

The Year in Review

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International Private Client

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International Private Client

FREDERICK K. SCHOENBRODT II AND JOSEPH M. ERWIN¹

I. Developments Involving the United States

A. FEDERAL ADMINISTRATIVE DEVELOPMENTS

1. IRS Inflation Adjustments for 2020

The IRS issued Revenue Procedure 2019-44, which provides the annual inflation adjustments for various tax provisions, including the amount of the federal estate tax exemption in 2020 and the amount of the annual federal gift tax exclusion in 2020. On January 1, 2020, the amount of the federal estate tax exemption, or the “basic exclusion amount,” will increase from \$11,400,000 to \$11,580,000.² The federal gift tax exemption and the federal generation-skipping transfer (GST) tax exemption, both of which are tied to the estate tax exemption, will also increase to \$11,580,000 in 2020.³ Notwithstanding these changes, there is no change in the amount of U.S.-situated assets that the estate of a nonresident noncitizen may exempt from federal estate tax.⁴ That exemption equivalent is based upon a statutory credit of \$13,000 against estate tax and remains \$60,000.⁵

Revenue Procedure 2019-44 also provided that the annual gift tax exclusion will remain \$15,000 per donee in 2020, while the annual exclusion for gifts to a noncitizen spouse will increase modestly from \$155,000 to \$157,000.⁶

2. Final Regulations Confirming No Clawback of Gifts under Higher Exclusion Amounts

Under the Tax Cuts and Jobs Act of 2017 (TCJA), the federal estate and gift tax exclusion amounts more than doubled, increasing from \$5,490,000 in 2017 to \$11,180,000 in 2018,⁷ and subsequently increasing further through

1. Frederick K. Schoenbrodt II, BRESSLER, AMERY & ROSS, P.C., Florham Park, New Jersey, and Joseph M. Erwin, LAW OFFICE OF JOSEPH M. ERWIN, Dallas, Texas.

2. Rev. Proc. 2019-44, 2019-47 I.R.B. 1093, §3.41. (“For an estate of any decedent dying in calendar year 2020, the basic exclusion amount is \$11,580,000 for determining the amount of the unified credit against estate tax under § 2010.”).

3. See I.R.C. §2505(a) (2019); I.R.C. § 2631(c) (2019).

4. See I.R.C. § 2102(b)(1) (2019).

5. *Id.*

6. Rev. Proc. 2019-44, 2019-47 I.R.B. 1093, §3.43(2).

7. Rev. Proc. 2018-18, 2018-10 I.R.B. 392, § 3.35.

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additional annual inflation adjustments as described above. These higher exclusion amounts are based on a provision of the TCJA that increased the statutory basic exclusion amount (BEA) from \$5,000,000 to \$10,000,000 for “estates of decedents dying or gifts made after December 31, 2017, and before January 1, 2026,” the so-called “sunset” provision.⁸ In the absence of further legislative action, when this higher BEA sunsets on December 31, 2025, the BEA will return to the substantially lower pre-TCJA level.

Practitioners had raised concerns that, because of the method by which the federal estate tax is calculated, the estate of a decedent who made a large gift under the higher pre-2025 BEA (for example, a 2020 gift of \$11,580,000) might owe federal estate tax if the decedent died after 2025, when the BEA reverts to its substantially lower level.⁹ On November 22, 2019, the IRS issued final regulations providing technical adjustments to the manner by which such a decedent’s estate will calculate its federal estate tax liability that will prevent a “clawback” of tax at death on a gift that was previously and properly sheltered from gift tax during life.¹⁰ The regulations explain that the estate tax calculation method provided under the new regulations will “ensure that the estate of a decedent is not inappropriately taxed with respect to gifts that were sheltered from gift tax by the increased BEA when made.”¹¹

3. *IRS Response to State Work-Arounds on SALT Deductions Cap*

The TCJA imposed a new \$10,000 limitation (\$5,000 in the case of a married taxpayer filing a separate return) on the amount of state and local taxes (SALT) that could be deducted by individuals for Federal income tax purposes.¹² In response, several states sought to create work-arounds that would allow their residents to minimize, in whole or in part, the impact of the limitation.¹³ In general, these work-arounds were designed to allow affected taxpayers in these jurisdictions to claim a credit against state and local taxes for tax deductible contributions to certain charitable organizations that support and are controlled by state and local government.¹⁴ Because federal income tax deductions for charitable contributions were not subject to a similar cap, by utilizing such a work-around, a taxpayer in a high-tax state could eliminate the adverse tax effects

8. I.R.C. § 2010(c)(3)(C) (2019).

9. *See No Clawbacks for Gifts if Estate Tax Exemption Changes*, J. K. LASSER (Nov. 25, 2019) <https://www.jklasser.com/news/no-clawbacks-for-gifts-if-estate-tax-exemption-changes/>.

10. *See* Treas. Reg. § 20.2010-1(c) (2019).

11. *Estate and Gift Taxes; Difference in the Basic Exclusion Amount*, 84 Fed. Reg. 228 (Nov. 26, 2019).

12. *Tax Cuts and Jobs Act of 2017*, Pub. L. 115-97, §11042(a), 131 Stat. 2054 (2017) (amending I.R.C. §164(b) by adding new paragraph (6)).

13. *See* Cynthia M. Pederson, *States' workarounds to the state and local tax deduction limitation*, THE TAX ADVISOR (Aug. 1, 2018), <https://www.thetaxadviser.com/issues/2018/aug/work-arounds-state-local-tax-deduction-limitation.html>.

14. *See id.*

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of the limitation by effectively converting a state and local tax deduction to a charitable deduction.¹⁵

Unsurprisingly, the IRS quickly moved to curb the effectiveness of any such technique, first publishing Notice 2018-54 in May 2018 indicating its intent to adopt regulations responding to these work-arounds¹⁶ and subsequently publishing proposed regulations in August 2018.¹⁷ With very limited exceptions, the proposed regulations sought to reduce the amount of any federal charitable income tax deduction by the amount of any credit against state or local taxes that the taxpayer receives as a result of the contribution.¹⁸ On June 11, 2019, the IRS issued final regulations, applicable to payments after August 27, 2018 (the date of the proposed regulations), adopting the *quid pro quo* analysis of the proposed regulations in which the income tax deduction for a charitable deduction is reduced by the value of any state or local tax credits received by the taxpayer, rendering ineffective the various state work-arounds to SALT deduction limitations.¹⁹

4. *Regulations Regarding Nonresident Aliens as Beneficiaries of ESBTs*

The Internal Revenue Service and the U.S. Department of the Treasury issued final regulations allowing nonresident aliens to be beneficiaries of Electing Small Business Trusts (ESBT).²⁰

Under Federal tax law, the ownership of S corporation shares is subject to strict limitations and restrictions.²¹ For example, there may not be more than 100 shareholders and, with some exceptions for qualifying trusts, all shareholders must be individuals.²² Nonresident aliens are not permissible S corporation shareholders.²³

An electing small business trust (ESBT) is one form of trust that is a qualified S corporation shareholder if all potential current beneficiaries (PCBs) of the ESBT are qualifying shareholders.²⁴ Until recently, if an ESBT's PCBs included one or more nonresident aliens, the shareholder rules would be violated, the ESBT election would be terminated, and the S corporation status would be lost.²⁵ The TCJA changed the law to permit an

15. *See id.*

16. I.R.S. Notice 2018-54, 2018-24 I.R.B. 750 (June 11, 2018).

17. Prop. Treas. Reg. § 1.170A-1(h)(3)(i), 83 Fed. Reg. 43, 571 (Aug. 27, 2018).

18. *See id.* § 1-170A-1(h)(3)(i).

19. Treas. Reg. § 1.170A-1(h)(3)(i) (2019).

20. Electing Small Business Trusts With Nonresident Aliens as Potential Current Beneficiaries, 84 Fed. Reg. 117, 28214 (2019) (amending Treas. Reg. §§ 1.641(e)-1 and 1.1361-1).

21. *See S Corporations*, IRS (Apr. 8, 2020) <https://www.irs.gov/businesses/small-businesses-self-employed/s-corporations>.

22. *Id.*

23. *Id.*

24. I.R.C. § 1361(e)(1) (2019).

25. *See* Electing Small Business Trusts with Nonresident Aliens as Potential Current Beneficiaries, 84 Fed. Reg. at 28214.

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ESBT to have a nonresident alien as a PCB without causing the loss of S corporation status.²⁶

All S corporation income is intended to be subject to federal income tax.²⁷ Note, however, that if the grantor of the ESBT is a nonresident alien and the ESBT is established as a grantor trust for federal income tax purposes, whereby all of the trust's income is taxable to the grantor, such an arrangement could result in all of the S corporation's income passing through to the nonresident alien and non-U.S. source income escaping U.S. tax.²⁸ Proposed regulations meant to prevent this result were issued in April 2019.²⁹ Under those regulations, if a nonresident alien is treated as the owner of the ESBT trust assets for Federal income tax purposes under the grantor trust rules, any S corporation income that would have been allocated to the nonresident alien grantor under the grantor trust rules shall instead be reallocated to, and thus made taxable to, the trust.³⁰

B. IMPORTANT FEDERAL LEGISLATION

1. Corporate Transparency Act of 2019

The U.S. House of Representatives passed H.R. 2513, the Corporate Transparency Act of 2019, on October 23, 2019.³¹ It was transmitted to the Senate and referred to the Senate Committee on Banking, Housing, and Urban Affairs.³² Through enhanced disclosure of the underlying beneficial ownership of certain entities, this legislation seeks to limit the use of entities as shell companies to avoid detection of illegal activity.³³

Bill H.R. 2513, if passed by the Senate and signed by the President, would require each person forming a corporation or limited liability company in the any of the United States or its territories to file a report with the office of the Financial Crimes Enforcement Network of the U.S. Department of the Treasury (FinCEN) listing the beneficial owners, their date of birth, current address, and passport number.³⁴ Annual updates would be required, and existing entities will have two years after regulations are issued to comply.³⁵ The filing requirement does not apply to minors, creditors, heirs, nominees, employees of the entity, banks, credit unions, publicly held companies, certain nonprofit organizations, businesses with more than twenty employees and more than \$5 million in gross receipts, and several other

26. *See id.*

27. *See S Corporations, supra* note 21.

28. *But cf.* Treas. Reg. § 1.641(c)-1 (2019) (demonstrating legislative efforts to remove this loophole).

29. *Id.*

30. Treas. Reg. § 1.641(c)-1(b) (2019).

31. H.R. 2513, 116th Congress (2019-2020).

32. *Id.*

33. *See Id.*

34. *See id.* § 5333(a)(1).

35. *See id.* § 5333(a)(1)(B).

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classes³⁶. A “beneficial owner” is any natural person who exercises control over the entity, owns twenty-five percent or more of equity of the entity, or receives “substantial economic benefits” from the entity.³⁷

2. *SECURE Act*

The U.S. House of Representatives passed H.R. 1994, the Setting Every Community Up for Retirement Enhancement Act of 2019, on May 23, 2019.³⁸ It was transmitted to the Senate, where its progress has stalled, but it is still expected to eventually become law.

The SECURE Act will make substantial changes to U.S. retirement planning, related to the employer’s administration of plans, the employee’s options with respect to those plans, and, most importantly for purposes of this summary, an individual’s rights and obligations in connection with his or her specific retirement assets.³⁹ Specifically, under the Act, an individual may contribute to an individual retirement account (IRA) regardless of his or her age, whereas current law prohibits contributions to an IRA after the account holder reaches age seventy-and-a-half.⁴⁰ In addition, the Act raises the age at which minimum required distributions (MRDs) must begin from seventy-and-a-half to seventy-two.⁴¹

Of particular note for trust and estate practitioners, the SECURE Act will effectively eliminate the ability of the beneficiary of an inherited IRA account to take MRDs over the beneficiary’s life expectancy.⁴² This strategy, commonly called a “stretch IRA,” allows the beneficiary of an inherited IRA to continue the account’s income tax deferral over the beneficiary’s lifetime.⁴³ The SECURE Act will change this, requiring that a non-spouse beneficiary receive the assets of an inherited IRA over a ten-year period, substantially limiting existing opportunities for continuing tax deferral.⁴⁴ To the extent that individuals have designated trusts under their wills as the beneficiary of certain retirement accounts and have structured those trusts as so-called “conduit trusts” to ensure the ability to use the trust beneficiary’s life expectancy to calculate MRDs (thereby establishing a trust-owned “stretch IRA”), this change to the maximum period of deferral may result in a substantial acceleration of the distribution of a retirement account to a trust beneficiary.⁴⁵ Note that distributions to spouses, minor

36. *See id.* § 5333(b)(3)(B).

37. H.R. 2513 § 5333(b)(3)(A).

38. H.R. 1994, 116th Congress (2019-2020).

39. *See id.*

40. *See id.* § 107.

41. *See id.* § 114.

42. *See id.* § 401(a)(1)(H).

43. *See* Randy A. Fox, *Inherited IRA Strategies after the SECURE Act*, THE TAX ADVISOR (Apr. 16, 2020), <https://www.thetaxadviser.com/newsletters/2020/apr/inherited-ira-strategies-secure-act.html>.

44. *See id.*

45. *See id.*

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beneficiaries, disabled beneficiaries, and certain other individuals who are not more than ten years younger than the original accountholder are not subject to the maximum ten-year period.⁴⁶

C. INVESTIGATIONS AND PROSECUTIONS

1. *DOJ-Swiss Bank Disclosure Program*

The program established by the U.S.-Swiss Joint Announcement of August 29, 2013, which set up four categories of Swiss banks by which the banks would disclose the extent of their activities relating to assisting evasion of U.S. income taxes, ended December 31, 2014, the last day of disclosure for category three and four banks.⁴⁷ This program had allowed Swiss banks, through comprehensive disclosure and cooperation with U.S. authorities, to avoid potential criminal liability related to banking services historically provided to U.S. taxpayers.⁴⁸ The program was part of the DOJ Offshore Compliance Initiative, which was formalized after the UBS affair in 2009.⁴⁹

The latest public activity was an addendum to the 2015 non-prosecution agreement with Banque Bonhôte & Cie. S.A., Ltd., in which the bank acknowledged it had discovered additional U.S.-related accounts and agreed to pay an additional \$1,200,000 in program-related penalties.⁵⁰

D. STATE DEVELOPMENTS

State Asset Protection Trust Legislation. In 2019, Connecticut⁵¹ and Indiana⁵² enacted laws allowing for the creation of enforceable asset protection trusts, adding to the list of U.S. states that permit this type of trust planning. An asset protection trust, broadly defined, is an irrevocable self-settled trust—i.e., a trust established by a settlor who also retains a beneficial interest in the trust's assets—that also offers protection under state law from certain claims of the settlor's creditors.⁵³ There are now nineteen states allowing for the creation and enforceability of such onshore asset protection trusts.⁵⁴

46. H.R. 1994, § 401(a)(2)(E)(ii).

47. *See Swiss Bank Program*, DEP'T OF JUST. (Jan. 8, 2020) <https://www.justice.gov/tax/swiss-bank-program>.

48. *See id.*

49. *See, e.g.,* Joseph M. Erwin, *The UBS Affaire: A Qualified Intermediary and "John Doe" Summons, Steuerbetrug, and Bankgeheimnis*, 38 TAX MGMT. INT'L J. 487 (2009).

50. *Justice Department Announces Addendum to Swiss Bank Program Category 2 Non-Prosecution Agreement with Banque Bonhote & Cie SA*, DEP'T OF JUST. (Jul. 19, 2019), www.justice.gov/opa/pr/justice-department-announces-addendum-swiss-bank-program-category-2-non-prosecution-agreeme-0.

51. *See* Connecticut Uniform Trust Code, Conn. Public Act No. 19-137 (2019).

52. *See* Ind. Code § 30-4-8 (2019).

53. *See* Investopedia Staff, *Asset Protection Trust (APT)*, INVESTOPEDIA (Jan. 23, 2020), <https://www.investopedia.com/terms/a/asset-protection-trust.asp>.

54. Alexander A. Bove, *Leimberg's Asset Protection Newsletter #393*, LEIMBERG'S INFORMATION SERVICES, Sep. 2019, at 1.

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E. COURT ACTION

1. *Grecian Magnesite Mining v. Commissioner – Sale of Partnership Interest by Foreign Partner*

In Revenue Ruling 91-32,⁵⁵ the IRS held that when a partnership is engaged in a U.S. trade or business through a fixed place of business, gain on the disposition of the partnership interest by a foreign partner is U.S. source gain under I.R.C. § 865(e)(2) because the partnership interest is attributable to the U.S. trade or business imputed from the partnership to the foreign partner. In *Grecian Magnesite Mining, Industrial & Shipping Co., SA v. Commissioner*,⁵⁶ the Tax Court held that gain from the sale by a foreign partner of its interest in a U.S. partnership engaged in a U.S. trade or business was not taxable in the United States, specifically rejecting Revenue Ruling 91-32. *Grecian Magnesite* was appealed, but before the case was affirmed,⁵⁷ the Tax Cuts and Jobs Act of 2017⁵⁸ added clause (8) to I.R.C. §864(c), explicitly rejecting the Tax Court’s position and codifying the IRS’ position in Revenue Ruling 91-32.

2. *Wilson v. United States – Penalties for Failure to File Form 3520 for Foreign Trust*

Wilson v. United States,⁵⁹ was a suit for a claim for refund of penalties paid pursuant to I.R.C. §6048 and §6677. The U.S. District Court held that Wilson, who was both the sole grantor/owner and sole beneficiary of the foreign trust, was subject only to a five percent penalty for untimely filing IRS Form 3520 as an owner under I.R.C. §6048(b) and not also the thirty-five percent penalty under §6048(c) as a beneficiary.⁶⁰

3. *Norman v. United States – Willful FBAR Penalty*

In *Norman v. United States*,⁶¹ the U.S. Court of Appeals for the Federal Circuit held that an amendment to the statute imposing the willful penalty for failure to file the Report of Foreign Bank and Financial Accounts (FinCEN Form 114), the “FBAR” superseded a regulation that suggested the willfulness penalty was limited to \$100,000 per year. The amended statute, 31 U.S.C. §5321(a)(5)(C), limited the willfulness penalty to the greater of \$100,000 or fifty percent of the balance in the account.⁶²

55. See Rev. Rul. 91-20, 1991-1 C.B. 107; See also, I.R.C § 875(1) (2019).

56. *Grecian Magnesite Mining, Indus. & Shipping Co., SA, v. Comm’r*, 149 T.C. 63 (2017).

57. See generally *Grecian Magnesite Mining, Indus. & Shipping Co., SA, v. Comm’r*, 926 F.3d 819 (D.C. Cir. 2019).

58. Tax Cuts and Jobs Act of 2017, Pub. L. 115-97, § 13501(a)(1), 131 Stat. 2054, 2139 (2017).

59. *Wilson v. United States*, 19-CV-5037 (BMC), 2019 WL 6118013 (E.D.N.Y. Nov. 18, 2019).

60. *Id.* at *8.

61. *Norman v. United States*, 942 F.3d 1111 (Fed. Cir. 2019).

62. *Id.*

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F. TREATIES AND INTERNATIONAL TAX AGREEMENTS

Treaties of the United States must be approved by the U.S. Senate before they may come into effect.⁶³ U.S. Senator Rand Paul (R.-Kentucky) held up ratification of income tax treaties and protocols to existing treaties for many years.⁶⁴ Finally, Senate Majority Leader Mitch McConnell (R.-Kentucky) made some procedural maneuvers and pushed through some of the backlog.⁶⁵

The protocol amending the U.S.-Luxembourg Income Tax Treaty, signed in 2013, entered into force in 2019.⁶⁶ The protocol to the U.S.-Japan Income Tax Treaty signed in 2013, entered into force on August 30, 2019.⁶⁷ The protocol exempts all cross-border interest payments from withholding tax for amounts paid or credited on or after November 1, 2019, with all other provisions generally effective on January 1, 2020.⁶⁸

A new protocol to the U.S.-Spain Income Tax Treaty was signed in 2013 and entered into force on November 27, 2019.⁶⁹ The protocol exempts certain dividend, interest, royalty, and capital gains payments made on or after November 27, 2019, between the United States and Spain taxpayers from withholding taxes.⁷⁰

The new protocol to the U.S.-Switzerland Income Tax Treaty was signed on September 23, 2009 and entered into force on September 20, 2019.⁷¹ The provisions of the protocol relating to taxes withheld at source are effective for amounts paid or credited on or after January 1, 2020.⁷² The protocol enhances the treaty provisions relating to information requests and provides for mandatory arbitration.⁷³

Remaining U.S. income treaties signed but awaiting approval are those with Chile (signed in 2010), Hungary (2010), Poland (2013), and Vietnam (2015).⁷⁴

FATCA Inter-Governmental Agreements with Armenia, Costa Rica, Dominica, the Dominican Republic, Tunisia, and Ukraine became effective

63. U.S. CONST., art. II, § 2, cl. 2.

64. Jim Tankersley, *Senate Approves Tax Treaty for First Time in Decade*, N.Y. TIMES (Jul. 7, 2019), <https://www.nytimes.com/2019/07/17/business/tax-treaties-vote.html>.

65. See Kaustav Basu & Nancy Ognanovich, *McConnel Shows Who's Boss After 9-Year Battle Over Tax Treaties*, DAILY TAX REP. (Oct. 23, 2019), https://www.bloomberglaw.com/product/tax/document/X956LA9S000000?bna_news_filter=daily-tax-report&jcsearch=BNA%25200000016c76e6db91ad7df7ef27c10001#jcite.

66. S. TREATY DOC. NO. 111-8.

67. S. TREATY DOC. NO. 114-1.

68. *Id.* at VI.

69. S. Treaty Doc. No. 113-4.

70. *Id.* at VI.

71. S. Treaty Doc. No. 112-1.

72. *Id.* at V.

73. *Id.* at III.

74. Jason R. Connery, *Current Status of U.S. Tax Treaties and International Tax Agreements*, 48 TAX INT'L J. 12, 4 (2019), <https://tax.kpmg.us/content/dam/tax/en/pdfs/2019/update-us-treaties-status-tmij.pdf>.

in 2019.⁷⁵ The United States now has FATCA IGAs in effect with ninety-four jurisdictions around the world.⁷⁶

A new Social Security Totalization Agreement between the United States and Slovenia became effective in 2019.⁷⁷

II. Developments Outside the United States

Significant developments in selected jurisdictions relevant to practitioners in the international private client context are reported below.

A. BRITISH OVERSEAS TERRITORIES

1. *Beneficial Ownership Required by UK*

The UK's Sanctions and Anti-Money Laundering Act (SAML) 2018⁷⁸ required the British Overseas Territories to set up public registers of corporate beneficial ownership information by 2020.⁷⁹ But the required date to have such registers operative was administratively delayed to 2023.⁸⁰

2. *Anguilla*

Anguilla revised its statutes relating to entities in 2019 with changes to placate threats from the EU on economic substance.⁸¹

3. *British Virgin Islands*

A significant amount of legislation and regulations were adopted by the British Virgin Islands or came into force in the latter part of 2018 and in 2019.⁸² Perhaps foremost among these were rules on economic substance implementing legislation, part of which was done with amendments to its

75. *Foreign Account Tax Compliance Act*, U.S. DEP'T OF TREASURY, <https://www.treasury.gov/resource-center/tax-policy/treaties/pages/fatca.aspx> (last visited Dec. 10, 2019).

76. *See generally id.*

77. *Slovenia-U.S. SSA, Administrative Arrangement to Enter Into Force*, DAILY TAX REP.: INT'L (Oct. 19, 2018), https://www.bloomberglaw.com/product/blaw/document/X2U9OVNO000000?criteria_id=fc7d6833c329f1096e33e2480971deb8&searchGuid=bef2b75c-866e-40be-84ca-16326821c36c&bna_news_filter=daily-tax-report-international.

78. *See generally* Sanctions and Anti-Money Laundering Act 2018, c. 13 (UK), *available at* <http://www.legislation.gov.uk/ukpga/2018/13/contents/enacted>.

79. *Id.* § 51.

80. HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE, GLOBAL BRITAIN AND BRITISH OVERSEAS TERRITORIES: RESETTling THE RELATIONSHIP, 2017-19, HC 1464, at 15 (UK).

81. Companies (Amendment) Act, 2019, Anguilla Act No. 1 of 2019; International Business Companies (Amendment) Act, 2019, Anguilla Act No. 3 of 2019; Limited Liability Company (Amendment) Act, 2019, Anguilla Act No. 2 of 2019; Limited Partnership (Amendment) Act, 2019, Anguilla Act No. 4 of 2019.

82. *See e.g., British Virgin Islands Jurisdiction Search*, SOC'Y OF TR. AND EST. PRAC., <https://www.step.org/jr-british-virgin-islands> (listing all BVI regulations enacted in late 2018 and early 2019) (last updated Sept. 2019).

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statutes establishing the beneficial ownership registry.⁸³ The effect of the Common Reporting Standard and Country by Country Reporting came into effect in 2019, though with extended deadline.⁸⁴

4. *The Bahamas*

The Removal of Preferential Exemptions Act was enacted on December 31, 2018, and addresses “ring-fencing” practices in which financial institutions were restricted to serving only domestic or only foreign customers.⁸⁵

Reports state that The Bahamas passed legislation for a beneficial ownership registry in 2018,⁸⁶ but the registry has not yet been set up by the Attorney General. The Bahamas’ economic substance legislation was passed at the end of 2018.⁸⁷

5. *Cayman Islands*

The International Tax Co-operation (Economic Substance) Law, 2018 (enacted and in force) introduced requirements for relevant entities carrying out relevant activities to be adequately directed and managed in the Cayman Islands.⁸⁸ It was amended in 2019 to change notification and information sharing requirements.⁸⁹

6. *Bermuda*

The Economic Substance Act 2018 requiring defined legal entities to maintain a substantial economic presence in Bermuda was amended in 2019.⁹⁰

83. See *BVI Issues Final Rules on Economic Substance Law*, SOC’Y OF TR. AND EST. PRAC (Oct. 14, 2019), <https://www.step.org/news/bvi-issues-final-rules-economic-substance-law>.

84. BRITISH VIRGIN ISLANDS INTERNATIONAL TAX AUTHORITY, GUIDANCE FOR VIRGIN ISLANDS FINANCIAL INSTITUTIONS AND VIRGIN ISLANDS CONSTITUENT ENTITIES, 2019 (Virgin Is.).

85. Press Release, Statement from the Hon. K. Peter Turnquest, Deputy Prime Minister and Minister of Finance Regarding Financial Sector Reform, Government of Bermuda (Jan. 3, 2019).

86. *Register of Beneficial Ownership Act, 2018*, HIGGS & JOHNSON (Feb. 5, 2019), <https://higgsjohnson.com/register-of-beneficial-ownership-act-2018/#>.

87. Commercial Entities (Substance Requirements) Act, 2018, The Bahamas Act No. 32 of 2018.

88. International Tax Co-Operation (Economic Substance) (Amendment) Bill, 2019, Gazette No. 43, Supp. No. 1 (Nov. 14, 2019) (Cayman Is.).

89. *Id.*

90. Bermuda Economic Substance Amendment Act 2019, Bermuda Act 19 of 2019.

B. BRITISH CROWN DEPENDENCIES

1. *Beneficial Ownership Registries*

The three Crown Dependencies of the United Kingdom – Guernsey, Jersey, and the Isle of Man – jointly set a timetable for establishing publicly accessible registers of beneficial owners of companies in their jurisdiction.⁹¹ “The Crown Dependencies now say they will work collaboratively with the EU in 2021 on connecting their existing registers of beneficial ownership with those in EU Member States, for access by law enforcement authorities and Financial Intelligence Units that monitor money-laundering transactions.”⁹² This coordination will be followed by access by financial services firms to the registers for due-diligence purposes.⁹³ Within twelve months of the publication of the EU’s planned review of the Fifth Anti-Money Laundering Directive, scheduled for January 2022, the Crown Dependencies will present their legislative proposals for public access to beneficial ownership data, which is expected to be in line with the actions of EU Member States.⁹⁴

2. *Jersey*

Beginning in 2018, International Savings Plans (ISPs) could be established in Jersey. “ISPs are income tax-exempt, flexible, savings plans intended to benefit employees of multinational and international companies.”⁹⁵ “ISPs are in the form of Jersey irrevocable trusts, established in connection with a trade or undertaking, partly or wholly outside of Jersey, by a non-Jersey resident.”⁹⁶

3. *Guernsey*

The Income Tax (Substance Requirements) (Guernsey) (Amendment) Ordinance, 2018 was approved by Guernsey in 2018 requiring companies carrying on, or undertaking, relevant activities to have substance in Guernsey, particularly being directed and managed, conducting core income generating activities, and having adequate people, premises, and

91. *Crown Dependencies Set Out Timetable for Public Accessibility of Beneficial Ownership Registers*, *Industry News*, SOC’Y OF TR. AND EST. PRAC. (June 20, 2019), <https://www.step.org/news/crown-dependencies-set-out-timetable-public-accessibility-beneficial-ownership-registers>.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Jersey Government Approves International Savings Plans Designed to Provide Better Futures for International Employees*, *JERSEY FIN.* (Dec. 6, 2018), <https://www.jerseyfinance.je/news/jersey-government-approves-international-savings-plans-designed-to-provide-better-futures-for-international-employees/>.

96. *Id.*

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expenditures in Guernsey.⁹⁷ Regulations implementing and explaining the legislation were issued in 2019.⁹⁸

An income tax treaty was signed with Estonia in late 2019, although instruments of ratification have not yet been exchanged.⁹⁹ A protocol amending the Guernsey-Isle of Man 2013 income tax treaty was signed in 2019.¹⁰⁰

A new comprehensive double taxation agreement and protocol between the United Kingdom and Guernsey was signed in London in 2018, replacing one that was signed in 1951.¹⁰¹ It has not yet entered into force.

4. *Isle of Man*

The Isle of Man negotiated a new “OECD style” double tax treaty with the United Kingdom in 2018. It came into force for withholding taxes on February 19, 2018; for income and capital gains taxes beginning April 6, 2019; for United Kingdom corporate tax beginning April 1, 2019; and for a mutual agreement procedure and exchange of tax information on December 19, 2018.¹⁰²

The income tax treaty signed with Belgium in 2009 has yet to come into force.¹⁰³

97. *Economic Substance Requirements for Guernsey Companies*, MOURANT (2019), [https://www.mourant.com/file-library/media—2019/2019—guides/economic-substance-requirements-for-guernsey-companies-\(apr-20\).pdf](https://www.mourant.com/file-library/media—2019/2019—guides/economic-substance-requirements-for-guernsey-companies-(apr-20).pdf).

98. The Income Tax (Substance Requirements) (Implementation) Regulations, 2018, Guernsey Statutory Instrument No. 20 of 2018.

99. Agreement Between Guernsey and the Republic of Estonia for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance, Nov. 18, 2019, London.

100. Protocol Amending the Agreement Between the States of Guernsey and the Government of the Isle of Man for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Nov. 12, 2019, Guernsey, Oct. 18, 2019, Isle of Man.

101. Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the States of Guernsey for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital Gains and the Prevention of Tax Evasion and Avoidance, July 2, 2018, London.

102. Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Isle of Man for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital Gains and the Prevention of Tax Evasion and Avoidance, July 2, 2018, London, Tynwald SD 2018/0229; <https://www.gov.im/media/1363994/double-taxation-agreement-712019.pdf>.

103. Agreement Between the Kingdom of Belgium and the Isle of Man for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital Gains and the Prevention of Tax Evasion and Avoidance, July 16, 2009, Brussels.

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C. CANADA

1. *Constitutional Challenge to FATCA in Canada*

Several individuals with dual United States and Canada citizenship challenged Canada's legislation implementing compliance with FATCA in a Canadian federal court. The lawsuit alleged that the Canadian legislation violates the Canadian Charter of Rights and Freedoms, specifically one's right to life, liberty, and security of the person, freedom from unreasonable search and seizure, and equal treatment before and under the law, and equal protection and benefit of the law without discrimination.¹⁰⁴ In *Deegan et al. v. Attorney General et al.*, the Federal Court of Canada held that the FATCA Inter-Governmental Agreement as implemented in Canada did not breach the Charter of Rights and Freedoms.¹⁰⁵

2. *Adoption of the Multi-Lateral Instrument*

Canada is one of the parties of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention), a measure of the OECD to combat base erosion and profit shifting.¹⁰⁶ It became effective in Canada on December 1, 2019.¹⁰⁷ The BEPS Convention automatically modifies tax treaties with which Canada is a partner and who have signed the BEPS Convention. It implements agreed minimum standards to counter treaty abuse, provides for arbitration between the countries, and tightens the definition of permanent establishment.¹⁰⁸

D. CYPRUS

In 2019, Cyprus amended the Income Tax Law of 2002 to add the interest limitation rule, the controlled foreign company rule, and the general anti-abuse rule, from the EU Anti-Tax Avoidance Directive (ATAD), with the amendments having retroactive effect to January 1, 2019.¹⁰⁹ Other

104. Patrick Cain, *Dual citizens sue feds over FATCA tax deal with U.S.* GLOBAL NEWS (Aug. 14, 2014), <https://globalnews.ca/news/1504452/dual-citizens-sue-feds-over-fatca-deal-letting-banks-pass-info-to-irs/>.

105. *Deegan v. Attorney General*, 2019 F.C. 960 (Can.).

106. *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*, ORG. FOR ECON. COOPERATION & DEV. (Nov. 24, 2016), <http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>.

107. *Signatories and Parties (MLI Positions)*, ORG. FOR ECON. COOPERATION & DEV. (2020), <http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>.

108. *Brochure: Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*, ORG. FOR ECON. COOPERATION & DEV. (2020). <http://www.oecd.org/tax/beps/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf>.

109. *Cyprus*, SOC'Y OF TR. AND EST. PRAC. (2019), <https://www.step.org/jr-cyprus>.

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provisions of the ATAD, exit taxation, and hybrid mismatches are expected to be added and effective in 2020.¹¹⁰

The revised income tax treaty between Cyprus and the UK signed in 2018 is generally in effect as of January 1, 2019.¹¹¹ The treaty is based on the OECD model convention.

E. EUROPEAN UNION

1. *Challenge to FATCA*

The group of dual U.S.-French citizens, *Americains Accidentels*, who lost their challenge to FATCA in the French administrative court, the *Conseil D'Etat*, have filed a challenge to FATCA with the EU Commission.¹¹²

2. *EU Creates Its Own Blacklist*

Due to concerns about the lack of transparency in some jurisdictions around the world, the European Parliament approved a “blacklist” of countries deemed not fully compliant with anti-money laundering and transparency efforts.¹¹³ But the European Council rejected the list, and it was revised to remove some jurisdictions, including some U.S. territories after a complaint by the U.S. Treasury about the lack of transparency of the process in creating the blacklist.¹¹⁴

F. FRANCE

A group of dual U.S. and French citizens, the Association of Accidental Americans, sued the French government to block the implementation of FATCA in France.¹¹⁵ But in 2019, the *Conseil d'Etat* (State Council) ruled that FATCA did not breach French law.¹¹⁶

G. SWITZERLAND

The Swiss Federal Tax Administration exchanged information on financial accounts with seventy-five countries from the beginning of its program in

110. *Id.*

111. Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Cyprus for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital Gains and the Prevention of Tax Evasion and Avoidance, March 22, 2018, Nicosia, OFFICIAL GAZETTE OF THE REPUBLIC OF CYPRUS, 4248-28/12/2018.

112. Christian Angeloni, *France sued by 'Accidental Americans' over FATCA*, INT'L ADVISER (Oct. 4, 2019), <https://international-adviser.com/france-sued-by-accidental-americans-over-fatca/>.

113. Teri Sprackland, *EU Money Laundering Blacklist to Get a Reboot, Commissioner Says*, TAX NOTES TODAY INT'L (April 15, 2019).

114. *Id.*

115. CE Ass., July 19, 2019, Association des Americains Accidentels, No. 424216 (Fr.).

116. *Id.*

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2017 through mid-2019. This involved information on about 3.1 million financial accounts.¹¹⁷

H. LIECHTENSTEIN

“To comply with requirements set out in the EU Fourth Anti-Money Laundering Directive,¹¹⁸ Liechtenstein introduced the Law on the Register of Beneficial Owners of Domestic Legal Entities,¹¹⁹ which. . . requires Liechtenstein entities to register their beneficial owners by February 1, 2020.” Access will be limited to financial institutions to exercise their due diligence obligations on a case-by-case basis.¹²⁰

At the urging of the OECD, Liechtenstein revised its tax laws effective January 1, 2019, to tax some dividends and capital gains, prohibit taking investment losses against taxable income, and amend the anti-abuse regulations with regard to the equity interest deduction.¹²¹

I. SINGAPORE

The BEPS Convention entered into force in Singapore on April 1, 2019.¹²²

“With the Singapore Budget Statement 2019, the ss.13CA, 13R and 13X funds tax incentive schemes were extended to 2024.”¹²³ “In addition, under ss.13CA and 13R fund tax incentive schemes, the condition that 100 per cent of the value of the issued securities of the fund must not be beneficially owned, directly or indirectly by Singapore persons, has been removed.”¹²⁴

J. MALTA

Malta implemented the EU Fourth Anti-Money Laundering Directive through amendments to its Prevention of Money Laundering and Funding of Terrorism Regulations.¹²⁵ “The Registrar of Companies’ beneficial ownership register (BO register) has been available since July 1, 2018.”¹²⁶ “The Malta Financial Services Authority maintains BO register information for trusts that have a Malta tax liability [while] the Registrar of Legal

117. *Id.*

118. Council Directive 2015/849, 2015 O.J. (L 141) (EU).

119. *Liechtenstein*, SOC’Y OF TR. AND EST. PRAC. (2019), <https://www.step.org/jr-liechtenstein>.

120. *Id.*

121. *Id.*

122. Press Release, Singapore Ratifies the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing, Singapore Ministry of Finance (Dec. 21, 2018).

123. *Singapore*, SOC’Y OF TR. AND EST. PRAC. (2019), www.step.org/jr-singapore.

124. *Id.*

125. Press Release, “Malta’s Transposition of the Fourth EU Anti-Money Laundering Directive will make the fight against money laundering and terrorism financing more effective,” Malta Ministry of Finance (Dec. 19, 2017).

126. *Malta*, SOC’Y OF TR. AND EST. PRAC. (2019), www.step.org/jr-malta.

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Persons maintains the BO register information for foundations and associations.”¹²⁷

Late in 2018, “legislation on blockchain technology, cryptocurrencies exchanges, and other intermediary services relating to cryptocurrencies were published.”¹²⁸

On December 19, 2018, Malta ratified the BEPS Convention.¹²⁹

K. UNITED ARAB EMIRATES

Economic substance legislation came into effect in the United Arab Emirates on April 30, 2019.¹³⁰

L. UNITED KINGDOM

Guidance was issued to give effect to the European Union’s Mandatory Disclosure Rules on certain cross-border arrangements (DAC6).¹³¹

The Finance Act 2019, effective April 6, 2019, extended the scope of Capital Gains Tax on non-UK residents to all UK immovable property (real property) for both direct and indirect disposals.¹³² The act also changed the assessment time limits for discovery of assets related to offshore matters such that HMRC have twelve years to raise an assessment for non-deliberate offshore tax non-compliance.¹³³ The extension operates retroactively as any tax years that were open April 5, 2019, had the discovery window extended to twelve years.¹³⁴

127. *Id.*

128. *Id.*

129. Multilateral Convention (Implementing Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order, 2018, Legal Notice 142 of 2018 (Malta).

130. Cabinet Resolution No. 31 of 2019 (U.A.E.); see also, *UAE Economic Substance Legislation Now in Force*, SOC’Y OF TR. AND EST. PRAC. (July 4, 2019), <https://www.step.org/news/uae-economic-substance-legislation-now-force>.

131. International Tax Enforcement (Disclosable Arrangements) Regulations 2019 (Draft) (published as International Tax Enforcement (Disclosable Arrangements) Regulations 2020, 2020/25) (UK); HM REVENUE & CUSTOMS, INTERNATIONAL TAX ENFORCEMENT: DISCLOSABLE ARRANGEMENTS (July 22, 2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818842/International_Tax_Enforcement_-_disclosable_arrangements_consultation_.pdf.

132. Finance Act 2019, c.1, §14 (Feb. 12, 2019).

133. *Id.* §80.

134. *Id.*

III. Multi-Lateral and Non-Government Activity

A. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

1. *Model Standard for Worldwide Automatic Tax Information Exchange and the Common Reporting Standard*

One of the primary aims of the OECD is the implementation of automatic exchange of information for tax purposes among the nations of the world as exemplified in its Model Tax Convention.¹³⁵ This developed into a standard for the capture, exchange, and processing of tax information in a timely and cost-effective manner and in 2015 became the Common Reporting Standard (CRS).¹³⁶

The CRS is implemented in a country by adoption of the Convention on Mutual Administrative Assistance in Tax Matters (MAATM), the CRS Multilateral Competent Authority Agreement, and, in most cases, local legislation or administrative action.¹³⁷

Through May of 2019, there were more than 4,000 bilateral CRS exchange relationships involving more than 100 countries.¹³⁸ The countries first participating in 2019 were Ghana and Kuwait.¹³⁹ In 2020, Albania, Ecuador, Kazakhstan, Maldives, Nigeria, Oman, and Peru are scheduled to begin exchanging information under the CRS standard.¹⁴⁰ The United States does not participate in CRS.¹⁴¹

In a direct attempt to prevent CRS avoidance planning, the OECD in 2018 issued model disclosure rules “that require lawyers, accountants, financial advisors, banks, and other service providers to inform tax authorities of schemes they put in place for clients to avoid CRS reporting or to prevent the identification of beneficial owners of entities and trusts.”¹⁴²

135. *Automatic Exchange Portal: Common Technical Solutions*, ORG. FOR ECON. COOPERATION & DEV. (2018), <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/>.

136. *Id.*

137. *Automatic Exchange Portal: International Framework for the CRS*, ORG. FOR ECON. COOPERATION & DEV. (2018), <https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/>.

138. *Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date*, ORG. FOR ECON. COOPERATION & DEV. (Nov. 26, 2019), <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/crs-mcaa-signatories.pdf>.

139. *The 2019 AEOI Implementation Report*, ORG. FOR ECON. COOPERATION & DEV. (2019), <https://www.oecd.org/tax/transparency/AEOI-implementation-report-2019.pdf>.

140. *Id.*

141. *Id.*

142. *Game over for CRS avoidance! OECD adopts tax disclosure rules for advisors*, ORG. FOR ECON. COOPERATION & DEV. (Sept. 3, 2018), <https://www.oecd.org/tax/exchange-of-tax-information/game-over-for-crs-avoidance-oecd-adopts-tax-disclosure-rules-for-advisors.htm>.

2. *Country by Country (CbC) Reporting*

Related to CRS is Country-by-Country reporting of tax information. It, too, is based on the MAATM and a separate Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC Competent Authority Agreement). The requirement to file CbC reports is limited to companies with significant revenue thresholds, usually USD 850 million or EUR 750 million.¹⁴³

There are more than 80 signatories to the CbC conventions. Countries where CbC reporting became required in 2019 were Anguilla, Egypt, United Arab Emirates, and San Marino, and for 2020 are Tunisia, Turks & Caicos, and Seychelles.¹⁴⁴

The United States requires CbC reporting by regulation for companies with over USD 850 million in gross revenue¹⁴⁵ but is not a party to the CbC Competent Authority Agreement so that it does not automatically exchange this information under the OECD format.

3. *BEPS Project – Reallocation of Corporate Profits to Market Jurisdictions*

As part of its Base Erosion/Profit Shifting program, in 2019 the OECD released a document setting out two “pillars” of its project on how to tax the worldwide economy as conducted by multi-national enterprises (MNE).¹⁴⁶ Though nominally about the digital economy, the proposal covers all cross-border business activities of MNEs.

The first pillar will consider new rules to establish criteria for a company having taxable presence in a jurisdiction without being physically present and methods of reallocating more taxing rights to the “market jurisdiction,” the place where goods and services are delivered or used.¹⁴⁷ “The second pillar would establish a global minimum tax for a multinational’s entities, alongside rules to prevent corporate tax base-eroding behavior.”¹⁴⁸

Most bilateral income tax treaties use a physical presence standard to determine whether an MNE is taxable. The OECD proposal would replace

143. Kathryn Horton O’Brien et al., *Country-by-Country Reporting – Questions and Answers for Asset Managers (Part II)*, PwC, <https://www.pwc.com/gx/en/tax/transfer-pricing/assets/country-by-country-reporting-questions-and-answers-for-asset-managers-part-2.pdf> (last visited June 1, 2020).

144. *Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) and Signing Dates*, ORG. FOR ECON. COOPERATION & DEV., <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/CbC-MCAA-Signatories.pdf> (last updated May 7, 2020).

145. Treas. Reg. §1.6038-4 (2017).

146. Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Base Erosion and Profit Shifting Project, Inclusive Framework on BEPS, Org. for Econ. Cooperation & Dev. (2019).

147. Isabel Gottlieb, *Countries’ Shares of Profits Would Shift Under OECD Tax Plan*, BLOOMBERG (March 31, 2019), <https://news.bloombergtax.com/transfer-pricing/oecd-outlines-plans-for-changing-nations-taxing-rights>.

148. *Id.*

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physical presence nexus with a standard measured by a revenue threshold for “consumer-facing businesses, broadly defined.”¹⁴⁹ The document posits that a revenue-based nexus standard is the simplest way to address the ability of MNEs to produce income in a jurisdiction without a physical presence.¹⁵⁰

The proposal recognizes that the current rules work reasonably well for most routine transactions. “The new rules would allow for the taxation at an appropriate level of business activities in market jurisdictions, while retaining transfer pricing rules where they work relatively well in that market jurisdiction,” the proposal states.¹⁵¹

4. *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*

The BEPS Convention is a treaty developed by the OECD that automatically overrides existing treaties when both parties to an existing bilateral tax treaty sign. The BEPS Convention seeks to prohibit hybrid mismatch arrangements, reduce treaty abuse, strengthen the definition of permanent establishment, and provide for additional mutual agreement procedures, including arbitration.¹⁵²

By the end of 2019, ninety-two countries (not including the United States) had signed the BEPS Convention though it had only become effective with respect to 37, notably including Switzerland, United Kingdom, Singapore, Russia, Monaco, Netherlands, New Zealand, Mauritius, Malta, Luxembourg, Jersey, Japan, Israel, Ireland, Isle of Man, Guernsey, France, Curaçao, Canada, Belgium, Austria, and Australia.¹⁵³

B. FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is composed of thirty-seven countries and two regional organizations.¹⁵⁴ “The objectives of FATF are to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial

149. *Secretariat Proposal for a “Unified Approach” under Pillar One*, ORG. FOR ECON. COOPERATION & DEV. (2019), <https://www.oecd.org/tax/beps/public-consultation-document-secretariat-proposal-unified-approach-pillar-one.pdf>.

150. *Id.*

151. *Id.* at 8.

152. *Brochure: Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*, ORG. FOR ECON. COOPERATION & DEV. (2020). <http://www.oecd.org/tax/beps/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf>.

153. *Id.* at 7.

154. *FATF Members and Observers*, FIN. ACTION TASK FORCE, (2019). <https://www.fatf-gafi.org/about/membersandobservers/>.

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system.”¹⁵⁵ Its recommendations are policy statements on issues relating to these objectives and are generally the standard for the world.¹⁵⁶

In 2019, FATF updated its procedures for the fourth round of its mutual evaluations, reviews of each member country’s adherence to FATF standards for anti-money laundering and countering the financing of terrorism (AML/CFT). Evaluations were conducted in 2019 in Malawi, the Philippines, Pakistan, Solomon Islands, Taiwan, Moldova, Malta, Hong Kong, Greece, Cape Verde Islands, and Haiti. The President of FATF for the year ending June 30, 2020, is from China.

C. INTERNATIONAL CONSORTIUM FOR INVESTIGATIVE JOURNALISTS

The database of the International Consortium for Investigative Journalists (ICIJ)¹⁵⁷ contains ownership information about thousands of companies created in offshore jurisdictions and their owners. The database became famous after the publication of the Panama Papers in 2016, a database of leaked files from a Panama law firm that publicized thousands of transactions, causing even legitimate transactions to be viewed with suspicion.¹⁵⁸

Its 2019 ICIJ activity has included disclosure of cables from China related to the mass internment of the Uighurs ethnic-minority in Xinjiang, records of faulty medical devices around the world, and information about alleged bribes by Brazilian construction firm Odebrecht in South America and the Caribbean.

155. *What do we do*, FIN. ACTION TASK FORCE (2019), <https://www.fatf-gafi.org/about/whatwedo/>.

156. *Id.*

157. INTERNATIONAL CONSORTIUM FOR INVESTIGATIVE JOURNALISTS (2020), <https://www.icij.org/about/>.

158. *Id.*