

<b>APPENDICES</b>	<b>REF: 0120454/1/039949PRM.LSE</b>
<b>FEASIBILITY STUDY ON A STANDARDISED “RELIEF AT SOURCE” SYSTEM IMPLEMENTING THE PRINCIPLES OF THE FISCO RECOMMENDATION</b>	

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**European Commission  
Taxation and Customs Union DG**

**Feasibility Study on a Standardised “Relief at Source” System  
Implementing the Principles of the FISCO Recommendation**

Appendices to the Final report

## APPENDIX 1: INTERNATIONAL CONTEXT

### 1.1 INTRODUCTION

1. **The Need for (Exchange of) Information.** The question of the application of DTT reliefs and the corresponding exchange of information between countries must be placed in a broader context.

*“In today’s globalised economy [...] effective information exchange is essential for countries to maintain sovereignty over the application and enforcement of their tax laws and to ensure the correct application of [DTTs]. Given that an increasing number of taxpayers are engaging in cross border activity, tax authorities need an effective legal mechanism for obtaining information from their treaty partners to ensure compliance with the tax laws. While taxpayers can operate in a global world relatively unconstrained by national borders, tax authorities must respect these borders in carrying out their functions. Exchange of information provisions offer a legal framework for co-operating across borders without violating the sovereignty of other countries or the rights of taxpayers” (2).*

In this respect, most countries started to take into account the loss of earnings resulting from the tax fraud/evasion and the poor exchange of information between them as from 2000.

The below paragraphs briefly present the various initiatives taken in Europe, in the United States and at the OECD level.

2. **Exchange of Information v. Anonymous WHT.** It appears nowadays that there is a broad consensus about the fact that FIs should play a role of tax intermediaries in cross-border transactions (3). There are basically two ways in which (domestic and/or foreign) FIs could play such role: either as (foreign) WAs or as (foreign) Reporting Agents:

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2 <http://www.oecd.org/tax/oecdreleasesnewprovisionsforexchangeofinformationbetweentaxauthorities.htm>

3 Beyond FATCA: An Evolutionary Moment for the International Tax System, Itai Grinberg, Draft of January 27, 2012, Abstract: *“The international tax system is in the midst of a novel contest between information reporting and anonymous withholding models for ensuring that states have the ability to tax offshore accounts. (...) Four incongruent initiatives of the European Union, the OECD, Switzerland, and the United States together represent an emerging international regime in which financial institutions act to facilitate countries’ ability to tax their residents’ offshore accounts. The growing consensus that financial institutions should act as “tax intermediaries” cross-border represents a remarkable shift in international norms that has yet to be recognized in the literature. What remains is a contest as to how financial institutions should serve as tax intermediaries cross-border, and for which countries. (...) The eventual triumph of an information reporting model over an anonymous withholding model is key to (1) allowing for the taxation of principal, (2) ensuring that most countries are included in the benefit of financial institutions serving as tax intermediaries cross-border, and (3) encouraging taxpayer engagement with the policy and supporting sovereign policy flexibility, especially in emerging and developing economies.”* The author is Associate Professor at the Georgetown University Law Center. Until the summer of 2011, the author worked in the Office of International Tax Counsel at the United States Department of the Treasury. In that capacity, he was substantially involved in FATCA from its inception, and also represented the United States at the OECD and at the Global Forum on Transparency and Exchange of Information for Tax Purposes.

## FEASIBILITY STUDY ON A STANDARDISED “RELIEF AT SOURCE” SYSTEM IMPLEMENTING THE PRINCIPLES OF THE FISCO RECOMMENDATION

## APPENDIX 1: INTERNATIONAL CONTEXT

- **WHT.** When a FI acts as a WA, it generally collects the tax on behalf of the SC (“classic” WHT), but taxes may also be collected, by way of an anonymous WHT, on behalf of the RC (e.g. in the framework of the Savings Directive, during a transitional period and in lieu of automatic information exchange; in the framework of the Rubik project – cf. Section 1.9 of the present appendix). The latter system is often applied in countries where some restrictions still exist (e.g. within the EU, in Austria and Luxembourg; outside the EU, in Switzerland);
- **Exchange of Information.** When a FI acts as a Reporting Agent, its main duty is to collect the relevant elements of information required by the taxing authority. Again, such taxing authority can either be the SC (e.g. the QI regime) or the RC (e.g. the Savings Directive as it is commonly applied).

The current trend is towards more exchange of information across borders (see below for the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes), although some specific projects/agreements still provide for anonymous WHT.

In the framework of this study, the main question is "how" the international exchange of information should be organised both towards the SC (to ensure correct application of the DTT rates) and towards the RC (to ensure correct income tax treatment) with specific consideration to the information channels used in this respect.

In this regard, the study covers the assessment of two main Models. In this document, these Models are referred to as the “AIC Model” and the “SC Model”. In a nutshell, these two Models can be described as follows:

- **AIC Model.** The AI closest to the beneficial owner reports the information to the Country where it is established, which then passes the information automatically on to both the SC and the RC (referred to as the “AIC Model” as the cross-border information flows passes through the AIC);
- **SC Model.** The AI closest to the beneficial owner reports the information to the SC, which then provides this information automatically to the RC (hereafter referred to as the “SC Model”).

3. **European Commission’s Communications.** The European Commission has adopted several Communications in 2009, 2010 and 2012, respectively, on promoting good governance in tax matters and the fight against tax fraud and tax evasion (4) (5).

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4 Brussels, 28 April 2009; COM(2009) 201 final, “*Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, Promoting Good Governance in Tax Matters*”; Press Release IP/09/650, Brussels, 28 April 2009, “*Taxation and Good Governance: The European Commission proposes actions to improve transparency, exchange of information and fair tax competition*”;

Brussels, 21 April 2010, COM(2010) 163, “*Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, Tax and Development, Cooperating with Developing Countries on Promoting Good Governance in Tax Matters*”; Press Release

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The 2009 Communication presented concrete actions that could be taken to better promote the principles of good governance in the tax area, transparency, exchange of information and fair tax competition. The 2010 Communication aimed to improve synergies between tax and development policies, to make them more effective. The 2012 Communication looked at ways to strengthen existing measures and sets out possible new initiatives for eliminating fraud and evasion in Europe.

As regards exchange of information in tax matters, these Communications in particular called on the MSs to:

- **Exchange of Information upon Request and Bank Secrecy.** Ensure effective administrative cooperation in the assessment of taxes that would, in particular, prohibit MSs in future from invoking bank secrecy laws as a justification for not assisting the tax authorities of other MSs;
- **Recovery.** Ensure administrative cooperation in the recovery of tax claims;
- **Recast of the Savings Directive.** Improve the functioning of the Savings Directive via its recast (extension of its scope to intermediate tax-exempted structures (trust, foundations etc.) and to income equivalent to interest obtained through investments in some innovative financial products) and via more cooperation with third countries (amendments to the existing EU savings agreements);
- **Tax Information Exchange Agreements.** Conclude specific agreements in the tax area containing provisions on transparency and exchange of information for tax purposes at EU level to accelerate the process of implementing commitments to greater transparency and exchange of information made by certain jurisdictions;
- **International Standard of Tax Cooperation.** Increase support to international capacity development initiatives, particularly when developing international standards of tax cooperation.
- **Better Cross-border Cooperation Between EU Tax Administrations.** Increase use of automatic exchange of information. Improving the use of existing legal instruments, further developments of electronic formats for exchange of information and of secure channels of communication to cover other types of income. Improvement of the identification of taxpayers (European TIN). Joint audits by tax administrations of various MSs, presence of officials in other MSs.

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MEMO/10/146, Brussels, 21 April 2010, “*Tax and development: promoting good governance in taxation as part of development cooperation*”.

Brussels, 27 June 2012, COM(2012) 351, “*Communication from the Commission to the European Parliament and the Council on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries*”; Press Release IP/12/697, Brussels, 27 June 2012, “*Tackling tax fraud and evasion: Commission sets out concrete measures*”.

5 The European Commission is currently working on a fourth Communication on good governance in the tax area in relation to tax havens and aggressive tax planning.

- **Cooperation with other international organisations.** Improvement of cooperation with international organisations with a view to promoting common interests and avoiding overlaps and creating synergies for the benefit of financial institutions and tax administrations (use of a single set of tools and instruments both within the EU and in their relations with third countries).

#### 4. Global Forum on Transparency and Exchange of Information for Tax Purposes (6).

*“Tax transparency and the fight against cross-border tax evasion have been key topics at G20 Summits in Washington, London, Pittsburgh, Toronto, Seoul and Cannes.*

*The OECD is helping to develop exchange of information networks through the Global Forum on Transparency and Exchange of Information for Tax Purposes [which] has been the multilateral framework within which work in the area transparency and exchange of information has been carried out by both OECD and non-OECD economies since 2000.”*

The work of the Global Forum leads to the development of a universally endorsed standard of exchange of information upon request. As the below figure shows, hundreds of new information exchange instruments have been signed in the last couple of years.

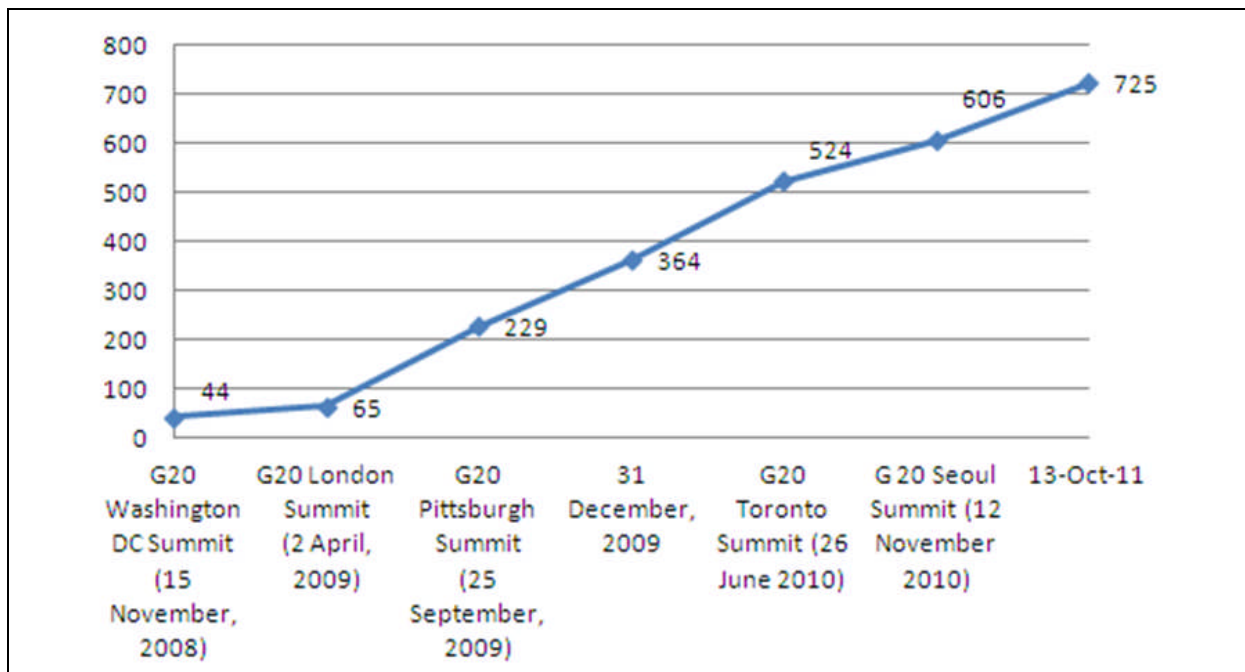


Figure 1: TIEAs/DTTs Signed between G20 Summits

## 1.2 QUALIFIED INTERMEDIARY REGIME

5. **Summary.** The United States introduced the “Qualified Intermediary” regime (commonly named “QI”) on 1 January 2001. The objective of the QI regime was to simplify the

6 <http://www.oecd.org/newsroom/fightingtaxevasion.htm>; <http://www.oecd.org/tax/transparency/>

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withholding and reporting obligations for payments of income (including interest, dividends, royalties and gross proceeds) made to an account holder through one or more intermediaries.

Non-US individuals and non-US corporations are subject to a 30-percent US WHT on most US source income (including interest, dividends, royalties, compensation, other fixed and determinable annual or periodical income, so-called FDAP income, and certain gains). Prior to the QI regime, the procedural requirements for claiming a reduced rate of withholding varied depending on the type of income, the status of the taxpayer or any income tax treaty applied. Thus, a WA could only apply a reduced rate of US WHT at source if it was provided with certain specific documentation with respect to the status of the beneficial owner of the income. Collecting all these documents, especially when several intermediaries were involved in a payment, was extremely burdensome. To benefit from the portfolio interest exemption for instance (which is a US domestic WHT exemption on certain interest payments), the beneficial owner of the interest income had to provide a statement of foreign status (Form W-8) to the WA. For dividends, a WA could rely on the address of the payee and grant a reduced rate of withholding at source if the recipient's address was in a treaty country. Payments made to US persons were subject to a backup withholding of 31% (now 28%), unless the payee would furnish the WA with a Form W-9. Because these procedures were not streamlined and were not workable in practice, they allowed abusive claims of foreign status or of benefits under US DTTs.

The main objective of the QI regime was to eliminate unnecessary burdens that the lack of standardisation and coordination of the old procedures imposed on the WA.

Under the QI regime, when a payment is made to a foreign person acting as an intermediary (for instance a bank) on behalf of the beneficial owner (for instance the client of such bank) or of other intermediaries, the certification of the beneficial owner should no longer be passed up the chain of intermediaries to the US WA, but the US WA may rely on the certification made by the foreign person (the bank) made on behalf of others (the clients) to reduce the rate of withholding. The QI may certify without having to furnish the certificates or other documentation of the person for whom it acts (this is, however, not the case for payments made to US non-exempt recipients for which Form W-9 must in general still be provided up the chain). This convenience, however, comes at the cost of assuming significant responsibilities as a WA.

6. **US as SC.** The QI system was mainly designed as a system to address the problems of the United States *as a source country*. The QI regime was indeed mainly focussed on making sure that the US WHT agent had adequate information to justify any reduction in the 30% statutory withholding rate (7).

According to Stafford Smiley, the QI system was a “*compromise between the IRS and the Swiss Banks of the world: the banks agreed to do the work of determining and applying appropriate withholding tax rates to cross-border payments in exchange for being able to*”

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7 S. Smiley, “Qualified intermediaries, the EU Savings Directive, TRACE – What does FATCA really add?”, Corporate Taxation, September/October 2011, at 20.



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*keep the detailed information confidential. The banks were not required to report the detailed information either to US paying agents or to the IRS – except for information on payments going to the US tax residents”.*

This compromise did allow foreign institutions to keep confidential information about their clients without having to report this information up the chain to the WA (which, like the other intermediaries in the chain, are competitors and could use this information to gain new clients) and, in some countries, not to infringe their local bank secrecy rules. As far as the IRS is concerned, it could grant the reduced WHT rates based on the due diligence work done by the QIs and without having to receive, and to deal with, detailed information per Investor (with the exception of information relating to US Investors).

Knowing that the US is the biggest market place in the world, a full reporting of the detailed information per Investor would have triggered a gigantic flow of information on foreign taxpayers whose tax liability in the US is, most of the time, limited to the WHT suffered at source as they generally do not have to pay (other) taxes and file a tax return in the US. Thus, the receipt and treatment of this huge flow of information was of little interest for the US and could even have entailed an obligation for the US, under various legal instruments (such as the DTTs and the OECD works), to exchange this information with many other countries.

**In a nutshell, the QI system was thus aimed at protecting the rights of the US, as SC, in respect of WHTs paid on FDAP (dividends and interest mainly) paid abroad to foreign taxpayers. In particular, the QI regime enables the IRS to tax US persons with or without detailed information in their respect, and it enables a relief at source on US source securities income pursuant to DTTs without the IRS collecting detailed information on non-US beneficial owners.**

### 1.3 SAVINGS DIRECTIVE REGIME

7. **Summary** (8). In order to ensure the proper operation of the internal market and tackle the problem of tax evasion, the Council Directive on taxation of savings income in the form of interest payments, hereafter referred to as the “Savings Directive”, was adopted in June 2003 and has been applicable since 1 July 2005.

The purpose of the Savings Directive is to promote exchange of information automatically between MSs and thereby enable them to apply their own taxation rules to interest payments that their residents receive from paying agents established in other MSs. It enables such interest payments to be made subject to effective taxation in accordance with the laws of the MS of residence of the individuals concerned.

The scope of the Savings Directive is limited to interest paid directly or indirectly to individuals in cross-border situations. More precisely, the Savings Directive applies where three conditions are simultaneously fulfilled: (i) an “interest payment” is made (ii) by a paying agent “established in a MS” (iii) to a “beneficial owner” resident of another MS or of a

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8 [http://ec.europa.eu/taxation\\_customs/taxation/personal\\_tax/savings\\_tax/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/personal_tax/savings_tax/index_en.htm)

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participating country that has accepted the mutual nature of the system. In this sense, the scope of the Savings Directive is relatively limited.

On the other hand, the notion of “interest” has been broadly defined and covers interest from debt-claims of every kind, whether obtained directly or as a result of indirect investment via most collective investment undertakings (9) and via other residual entities (paying agents upon receipt). This scope includes income realised at the sale, refund or redemption of shares or units in these aforementioned collective investment undertakings or entities, if these undertakings and entities have invested more than 25% of their assets in debt-claims (10).

Under the Savings Directive, the obligations of the paying agent are in principle as follows:

- Identifying and gathering information on beneficial owners;
- Determining whether there is any “interest payment”;
- Carrying out the exchange of information. In this respect, the information is provided to the RC of the Investor on an annual basis via the tax administration of the country where the paying agent is established.

Only Luxembourg and Austria are still entitled during a transitional period to levy a WHT at a rate of 35% in place of information exchange (11). They transfer 75% of the revenue of this WHT to the RC of the Investor.

The WHT levied by Luxembourg and Austria during the transitional period can be considered as a protective measure to the benefit of the RC:

- Indeed, such WHT is in principle entirely creditable or refundable to the Investor complying with his income tax obligations in his RC;
- In addition, as an alternative to such WHT, the Investor can permit the paying agent to disclose detailed information about his identity (which will in turn be exchanged to the RC);
- Finally, Luxembourg or Austria may elect, as Belgium did, to introduce automatic exchange of information during the transitional period, in which case they no longer apply the WHT and the revenue sharing.

On 2 June 2004, the EU Council adopted a Decision on the signature and conclusion of an Agreement between the EU and Switzerland providing for measures equivalent to those laid down in the Directive. The Agreement was signed on 26 October 2004. The following key elements of this Agreement also form the basis for Agreements with Andorra, Liechtenstein, Monaco and San Marino:

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9 Mainly undertaking for collective investments in transferable securities (UCITS) and non-EU funds.

10 Until 31 December 2010, this threshold was set at 40%.

11 The rate was initially set at 15% for the first three years (until 30 June 2008) and 20% for the following three years (until 30 June 2011).

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- A retention or WHT with revenue sharing at the same rates as applied by Luxembourg or Austria during the transitional period of the Directive;
- An option for the taxpayer to permit the disclosure of the income to his or her MS of residence for tax purposes as an alternative to the retention or WHT;
- A provision for the exchange of information on request in cases of tax fraud or similar misbehaviour;
- A review clause to allow the Contracting Parties to review the working of the Agreement over time in line with international developments.

These Agreements have all been signed (12) and concluded and have been effectively applied since 1 July 2005 (1 January 2007 for Bulgaria and Romania).

Ten relevant MSs' dependent or associated territories (the Channel Islands of Jersey and Guernsey, the Isle of Man and the dependent or associated territories in the Caribbean) took a commitment in the form of written agreements or arrangements between each of them and each of the 27 EU MSs in order to provide since 1 July 2005 (1 January 2007 for Bulgaria and Romania) for the same measures as those in the Directive, i.e. they apply a system of information reporting or, during the transitional period of the Directive, levy a WHT on the same terms as Luxembourg or Austria.

On 13 November 2008, the European Commission adopted an amending proposal to the Savings Directive, with a view to closing existing loopholes and better preventing tax evasion.

**In a nutshell, the Savings Directive regime enables MSs, as RCs, to secure the income tax treatment of interest income received by or paid to their residents abroad, irrespective of the tax treatment in the SC.**

## 1.4 OECD WORKS

8. **Automatic Exchange of Information Programs.** On 22 March 2001, the Council of the OECD adopted the Recommendation of the Council on the Use of the OECD Model Memorandum of Understanding on Automatic Exchange of Information for Tax Purposes (13).

9. **The ICG.** In 2006, the Committee on Fiscal Affairs (“CFA”) established the Informal Consultative Group on the Taxation of CIVs and Procedures for Tax Relief for Cross-Border Investors (the “ICG”). One of the objectives set for the ICG was to analyse the significant compliance and administrative difficulties surrounding claims for tax treaty benefits on investment income derived through intermediated structures and to consider whether there are

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12 Press Release IP/04/1445, Brussels, 7 December 2004, *Savings taxation: Commission welcomes signature of agreements with Liechtenstein, San Marino and Monaco*, [http://europa.eu/rapid/press-release\\_IP-04-1445\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-04-1445_en.htm?locale=en).

13 It is, however, not yet typically implemented.

administrative procedures that could be adopted to streamline those claims. In doing so, the ICG was directed to strike an appropriate balance between the tax compliance needs of governments in both SCs and RCs and developing administratively feasible procedures.

**10. ICG Reports on Possible Improvements to Procedures for Tax Relief for Cross-Border Investors.** The ICG Report of 12 January 2009 on possible improvements to procedures for tax relief for cross-border Investors (14) discusses the recommendations of the ICG with respect to “best practices” regarding procedures for making and granting claims for treaty benefits for intermediated structures. It develops a framework for considering improvements to the current procedures for claiming benefits under tax treaties. The objective of the work on procedures is two-fold:

- To develop systems that are as efficient as possible, in order to minimise administrative costs and allocate the costs to the appropriate parties; and
- To identify solutions that might address the need for tax administrations to ensure proper compliance with tax obligations, from the perspectives of both SCs and RCs.

After analysing the extent to which various proposed systems further these objectives, the Report makes a series of recommendations regarding “best practices” with respect to the granting of treaty benefits.

- The ICG Report recommends that SCs allow relief at source, rather than requiring Investors to pay tax and then request a refund;
- Further it recommends that countries develop systems for claiming treaty benefits that allow AIs to make claims on behalf of their customers on a “pooled” basis. As one of the major benefits of such kind of systems, intermediaries in the chain can facilitate treaty claims for their customers, without passing proprietary customer information to potential competitors (i.e. the other intermediaries). The systems also eliminate the time and expense of handling large amounts of paper. By reducing inefficiencies, the systems make it more likely that Investors will in fact receive treaty benefits in a timely manner;
- The ICG Report also recommends that those FIs that wish to make use of the “pooled” treaty claim system be required to report directly to SCs (i.e. not through the chain of intermediaries) Investor-specific information regarding the beneficial owners of the income;
- The ICG Report also identifies improved processes that would be necessary to ensure the administrability and cost effectiveness of such a system. This type of reporting would allow the SC to provide such information to the relevant RCs through normal exchange of information programs, thereby allowing RCs to apply effective matching programs to ensure taxation of that income;

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14 Executive Summary of the ICG Report, p. 5.

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- The ICG Report concludes that such an effective exchange of information program should allow SCs that currently grant treaty benefits only upon receipt of a Certificate of Residence issued by the RC to eliminate this requirement;
- The ICG Report also recommends that claims for benefits and reporting should be capable of transmission in electronic form;
- Finally, the ICG Report recommends the development of standardised documentation for such a system.

11. **ICG Report on CIVs.** The ICG also considered the legal and policy issues relating specifically to CIVs (i.e. the extent to which either the vehicles or their Investors are entitled to treaty benefits). On 12 January 2009, the Committee approved the release for public comment of a draft report in this respect. A modified version of that Report was released by the OECD for public comment on 9 December 2009. On 23 April 2010, a final report was adopted.

12. **OECD Implementation Package.** On 8 February 2010, the Pilot Group on Improving Procedures for Tax Relief for Cross-Border Investors (Pilot Group) issued a public discussion draft Implementation Package on possible improvements to procedures for tax relief for cross-border Investors. It represents the continuation of work that was begun by the ICG as it provides draft standardised documentation that could be used by countries that wish to adopt the “best practices” described in the ICG’s report. The Pilot Group includes representatives of the tax administrations of some OECD member countries as well as representatives from the financial services industry.

The Implementation Package provides a system for claiming treaty benefits that allows AIs to make claims on behalf of portfolio Investors on a “pooled” basis. One of the major benefits of such a system is that information regarding the beneficial owner of the income is maintained by the AI that is nearest to the Investor, rather than being passed up the chain of intermediaries. However, although a country may be willing to provide benefits on the basis of pooled information, it may want to maintain the ability to confirm that benefits that have been provided were in fact appropriate. For that reason, and in order to encourage compliance in the RC, the Implementation Package also requires AIs to report directly to SCs (i.e. not through the chain of intermediaries) Investor-specific information regarding the beneficial owners of the income.

The ICG Report concluded that the most efficient way for the “best practices” to be implemented was through individual SCs entering into contracts with Financial Intermediaries. Accordingly, the Implementation Package consists of a self-contained set of all of the agreements and forms that would pass between a SC and the Financial Intermediaries and Investors participating in the system. Some countries have indicated that they would implement the system by incorporating the procedures into their domestic law or regulations. It appears that the documents in the Implementation Package could be adapted relatively readily by a country pursuing such an administrative approach.

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Interested parties were invited to send their comments on the Implementation Package before 31 August 2010. A revised version of the Implementation Package is currently in progress.

13. **The TRACE Group.** Currently, different working groups are working on this issue. In January 2010, the Committee on Fiscal Affairs of the OECD has created the Treaty Relief and Compliance Enhancement Group (“TRACE Group”), which is developing the Implementation Package, and the TRACE IT Group, which is taking care of the technological aspects of the project.

The objectives of the TRACE Group are two-fold:

- First, to develop a standardised relief at source system, in order to minimise administrative costs and allocate the costs to the appropriate parties; and,
- Second, to identify and develop solutions that would guarantee tax compliance from both SC and RC perspective.

The TRACE Group held its first meeting on October 2010.

## 1.5 FOREIGN ACCOUNT TAX COMPLIANCE ACT

14. **Background.** Before introducing FATCA, it is necessary to briefly describe the reasons why such new piece of legislation has been adopted in the United States. This part of the study is greatly inspired by an article written by Richard Harvey on the future of FATCA (15).

Although the QI system did include some reporting with respect to US taxpayers, there were major loopholes in the system that were exploited by some taxpayers to avoid reporting to the IRS. The following paragraphs briefly summarize the main loopholes of the QI system as they are listed by Richard Harvey.

- **Foreign Source Income not Reported.** The QI system only required QIs to report US source income of their US customers and not foreign source income, so that US taxpayers could decide to invest exclusively in foreign securities to avoid any reporting to their tax administration;
- **No Requirement to Determine the Beneficial Ownership.** The QI system did not specifically require QIs to look-through foreign entities to determine the underlying beneficial owners, allowing US taxpayers to easily avoid reporting to the IRS by investing in US securities through foreign companies, wherever they are located;
- **QI System only Applicable to Designated QI Accounts.** The QI system does not apply automatically to all bank accounts, but only to those which have been designated by the QI as a “QI account” (i.e. an account subject to the QI rules, including the identification

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15 J. Richard “Dick” Harvey, “*Offshore accounts: Insider’s summary of FATCA and its potential future*”, Villanova University School of Law, Public law and legal theory, Working paper no. 2011-24, December 2011. Villanova Law Review, Volume 57, #3, pp. 3 - 6.

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and the reporting rules). Other accounts are out of scope and can thus be used to circumvent the reporting to the IRS;

- **Only Banks.** The QI system is designed exclusively for banks, to the exclusion of other types of FIs, such as hedge funds and insurance companies, private equity funds. US taxpayers could therefore use these FIs to invest indirectly in the US market without running the risk of a reporting to the IRS.

15. **Summary.** On 18 March 2010, the US legislator enacted various provisions of the Foreign Account Tax Compliance Act of 2009 ("FATCA") as part of the Hiring Incentives to Restore Employment ("HIRE") Act (16).

The FATCA aims to enforce disclosure of US citizens and residents that may be evading US federal income tax by holding certain investments through a Foreign Financial Institution (FFI). It includes certain provisions on WHTs and on the reporting of information by FFIs for US tax compliance purposes.

More precisely, with general effect from 1 July 2013, offshore funds and other FFIs will have to comply with the information gathering, reporting and withholding obligations prescribed under the provisions of FATCA in order to avoid a new 30% US WHT on any US-sourced income paid on or after 1 January 2014.

Starting 1 January 2015, this new WHT will apply to US-sourced income and gross proceeds from the sale of investments that produce US-sourced interest or dividends. Withholding on certain pass-through payments paid to an FFI unless the FFI is compliant with FATCA has been deferred to 1 January 2017. The WHT may be avoided if the FFI enters into an agreement (FFI agreement) with the IRS and complies with new documentation requirements, due diligence procedures, and reporting and withholding obligations.

These give rise to certain legal difficulties and administrative burdens for FIs (17).

16. **First Joint Statement (France, Germany, Italy, Spain and the United Kingdom).** In order to address these issues, the Commission initiated discussions with the US, with the support of all MS. Then, the Governments of France, Germany, Italy, Spain and the United Kingdom, with the support of the European Commission, took part in joint discussions with the United States Government to explore a practical way forward that supports the overall aim to combat tax evasion, while reducing the risks and burdens on FIs. This approach focuses on the use of existing tax treaties for information exchange between tax administrations, rather than direct reporting by FIs to the US Internal Revenue Service.

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16 Since the enactment of FATCA, the Department of the Treasury and the IRS have issued preliminary guidance on its implementation. See Notice 2010-60, 2010-37 I.R.B. 329, issued on 27 August 2010, Notice 2011-34, 2011-19 I.R.B. 765, issued on 8 April 2011 and Notice 2011-53, 2011-32 I.R.B. 124 issued on 15 July 2011 (collectively, the FATCA Notices) and proposed regulations Reg-121647-10 issued on 8 February 2012 ([www.irs.gov](http://www.irs.gov)).

17 [http://www.hm-treasury.gov.uk/press\\_12\\_12.htm](http://www.hm-treasury.gov.uk/press_12_12.htm).

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On 8 February 2012, the Governments of France, Germany, Italy, Spain and the United Kingdom issued a Joint Statement regarding an Intergovernmental Approach to Improving International Tax Compliance and Implementing FATCA. The content of this Statement is reproduced below as an illustration of the complexity of the reporting questions, but also as an illustration of the quickly moving context. The highlighted parts are especially relevant in the framework of the present study.

*A. General Considerations*

- 1. Building on their longstanding and close relationship with respect to mutual assistance in tax matters, the United States, France, Germany, Italy, Spain and the United Kingdom wish to intensify their cooperation in combating international tax evasion.*
- 2. On 18 March 2010 the United States enacted provisions commonly referred to as the Foreign Account Tax Compliance Act (FATCA), which introduce reporting requirements for foreign financial institutions (FFIs) with respect to certain accounts. France, Germany, Italy, Spain and the United Kingdom are supportive of the underlying goals of FATCA. FATCA, however, **has raised a number of issues, including that FFIs established in these countries may not be able to comply with the reporting, withholding and account closure requirements because of legal restrictions.***
- 3. An intergovernmental approach to FATCA implementation would address these legal impediments to compliance, simplify practical implementation, and reduce FFI costs.*
- 4. Because **the policy objective of FATCA is to achieve reporting, not to collect withholding tax**, the United States is open to adopting an intergovernmental approach to implement FATCA and improve international tax compliance.*
- 5. In this regard the United States is willing to **reciprocate in collecting and exchanging on an automatic basis information on accounts held in US financial institutions by residents of France, Germany, Italy, Spain and the United Kingdom.** The approach under discussion, therefore, would **enhance compliance and facilitate enforcement to the benefit of all parties.***
- 6. The United States, France, Germany, Italy, Spain and the United Kingdom are cognizant of the need to keep compliance costs as low as possible for financial institutions and other stakeholders and are committed to **working together over the longer term towards achieving common reporting and due diligence standards.***
- 7. In light of these considerations, the United States, France, Germany, Italy, Spain and the United Kingdom have agreed to explore a common approach to **FATCA implementation through domestic reporting and reciprocal automatic exchange and based on existing bilateral tax treaties.***

*B. Possible Framework for Intergovernmental Approach*



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*1. The United States and a partner country (FATCA partner) would enter into an agreement pursuant to which, subject to certain terms and conditions, the FATCA partner would agree to:*

*a. Pursue the necessary implementing legislation to require FFIs in its jurisdiction to collect and report to the authorities of the FATCA partner the required information;*

*b. Enable FFIs established in the FATCA partner (other than FFIs that are excepted pursuant to the agreement or in US guidance) to apply the necessary diligence to identify US accounts; and*

*c. Transfer to the United States, on an automatic basis, the information reported by the FFIs.*

*2. In consideration of the foregoing, the United States would agree to:*

*a. Eliminate the obligation of each FFI established in the FATCA partner to enter into a separate comprehensive FFI agreement directly with the IRS, provided that each FFI is registered with the IRS or is excepted from registration pursuant to the agreement or IRS guidance;*

*b. Allow FFIs established in the FATCA partner to comply with their reporting obligations under FATCA by reporting information to the FATCA partner rather than reporting it directly to the IRS;*

*c. Eliminate US withholding under FATCA on payments to FFIs established in the FATCA partner (i.e., by identifying all FFIs in the FATCA partner as participating FFIs or deemed-compliant FFIs, as appropriate);*

*d. Identify in the agreement specific categories of FFIs established in the FATCA partner that would be treated, consistent with IRS guidelines, as deemed compliant or presenting a low risk of tax evasion;*

*e. Commit to reciprocity with respect to collecting and reporting on an automatic basis to the authorities of the FATCA partner information on the US accounts of residents of the FATCA partner.*

*3. In addition, as a result of the agreement with the FATCA partner described above, FFIs established in the FATCA partner would not be required to:*

*a. Terminate the account of a recalcitrant account holder;*

*b. Impose passthru payment withholding on payments to recalcitrant account holders;*

*c. Impose passthru payment withholding on payments to other FFIs organized in the FATCA treaty partner or in another jurisdiction with which the United States has a FATCA implementation agreement;*

*4. The United States, France, Germany, Italy, Spain and the United Kingdom would:*

*a. Commit to develop a practical and effective alternative approach to achieve the policy objectives of passthru payment withholding that minimizes burden.*

*b. Commit to working with other FATCA partners, the OECD, and where appropriate the EU, on adapting FATCA in the medium term to a common model for automatic exchange of information, including the development of reporting and due diligence standards.*

**17. European Commission Press Release.** In its press release of the same day, the European Commission welcomed the US’ move to ensure enhanced international tax cooperation in a more business-friendly way (18). The European Commission complemented the Joint Statement with the following:

*Any Member State that wants to should now be able to adopt this government-to-government approach to information exchange through coordinated bilateral agreements with the USA.*

*This would benefit Member States' tax administrations by ensuring reciprocal information provision by the US, and could be the basis for broader cooperation between the EU and the US on information exchange at a later stage.*

*In this context, the Commission will continue work to ensure that EU and national data protection legislation is fully respected in the implementation of the FATCA provisions.*

*Overall, this cooperation with US regarding FATCA should help greatly in advancing the EU's efforts to promote the global application of automatic exchange of information for tax purposes. It could also contribute to promote a single approach at global level to reporting arrangements on financial institutions.*

## **18. Preliminary Considerations about the Joint Statement.**

The Joint Statement and the press release of the European Commission represent a major development in the framework of our study.

- It is clearly confirmed that the policy objective of FATCA is to achieve reporting and not to collect WHT;
- From an initially imposed unilateral legislation, FATCA would become a bilateral system with reciprocity obligations between Contracting Parties (i.e. via the involvement of Competent Authorities of the participating countries) (19);
- FFIs established in a FATCA partner would be required to collect and report the required information (they would not enter into individual agreements with the IRS);

18 Press Release ref. MEMO/12/88 of 08/02/2012;

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/88&format=HTML&aged=0&language=EN&guiLanguage=en>

19 If applied by many MSs, such bilateral automatic exchange of information system combined with the existing EU legislative framework could even *de facto* lead to a multilateral automatic exchange of information system.

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- The reporting would be done by the FFI to its own tax administrations and not directly to the IRS (no direct exchange of information relationship between the FATCA partner’s FFIs and the IRS);
- The system would require each FATCA partner to amend, if necessary, its local legislation to allow cross-border exchange of information under FATCA (i.e. collection of information with FFIs and reporting of such information to the US) (20);
- Although only five countries were mentioned in the Joint Statement, any MS would be able to adopt this approach and become a FATCA partner (21);
- The intergovernmental approach to FATCA implementation is expected to simplify practical implementation and reduce FFI costs (provided that it is applied consistently and in a standardised way across FATCA partners (22)).

**19. Other Joint Statements (Japan, Switzerland).** On 21 June 2012, the governments of Japan and Switzerland each released a joint statement with the US government regarding their intention to explore and negotiate an intergovernmental agreement to facilitate the implementation of FATCA (23) (24). These statements contain the same broad principles, especially in the area of income tax withholding. However, there are significant differences between the three joint statements on matters related to tax information reporting, registration requirements with the IRS, account due diligence and information exchange.

In particular, the two latter statements indicate that financial institutions in each jurisdiction would be required to report directly to the IRS and not to their respective governments (a different routing of information compared to the first joint statement thus).

20 *“It was confirmed that any agreed approach would be based on domestic tax reporting legislation and automatic exchange of information under existing bilateral tax treaties. It is understood that the approach being explored is to develop a model global agreement, which will be adopted under relevant bilateral tax treaties/exchange of information agreements. [...] The model agreement will not alter or amend the obligation to identify or report certain information under FATCA, but will outline an alternative pathway for reporting FATCA information. The model agreement is expected by the end of June 2012. Tax Analysts, Irish Authorities in Discussions with US Treasury on FATCA, 23 April 2012.*

21 For instance, *“it has been confirmed that the Irish tax authorities are in contact with the US Treasury in relation to exploring a common approach to FATCA.” Tax Analysts, Irish Authorities in Discussions with US Treasury on FATCA, 23 April 2012.*

22 According to the representatives of the Irish Investment Fund Association, *“the fact intergovernmental arrangements are likely to be based on a model agreement means that any framework under which bilateral exchange of information agreements operate should be done on a consistent basis, rather than under individual agreements which might be operated on a disjointed basis. This is welcome news for an industry which operates on a multi-jurisdictional basis [...] The news is very positive and a simplified standardised approach should lead to the potential benefits advocated in the joint statement. [...] One of the key goals is getting a consistent and standardised approach”.* Tax Analysts, *Irish Authorities in Discussions with US Treasury on FATCA, 23 April 2012.*

23 <http://www.treasury.gov/press-center/press-releases/Documents/FATCA%20Joint%20Statement%20US-Japan.pdf>

24 <http://www.treasury.gov/press-center/press-releases/Documents/FATCA%20Joint%20Statement%20US-Switzerland.pdf>

**20. Model Intergovernmental Agreement to Improve Tax Compliance and Implement FATCA.** On 26 July 2012, the Governments of France, Germany, Italy, Spain, the United Kingdom and the US issued a joint communiqué on the occasion of the publication of the Model Intergovernmental Agreement to Improve Tax Compliance and Implement FATCA (25).

The communiqué insists on “*pursuing equivalent levels of reciprocal information exchange and to achieving maximum consistency and standardisation in the technical implementation of the agreed information exchange*” and working “*towards common reporting and due diligence standards to support a move to a more global system to most effectively combat tax evasion while minimising compliance burdens*”.

Two versions of the model intergovernmental agreement were issued, a reciprocal version and a nonreciprocal version (26). The United Kingdom and the US entered into the reciprocal version on 12 September 2012 (27) (28).

## 1.6 ADMINISTRATIVE COOPERATION DIRECTIVE

**21. Scope** (29). This directive repeals Directive 77/799/EEC and establishes new rules and procedures for the cooperation between MSs with a view to exchanging information that is relevant to the administration and enforcement of national laws in the field of taxation (art. 1).

It applies to all taxes except the following (Article 2):

- Value added tax (VAT) and customs duties, or excise duties covered by other EU legislation on administrative cooperation between EU countries;
- Compulsory social security contributions payable to the EU country;
- Fees, such as for certificates and other documents issued by public authorities;
- Dues of a contractual nature, such as consideration for public utilities.

**22. Three Exchange of Information Types.** Three different types of exchange of information are provided for by the Directive.

25 <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Joint-Communique-Model-Agreement-to-Implement-FATCA-7-25-2012.pdf>

26 <http://www.treasury.gov/press-center/press-releases/Pages/tg1653.aspx>

<http://www.treasury.gov/press-center/press-releases/Documents/reciprocal.pdf>;

<http://www.treasury.gov/press-center/press-releases/Documents/nonreciprocal.pdf>.

27 [http://www.hm-treasury.gov.uk/d/facta\\_agreement\\_tax\\_compliance\\_140912.pdf](http://www.hm-treasury.gov.uk/d/facta_agreement_tax_compliance_140912.pdf)

28 Discussions on the model agreements are going forward in many countries. For instance, the Isle of Man, Jersey and Guernsey governments have issued on 9 October 2012 a simultaneous announcement according to which they plan to negotiate intergovernmental agreements that follow a similar format to the agreement signed by the UK.

<http://www.gov.gg/article/103498/Foreign-Account-Tax-Compliance-Act-FATCA---Crown-Dependencies-simultaneous-announcement>.

29 This high-level summary of the Administrative Cooperation Directive is largely inspired from the summary provided by the European Commission on its website.

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- **Exchange of Information upon Request (Article 5).** The requested authority must, at the request of the requesting authority, communicate any relevant information that it has in its possession or that it obtains from administrative enquiries. In order to obtain the requested information or to conduct the administrative enquiry requested, the requested authority must follow the same procedures as it would when acting on its own initiative or at the request of another authority in its own MS.

Besides, the Administrative Cooperation Directive endorses the standard of exchange of information upon request as MSs may no longer refuse to supply information solely because this information is held by a bank or other types of financial institution (article 18.2).

23. **Timing of the request handling.** The requested authority must confirm receipt of the request within seven working days and must then provide the information as quickly as possible, and no later than six months after receipt of the request. If, however, the requested authority already possesses the information, it must provide it within two months of that date.

24. **Mandatory Automatic Exchange of Information (Article 8).** Each competent national authority must send to the Competent Authority of any other MS, by automatic exchange, available information concerning taxable periods as from 1 January 2014 relating to residents in that other MS on the following categories of income and capital:

- Income from employment;
- Director’s fees;
- Life insurance products not covered by other EU legal instruments on exchange of information and other such measures;
- Pensions;
- Ownership of and income from immovable property.

25. **Spontaneous Exchange of Information (Article 9).** Each competent national authority must communicate information to the Competent Authority of any other MS in the following situations:

- The Competent Authority of one MS has reason to suppose that there may be a loss of tax in the other MS;
- A person liable to tax obtains a reduction in, or an exemption from, tax in one MS which would give rise to an increase in tax or to liability to tax in the other MS;
- Business dealings between two persons liable to tax in different MSs are conducted through one or more countries in such a way that a saving in tax may result in either or both of the MSs;

- The Competent Authority of one MS has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- Information forwarded to one MS by another MS’ Competent Authority has enabled information to be obtained which may be relevant in assessing liability to tax in the latter MS.

26. **Most-Favoured Nation Clause (Article 19).** The Directive also states that, where a MS provides a wider cooperation to a third country than the cooperation currently provided for in the Directive (e.g. an automatic exchange of information agreement on dividends and interest income), that MS may not refuse to provide such wider cooperation to any other MS wishing to enter into such mutual wider cooperation with that MS.

## 1.7 ARTICLE 26 OF THE OECD MODEL TAX CONVENTION

27. **Summary** <sup>(30)</sup>. Article 26 of the OECD Model Tax Convention provides the most widely accepted legal basis for bilateral exchange of information for tax purposes. More than 3,000 bilateral treaties are based on the OECD Model Tax Convention.

Article 26 creates an obligation to exchange information that is foreseeably relevant to the correct application of a tax convention as well as for purposes of the administration and enforcement of domestic tax laws of the Contracting States. Countries are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. In formulating their requests, the requesting State should demonstrate the foreseeable relevance of the requested information. In addition, the requesting State should also have pursued all domestic means to access the requested information except those that would give rise to disproportionate difficulties.

Article 26 was updated in July 2005, at which time paragraphs 4 and 5 were added. These paragraphs make it clear that a state cannot refuse a request for information solely because it has no domestic tax interest in the information (paragraph 4) or solely because it is held by a bank or other FI (paragraph 5).

Finally, where information is exchanged, it is subject to strict confidentiality rules. It is expressly stated in article 26 that information communicated shall be treated as secret and that it can only be used for the purposes provided for in the Convention.

Austria, Belgium, Luxembourg and Switzerland had entered reservations to article 26. However, in March 2009, each of these countries notified the OECD that they were withdrawing their reservation to article 26. These developments are now reflected in the latest update of the OECD Model Tax Convention (22 July 2010).

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30 [http://www.oecd.org/document/53/0,3343,en\\_2649\\_33747\\_33614197\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/53/0,3343,en_2649_33747_33614197_1_1_1_1,00.html)

## 1.8 MULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

28. **Summary** <sup>(31)</sup>. This Convention was developed jointly by the Council of Europe and the OECD and opened for signature by the MSs of both organisations on 25 January 1988.

In April 2009, the G20 called for action “*to make it easier for developing countries to secure the benefits of the new cooperative tax environment, including a multilateral approach for the exchange of information*”.

In response, the OECD and the Council of Europe developed a Protocol amending the multilateral Convention on Mutual Administrative Assistance in Tax Matters to bring it in line with the international standard on exchange of information for tax purposes and to open it up to all countries. Previously, it was only open to members of the OECD and of the Council of Europe. At the G20 Summit in Cannes (France) in November 2011, all G20 countries participated in a ceremony to mark the signing of the Convention.

Before the signing ceremony, the amended Convention had already been signed by 21 countries: Belgium, Denmark, Finland, France, Georgia, Iceland, Ireland, Italy, Korea, Mexico, Moldova, the Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Ukraine, the United Kingdom and the United States.

The Convention facilitates international cooperation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. The Convention provides for all possible forms of administrative cooperation between States in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. This cooperation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims.

## 1.9 RUBIK PROJECT

29. **Summary**. Since the start of the financial crisis, exchanging information (which includes overcoming the bank secrecy) and implementing international tax standards has become more and more significant for the European Commission and the OECD as it is a way to collect tax revenue for most countries facing a growing public debt.

However, the extension of cross-border exchange of information between countries remains fragile, such exchange of information not being always considered the prerequisite to secured tax revenue for the RCs.

For instance, the necessary consensus for adopting the Savings Directive and related agreements leads to a transitional period during which some countries can levy a WHT at a rate of currently 35% in place of information exchange to the RCs <sup>(32)</sup>.

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31 [http://www.oecd.org/document/14/0,3746,en\\_2649\\_33767\\_2489998\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/14/0,3746,en_2649_33767_2489998_1_1_1_1,00.html)

32 Thereby securing somehow the tax revenue of the residence MS of the investor.

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This doctrine has been recently revived when Switzerland signed several Agreements with Germany, the United Kingdom and more recently Austria, respectively, despite the initial European Commission’s reluctance, in what is commonly called the “Rubik project” (33).

These Agreements are largely the same (34) and basically comprise three elements (35):

- A final WHT on future investment income and capital gains at a fairly high rate, although Individual Account Holders could still opt for a voluntary disclosure of information instead;
- Regularisation of the outstanding tax liability through the payment of a flat-rate tax; and
- Facilitation of access for Swiss banks to the banking market of the Contracting State.

30. **Reactions.** “*Withholding tax is not an alternative to exchange of information*” criticised Jeffrey Owens, director of the OECD Centre for Tax Policy and Administration (36).

The European Commission initially challenged the first versions of the respective Agreements, arguing that they conflict with European law and the current EU-Switzerland tax Agreement, especially as regards the Savings Directive.

In response to this argument, it was made clear in the agreements that, if interest payments fall under the EU-Swiss agreement on the taxation of savings income now or in the future, they are not covered by the bilateral agreement concluded with the UK and Germany, respectively (37).

31. According to Taxation Commissioner Algirdas Semeta “*the Commission’s position on the bilateral agreements that Germany and the UK signed with Switzerland has been extremely clear. The German and UK agreements, in their original form, gave rise to concern. As we explained these MSs, they breached the exclusive competence of the EU in the field of*

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33 The agreement between Germany and Switzerland was signed on 21 September 2011 (and amended by the protocol of 5 April 2012), the agreement between the UK and Switzerland was signed on 6 October 2011 (and amended by the protocol of 20 March 2012), and the agreement between Austria and Switzerland was signed on 13 April 2012.

34 Questions and answers on the tax agreements with Germany, the United Kingdom and Austria, Federal Department of Finance FDF, State Secretariat for International Financial Matters SIF, April 2012, “*What are the differences between the German, British and Austrian agreements? The content of the three agreements with Germany, the UK and Austria is largely the same. The differences are due primarily to the different tax systems, and concern in particular the tax rates for future income and procedural arrangements.*”

35 Interestingly, these agreements also mention that “*The Government of the [United Kingdom/Germany] declares on the occasion of the signing of the Agreement between the Swiss Confederation and the [United Kingdom of Great Britain and Northern Ireland/Germany] on cooperation in the area of taxation that it will not actively seek to acquire customer data stolen from Swiss banks*”. It should indeed be reminded that the international context over the past years was greatly influenced by information leaks bringing offshore tax evasion/fraud to light as never before.

36 Tax Analysts, News Analysis: OECD Global Forum on the Defensive About Information Exchange, October 27, 2011, by Lee A. Sheppard

37 At the time this report was produced, very few elements of information were available with respect to the agreement between Austria and Switzerland.



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*international savings tax and overlapped with areas that are already covered at EU level. I don't question the competence of MSs to enter into bilateral agreements with Switzerland. But these agreements must not include any aspects which impinge on areas of common EU action. This message was unequivocal in the letter I sent to the Danish Presidency and EU finance ministers, on 5 March. Germany and the UK have reacted positively and worked to address our concerns by proposing amendments to their agreements.*

*Indeed, the UK agreement has already been formally amended and Germany is working to revise its own. The Commission will look closely at the changes, as well as any future agreements that MSs might sign with Switzerland to ensure compliance with EU law.” (38) “It took some time to analyze the agreements ... and today I can confirm that in the commission's view these revised agreements are in full compliance with EU law” (39).*

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38 EUROPOLITICS / Taxation, Interview with Algirdas Semeta, *Taxation commissioner EU states “running out of patience” with Berne*, By Tanguy Verhoosel, Thursday 19 April 2012, <http://www.europolitics.info/economy-monetary-affairs/eu-states-running-out-of-patience-with-berne-art332069-30.html>.

39 Tax Notes International, *EU Accepts Swiss Tax Agreements With Germany, U.K.*, 23 April 2012, p. 314.

## APPENDIX 2: SELECTION OF THE RELEVANT SCENARIOS

### 2.1 INTRODUCTION

32. This appendix starts by presenting four assumptions aimed at simplifying the identification of relevant cases for the study. These assumptions disregard any involvement of CIs, situations where WAs are not located in the SCs, situations where SCs and RCs are located outside the EU as well as purely internal situations.

Taking into account these assumptions, the selected scenarios that will be assessed throughout the study will then be defined: Cross-Border Scenario, Reversed Cross-Border Scenario and Triangular Scenario (the first two being actually simplifications of the last one).

### 2.2 SIMPLIFYING ASSUMPTIONS

33. **Five Potential Stakeholders, Many Possible Cases.** In addition to the tax administrations (SC, RC and AIC), five stakeholders could be relevant in both the SC Model and the AIC Model:

- The Investor,
- The CI,
- The AI,
- The WA,
- The Issuer.

As the theoretical number of possible scenarios is very high owing to the five stakeholders respectively possibly being in five different countries either inside or outside the EU, some simplifying assumptions had to be considered so as to narrow the range of possible cases.

34. **Exclusion 1: CIs.** Within the scenarios in scope, it has been decided not to include any CIs essentially for two reasons:

- CIs do not have any direct relationship with the MSs (AIC in the AIC Model, SC in the SC Model);
- In addition, the CIs would be allowed to make claims for treaty benefits on behalf of their customers that are portfolio Investors only through an AI. To this end, the CIs would have to provide the complete customers' details to the first AI (which would then pool this information with the information of its own Direct Account Holders).

The involvement of CIs in the chain of intermediaries can be illustrated as follows:

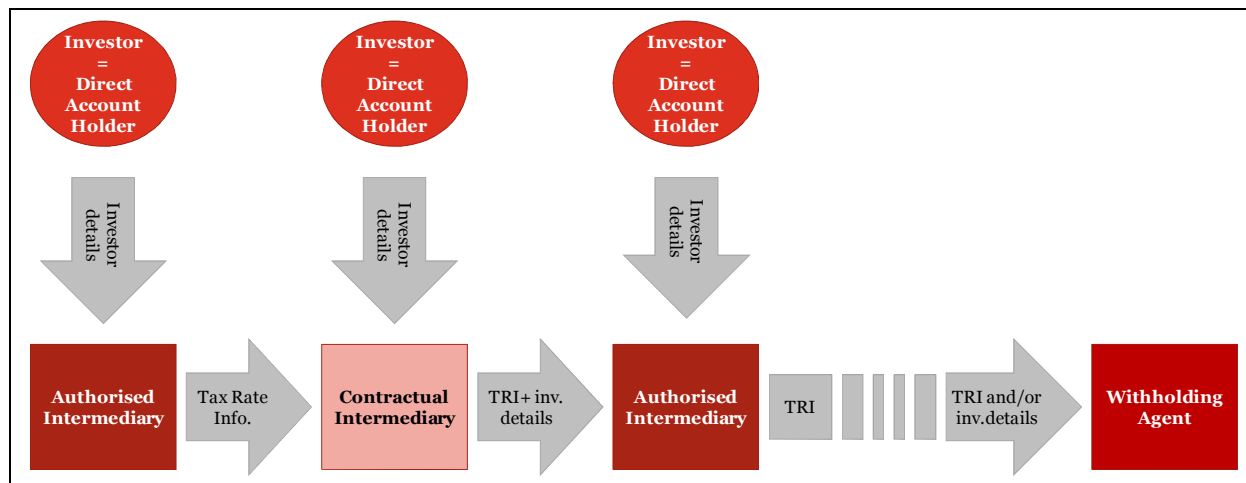


Figure 2: Relevant Scenarios: Exclusion 1: CIs

35. **Exclusion 2: WA not in the SC.** It was decided not to analyse the scenarios in which the Issuer is not located in the same country as the WA.

The rationale here is that, currently, MSs generally do not authorise foreign institutions to withhold tax. The FISCO Recommendation provides that MSs should allow foreign FI to become WAs if they so wish. Under the OECD IP, this is an option (“*Some countries also may allow foreign intermediaries to assume actual withholding obligations. If so, that possibility should not be imposed on foreign intermediaries, but should be available at their option*” (40)). Therefore, it was agreed not to include this in the study but to consider it as an option available to MSs.

That assumption allowed us to select the most relevant cases within this study (41).

40 ICG Report on Possible Improvements to Procedure for Tax Relief, 12/01/2009, p. 33.

41 Whatever the model, an option could of course be left to the MSs on this point.

The cases excluded can be illustrated as follows (here, shown in the framework of the AIC Model):

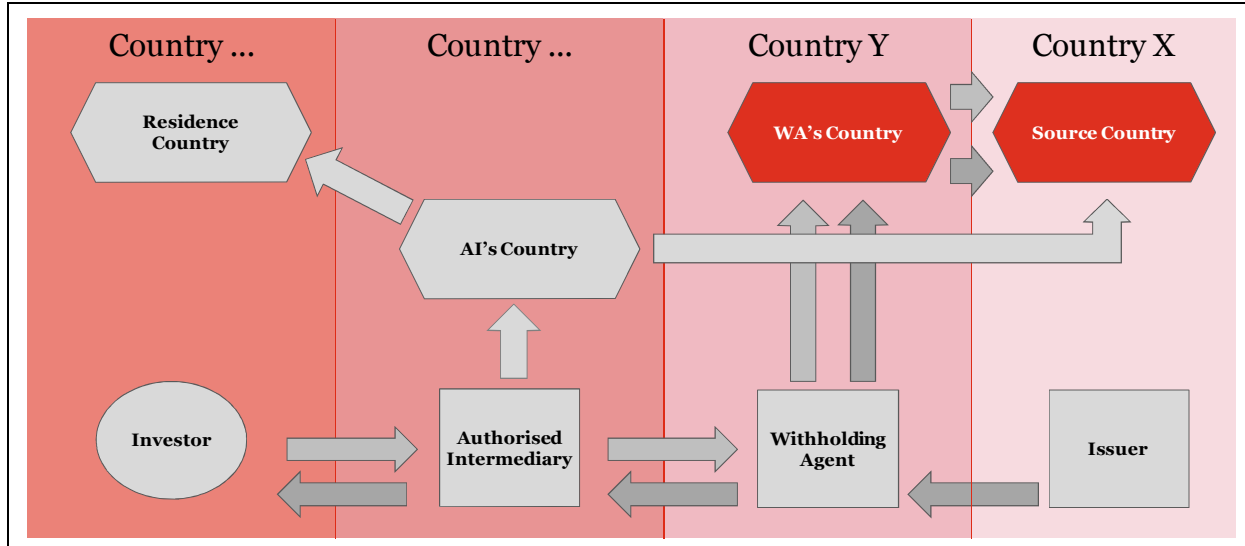


Figure 3: Relevant Scenarios: Exclusion 2: WA not in the SC

**36. Exclusion 3: SC and RC Outside the EU.** It was decided not to analyse the scenarios in which the Issuer and the Investor are located outside the EU, either in the same country or not, as there is no budgetary impact within the EU in such cases.

The cases excluded can be illustrated as follows (here, shown in the framework of the AIC Model):

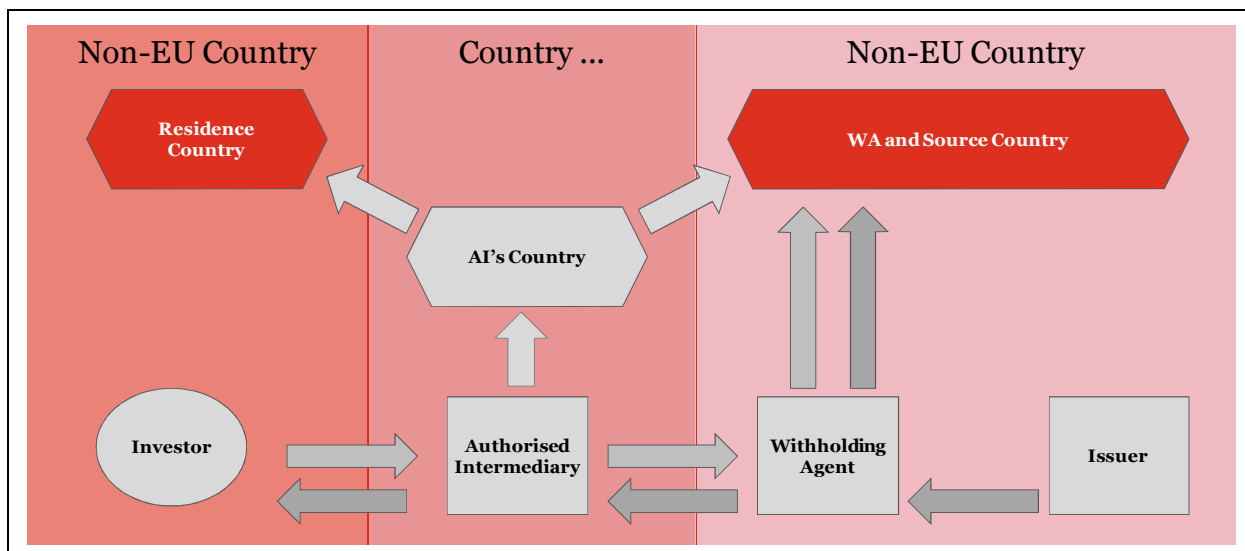


Figure 4: Relevant Scenarios: Exclusion 3: SC and RC Outside the EU

However, if the AIC is a MS, the case will still be covered by the legal and IT interoperability analysis.

37. **Exclusion 4: Four Stakeholders in the Same Country.** It was decided not to analyse the scenarios in which the four stakeholders (the Investor, the AI, the WA and the Issuer) are located in the same country, either inside or outside the EU. These scenarios do not involve cross-border situations and are thus irrelevant in the present study.

The cases excluded can be illustrated as follows (here, shown in the framework of the AIC Model):

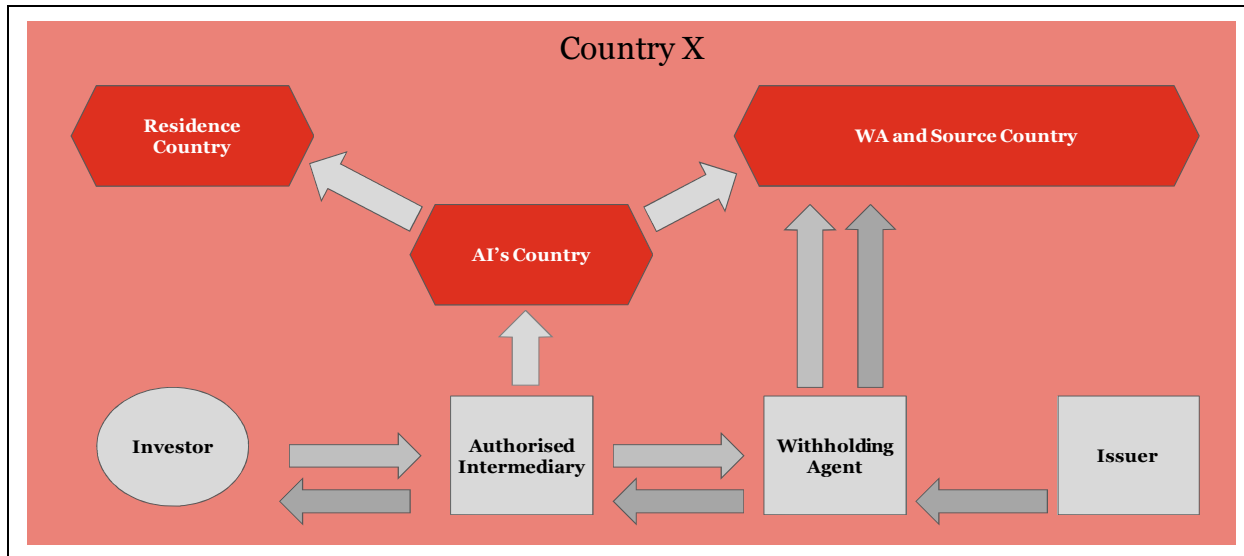


Figure 5: Relevant Scenarios: Exclusion 4: Four Stakeholders in the Same Country

## 2.3 SELECTED SCENARIOS

38. **Twelve Cases.** Application of the above simplifying assumptions has narrowed down the number of possible cases to twelve. The remaining cases are described below in order of complexity:

- Cross-Border Scenario;
- Reversed Cross-Border Scenario;
- Triangular Scenario.

### 2.3.1 CROSS-BORDER SCENARIO

39. **AIC is RC.** In the first selected kind of scenarios, the Issuer is located in the same country as the WA, namely X being located either inside or outside the EU, whereas the AI is located in the same country as the Investor, namely Y being located either inside or outside the EU. This situation is called the “Cross-Border Scenario”.

This is probably the most classic case of cross-border investments, i.e. a taxpayer investing in foreign securities through its local bank.

ISSUER	WA	AI	INVESTOR	SCENARIO
EU X	EU X	EU Y	EU Y	SC = WA’s Country & AIC = RC
EU X	EU X	Non-EU Y	Non-EU Y	
Non-EU X	Non-EU X	EU Y	EU Y	

Table 1: Selected Scenarios: Cross-Border Scenario (AIC is RC)

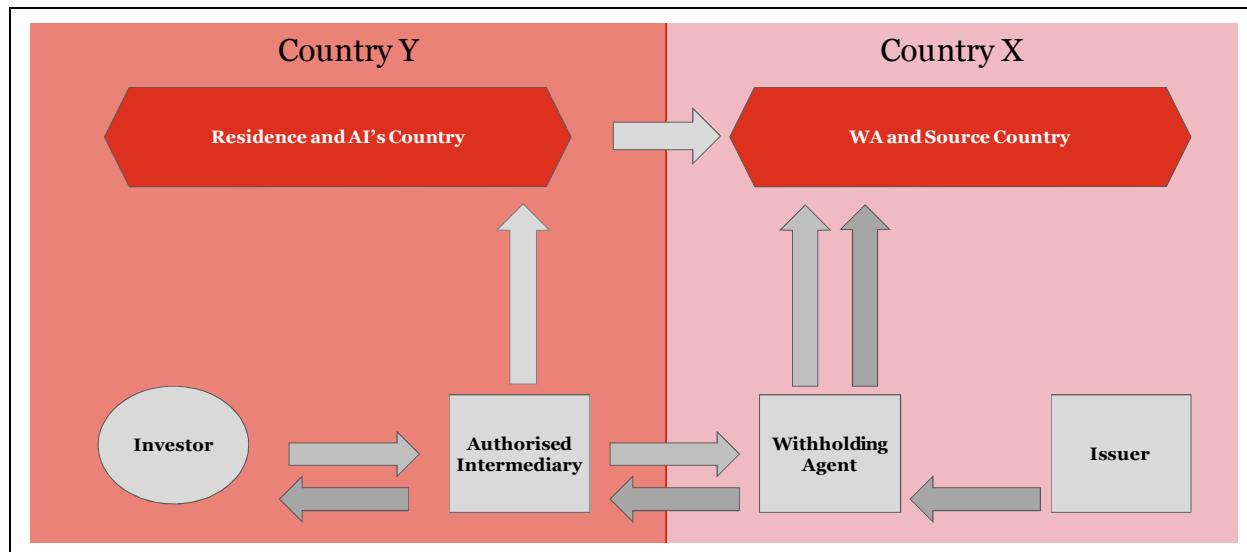


Figure 6: Selected Scenarios: Cross-Border Scenario (AIC is RC)

### Examples:

- Non-EU Country X dividend, with a non-EU Country X WA, paid to an EU Country Y Investor via an EU Country Y AI;
- EU Country X dividend, with an EU Country X WA, paid to a non-EU Country Y Investor via a non-EU Country Y AI.

### 2.3.2 REVERSED CROSS-BORDER SCENARIO

40. **WA and AI in SC.** In the second kind of scenarios, it has been taken into account that the Issuer, the WA and the AI could be located in the same country, namely X being located either inside or outside the EU. The Investor would still be in a different country, namely Y being located either inside or outside the EU. This situation is called the “Reversed Cross-Border Scenario” as the AI is established in the same country as the Issuer of the security.

The selected cases can be illustrated as follows (here, shown in the framework of the AIC Model):

ISSUER	WA	AI	INVESTOR	SCENARIO
EU X	EU X	EU X	EU Y	SC = WA’s Country = AIC
EU X	EU X	EU X	Non EU Y	
Non-EU X	Non-EU X	Non-EU X	EU Y	

Table 2: Selected Scenarios: Reversed Cross-Border Scenario (WA and AI in SC)

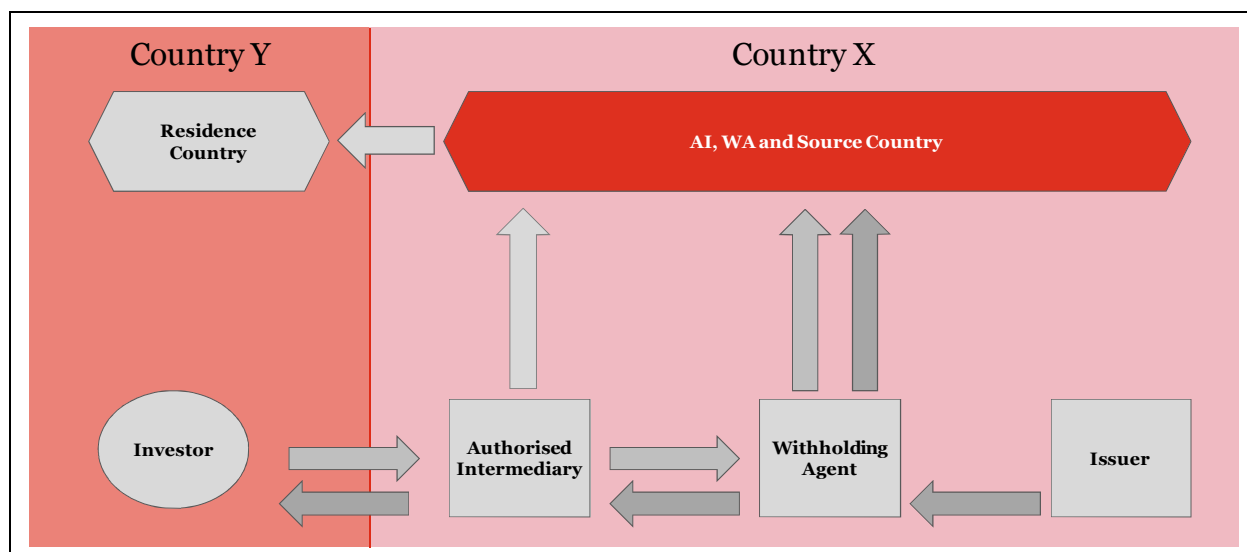


Figure 7: Selected Scenarios: Reversed Cross-Border Scenario (WA and AI in SC)

**Examples:**

- Non-EU Country X dividend, with a non-EU Country X WA, paid to an EU Country Y Investor via a non-EU Country X AI.
- EU Country X dividend, with an EU Country X WA, paid to a non-EU Country Y Investor via an EU Country X AI.

**2.3.3 TRIANGULAR SCENARIO**

41. **WA in SC.** In the third selected kind of scenarios, the Issuer is considered to be located in the same country as the WA (either inside or outside the EU), while the AI and the Investor are located in different countries. This situation is called the “Triangular Scenario” as three countries are involved in the routing of information.

The selected cases can be illustrated as follows (here, shown in the framework of the AIC Model):

ISSUER	WA	AI	INVESTOR	SCENARIO
EU X	EU X	EU Y	EU Z	SC = WA’s Country
EU X	EU X	EU Y	Non-EU Z	
EU X	EU X	Non-EU Y	EU Z	
EU X	EU X	Non-EU Y	Non-EU Z	
Non-EU X	Non-EU X	EU Y	EU Z	
Non-EU X	Non-EU X	Non-EU Y	EUZ	

Table 3: Selected Scenarios: Triangular Scenario (WA in SC)

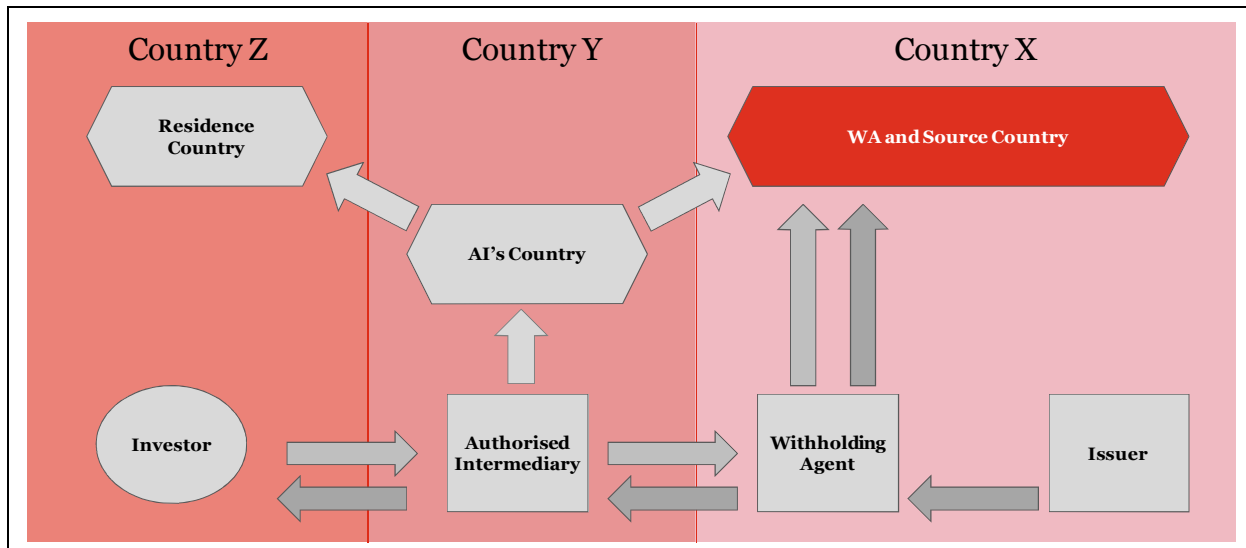


Figure 8: Selected Scenarios: Triangular Scenario (WA in SC)

Hence, the first kind of scenarios in scope is as follows. As mentioned above, the Issuer and the WA are always located in the same country, namely X being located either inside or outside the EU. The AI is not located in the same country as the Issuer and the WA. In this case, the AI has been placed in country Y, being located either inside or outside the EU. The Investor is located neither in the same country as the AI nor in the same country as the Issuer and the WA. In this case, the Investor has been placed in the country Z, being located either inside or outside the EU.

**Examples:**

- Non-EU Country X dividend, with a non-EU Country X WA, paid to an EU Country Y Investor via an EU Country Z AI;



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## APPENDIX 2: SELECTION OF THE RELEVANT SCENARIOS

- EU Country X dividend, with an EU Country X WA, paid to a non-EU Country Y Investor via an EU Country Z AI.

This scenario is the most complex one (and in some instances, cover the difficulties of the two other scenarios) but it nevertheless occurs frequently in practice since it covers the situation of a taxpayer investing in a portfolio of securities from various origins in a bank account held abroad, which is a situation typically sensitive in terms of tax fraud and tax compliance.

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## APPENDIX 3: DESCRIPTION OF THE OPERATING MODELS

### 3.1 INTRODUCTION

42. This appendix presents the detailed description of the operating models. It considers the various flows within the Models. There are four different flows (three of them being information flows):

- The TRI flow
- The cash flow
- The exchange of information flow under the SC Model
- The exchange of information flow under the AIC Model.

Each of these flows will be documented using a flowchart (cf. Appendices 4-7 in separate enclosures) and a narrative description. The flows are split into high-level phases as shown below and will be described in more detail in the narrative sections.

43. **TRI.** The TRI flow, corresponding to the communication of the applicable tax rate:

1. Notification of income by the Issuer
2. Identification of the entitlement and generation of the TRI by an AI
3. Identification of the entitlement and generation of the report including beneficial owner details by a CI
4. Identification of the entitlement and generation of the TRI by an AI
5. Processing of the TRI by the WA.

44. **Cash Flow.** The cash flow, which corresponds to the effective payment of the income:

1. Payment of the income by the Issuer
2. Processing of the income by the WA
3. Processing of the income by the AI
4. Processing of the income by the SC.

45. **Exchange of Information Flow SC.** The exchange of information flow under the SC Model, including validation, correction and feedback:

1. Report generation by the AI
2. Treatment of the reporting by the SC and sorting out of the information by the RC

3. Analysis of the information by the SC:
    - Analysis of the data
    - Elaboration of a RFI
  4. Analysis of the reporting by the RC:
    - Analysis of the data
    - Elaboration of a RFI
  5. Treatment of a RFI by the SC
  6. Treatment of a RFI by the AI
  7. Treatment by the SC of a reply message received from the AI
  8. Receipt of a reply message by the RC.
46. **Exchange of Information Flow AIC.** The exchange of information flow under the AIC Model, including validation, correction and feedback:
1. Report generation by the AI
  2. Treatment of the reporting by the AIC:
    - Receipt of the reports from the AIC
    - Sorting out of data by SC and RC
    - Sending of a report to the SC and the RC
  3. Analysis of the information by the AIC acting as SC or RC
    - Analysis of the data
    - Elaboration of a RFI
  4. Analysis of the information by the SC:
    - Analysis of the data
    - Elaboration of a RFI
  5. Analysis of the information by the RC:
    - Analysis of the data
    - Elaboration of a RFI
  6. Treatment by the AIC of a RFI generated by the SC or the RC

7. Treatment of a RFI by the AI
8. Treatment by the AIC of a reply message received from the AI
9. Receipt of a reply message by the SC or the RC.

**47. Flows, Phases and Steps.** Each flow is represented in a flowchart and flowcharts have been divided into different phases. Each phase represents an activity performed by one of the actors in the process from a very high-level perspective (e.g. the AI generates the reports). In the flowcharts, different colours have been assigned to the phases as to ease their identification by the reader. As already mentioned above, besides the flowcharts, a detailed narrative description is provided to the reader.

A phase is naturally too high-level to describe the operating model. So phases are divided into steps. Each step of the operating model will be included in the flowchart and described in the following pages. In order to ease the understanding of this operating model description, steps in the flowchart have been numbered. The first digit of the number corresponds to the phases within the flowchart considered. The second digit is the numbering of the step within that phase. The full number of the step will be highlighted in front of its description in the narrative descriptions, and steps will be ordered increasingly.

**48. Steps Performed by AIs.** The different steps to be performed by the various AIs are not as such within the scope of the study.

**49. Steps Out of Scope of the Study.**

- These items have been highlighted in *italics* in the flowcharts and they will not be covered by this study. As an example, if an AI notices that the reporting contains wrong data, the AI will have to find out the correct data to correct the wrong information. However, the various activities to find the correct information are not as such part of the Models but are a mandatory input for the Model (whatever the Model used). In addition to that, the activities that the AI will have to carry out to investigate the errors may greatly differ from one AI to another and from one type of error to another. These activities/steps need to be performed for the proper functioning of the Models, but they are considered as being out of scope of the study.
- The AI is liable for the quality of the information provided to the WA via the business chain and for the quality of the reporting sent to tax administrations of MSs. However, AIs are committed to reach quality standards in terms of results, and the way they organise themselves to ensure quality will certainly differ from one FI to another and will not be included in the description of the operating models. As a consequence, the different steps performed by the AI (e.g. ensuring data completeness and accuracy) are described from a high-level perspective, assuming that these steps should be documented by each FI in order to enable them to reach the required standards and quality. There are rules and processes that have an important impact on the reporting and the quality of the data but which are not directly part of the operating models. Indeed, as an example, the “KYC rules” are not included in the operating models but are key in the client’s identification

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and data collection. About that specific point, the Implementation Package requires the AI and each of its affiliates to be subject to KYC rules with respect to each of the offices through which it will act as an AI.

50. **Treatment v. Analysis.** In the operating models, a distinction is made between the treatment and the analysis of information or a reporting. In a nutshell,

- Treatment refers to activities aimed at checking the format, the completeness and the structure/organisation of the data (e.g. sorting out the data by RC or SC);
- Analysis refers to activities focussing on the quality and validity of the data (e.g. RC checking that all the TINs included in the reporting are valid and belong to its tax residents).

51. **Logical Connectors.** In the different flowcharts, three types of logical connectors are used:

LOGICAL CONNECTOR	REPRESENTATION	DESCRIPTION
AND		An AND relationship corresponds to activating all paths in the control flow concurrently. An opening AND may have one incoming control flow and two or more outgoing control flows. When the condition is fulfilled, it activates all of the outgoing control flows in parallel. The closing AND may have two or more incoming control flows and one outgoing control flow. When all the incoming control flows are activated, the closing AND connector will pass the control to the next element after it.
OR		An OR relationship corresponds to activating one or more paths among control flows. An opening OR connector may have one incoming control flow and two or more outgoing control flows. When the condition is fulfilled, an opening OR connector activates one or more control flows and deactivates the rest of them. The counterpart of this is the closing OR connector. When at least one of the incoming control flows is activated, the closing OR connector will pass the control to the next element after it.


LOGICAL CONNECTOR	REPRESENTATION	DESCRIPTION
XOR		An XOR relationship corresponds to activating only one path among control flows. An opening XOR connector may have one incoming control flow and two or more outgoing control flows. When the condition is fulfilled, an opening XOR connector activates one and only one control flow and deactivates the rest of them. The counterpart of this is the closing XOR connector. When one and only one of the incoming control flows is activated, the closing XOR connector will pass the control to the next element after it.

Table 4: Operating Models – Logical Connectors



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### 3.2.1 NOTIFICATION OF INCOME BY THE ISSUER

**1.1 Income Notification.** The first step in the flow is triggering the whole process: the notification by an Issuer of income to be paid. This announcement will include all the information required for the processing of this payment. It could be interest or dividend and will be the trigger of all the process.

### 3.2.2 TREATMENT OF THE INFORMATION BY AN AUTHORISED INTERMEDIARY

In this subsection, “Authorised Intermediary” designs an AI that is not in direct contact with the WA. So this Authorised Intermediary will have to go through another AI in order to provide its TRI to the appropriate WA.

**2.1 Gather Information on the Income.** The Authorised Intermediary will first gather all the information needed in order to determine which of its clients are entitled to a payment and what is the amount of the payment. The AI needs all those details in order to be able to process the payment according to the Issuer’s and the market’s prescriptions.

**2.2 Calculate Entitlement.** Based on the information gathered and on the market practices, the Authorised Intermediary is able to calculate the entitlement for each of the positions held in its accounts.

**2.3 Identify DAH Benefiting from Relief at Source.** Within the positions entitled to the income, the Authorised Intermediary should identify all the DAH who could benefit from relief at source.

**2.4 Collect Information from CIs and Other Authorised Intermediaries.** Within its clients, the Authorised Intermediary should gather the beneficial owners’ details of its IAH having an account with CIs and the TRI of its clients having the status of Authorised Intermediary.

**2.5 Information from Other CIs and Authorised Intermediaries.** This information includes two types of information:

- **Report from CIs.** All the reports provided by clients having the status of CIs include details on DAH and IAH and TRI for CIs’ clients benefiting from an Authorised Intermediary status;
- **TRI from Other AIs.** The TRI is the information provided by a FI benefiting from the status of Authorised Intermediary. This status allows the institution to benefit from relief at source without providing details on the beneficial owners of this income but only by providing an allocation of the tax rate to be applied to its positions.

**2.6 Store Information for Report to AIC/SC.** While the Authorised Intermediary is allowed to provide only TRI to benefit from relief at source, it must provide details on the beneficial owners of that income in a periodic reporting to the AIC (according to the AIC Model) or to the SC (according to the SC Model). This information, not communicated in the business



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chain, should therefore be stored in order to allow this reporting to be generated for the tax administrations. This report will include the data from the DAH and from the IAH (via CIs) as well as the TRI received from other AIs.

**2.7 Reconciliation.** The Authorised Intermediary has to reconcile the information received with its own information. In this case, the main reconciliation is between the positions mentioned in the information received and the positions in its books. If any discrepancy is found, the AI will have to investigate and correct the unreconciled items that fall within its responsibility.

**2.8 Control Documents Provided by CIs.** CIs have to provide to the Authorised Intermediary documents attesting that the beneficial owners are entitled to treaty benefits (such as ISD). The Authorised Intermediary must check the validity of those documents.

**2.9 Notify Error to Contractual and/or Other Authorised Intermediaries.** If the positions mentioned in the Authorised Intermediary’s books are correct or if there is a problem with the documents sent by a CI, the Authorised Intermediary must notify the error to the FI from which wrong TRI, wrong information or a wrong document has been received.

**2.10 Correction Sent by Contractual and/or Other Authorised Intermediaries.** The FI corrects the wrong information and sends the correction to the Authorised Intermediary. The full correction process is detailed from steps 4.08 to 4.09.

**2.11 Pooled Information.** If the positions are reconciled and the documents received are valid, even if the Authorised Intermediary is not the last one in the chain and is not in direct contact with the WA, it is allowed to provide only TRI (allocation of the tax rate to be applied to its various positions), without providing any details on the beneficial owners of this income.

**2.12 TRI from Authorised Intermediary.** The TRI is the information provided by a FI benefiting from the status of Authorised Intermediary. This status allows the institution to benefit from relief at source without providing details on the beneficial owners of this income but only by providing an allocation of the tax rate to be applied to its positions. So a minimum version of the TRI would be a list of the tax rates and the amount of securities subject to each rate (e.g. 100 shares should be taxed at 15% and 230 at 25%).

**2.13 Send TRI to AI.** Once the TRI from the Authorised Intermediary has been generated, it should be sent to the other FI (often an Authorised Intermediary but could be a CI as well) that will handle the information further.

### 3.2.3 TREATMENT OF THE INFORMATION BY A CI

**3.1 Gather Information on the Income.** The CI will first gather all the information needed in order to determine which of its clients are entitled to a payment and what is the amount of the payment. The CI needs all those details in order to be able to process the payment according to the Issuer’s and the market’s prescriptions.

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**3.2 Calculate Entitlement.** Based on the information gathered and on the market practices, the CI is able to calculate the entitlement for each of the positions held in its accounts.

**3.3 Identify DAH Benefiting from Relief at Source.** Within the positions entitled to the income, the CI should identify all the DAH who could benefit from relief at source.

**3.4 Collect Information from Other CIs and Authorised Intermediaries.** Within its clients, CI should gather the beneficial owners’ details of its IAH having an account with CIs and the TRI of its clients having the status of Authorised Intermediary.

**3.5 Information from Other CIs and Authorised Intermediaries.** This information includes two types of information:

- **Report from CIs.** All the reports provided by clients having the status of CIs include details on DAH and IAH and TRI for CIs’ clients benefiting from an Authorised Intermediary status;
- **TRI from Authorised Intermediaries.** The TRI is the information provided by a FI benefiting from the status of Authorised Intermediary. This status allows the institution to benefit from relief at source without providing details on the beneficial owners of this income but only by providing an allocation of the tax rate to be applied to its positions.

**3.6 Reconciliation.** The CI has to reconcile the information received with its own information. In this case, the main reconciliation is between the positions mentioned in the information received and the positions in its books. If any discrepancy is found, the CI will have to investigate and correct the unreconciled items that fall within its responsibility.

**3.7 Control Documents Provided by CIs.** CIs must provide documents attesting that the beneficial owners are entitled to treaty benefits (such as ISD). The CI must check the validity of those documents.

**3.8 Notify Error to Contractual and/or Other Authorised Intermediaries.** If the positions mentioned in the CI’s books are correct or if there is a problem with the documents sent by a CI, the CI must notify the error to the FI from which wrong TRI, wrong information or a wrong document has been received.

**3.9 Correction sent by Contractual and/or Other Authorised Intermediaries.** The FI corrects the wrong information and sends the correction to the AI. The full correction process is detailed from steps 4.08 to 4.09.

**3.10 Export Required Data from Identified Clients.** The CI has to provide to the next FI in the chain the full details on its DAH and IAH (via other CIs) as well as documents attesting that the beneficial owners are entitled to treaty benefits (such as ISD). However, a CI can have an Authorised Intermediary as a client. So, as the Authorised Intermediary is allowed to communicate only TRI and not the beneficial owners’ details, the Authorised Intermediary will provide only TRI to the CI. As a result, regarding this Authorised Intermediary, the CI

will only communicate TRI to its own AI. In addition, the CI will still have to communicate to its AI the details on its DAH and IAH.

**3.11 Report with Beneficial Owner Details from CI.** All the information and documents exported in task 3.10 (details on DAH and IAH and TRI for its clients benefiting from an Authorised Intermediary status) will be included in a report. This report will allow the next FI in the chain to determine and verify the tax rates to be applied to those positions.

**3.12 Send Report to AI.** Once the report with beneficial owner details from the CI has been generated, it should be sent to the other FI that will handle the information.

### 3.2.4 TREATMENT OF THE INFORMATION BY AN AI

**4.1 Gather Information on the Income.** The AI will first gather all the information needed in order to determine which of its clients are entitled and what the amount of this entitlement is. The FI needs all those details in order to be able to process the payment according to the Issuer’s and the market’s prescriptions.

**4.2 Calculate Entitlement.** Based on the information gathered and on the market practices, the AI is able to calculate the entitlement for each of the positions held in its accounts.

**4.3 Identify DAH Benefiting from Relief at Source.** Within the positions entitled to the income, the AI should identify all the DAH who could benefit from relief at source.

**4.4 Collect Information from Contractual and Other Authorised Intermediaries.** Within its clients, the AI should gather the beneficial owners’ details of its IAH having an account with a CI and the TRI of its clients having the status of Authorised Intermediary.

**4.5 Store Information for Report to AIC/SC.** While the AI is allowed to provide only a tax rate allocation to benefit from relief at source, it must provide details on the beneficial owners of that income in a periodic reporting to the AIC (according to the AIC Model) or to the SC (according to the SC Model). The information not communicated in the business chain should therefore be stored in order to allow this reporting to be generated for the tax administration. This report will include the data from the DAH and from the IAH (via the CI) as well as the TRI received from other AIs.

**4.6 Reconciliation.** The AI has to reconcile the information received with its own information. In this case, the main reconciliation is between the positions mentioned in the information received and the positions in its books. If any discrepancy is found, the AI will have to investigate and correct the unreconciled items that fall within its responsibility.

**4.7 Control Documents Provided by CIs.** CIs must provide to AI documents attesting that the beneficial owners are entitled to treaty benefits (such as ISD). The AI must check the validity of those documents.

**4.8 Notify Error.** If the positions mentioned in the AI’s books are correct or if there is a problem with the documents sent by a CI, the AI must notify the error to the FI from which wrong TRI/wrong information has been received.

**4.9 Pooled Information.** If there are no reconciling differences or once the unreconciled items have been solved and if the documents received are valid, the AI must pool the information. The AI is allowed to provide only TRI (allocation of the tax rate to be applied to its various positions), without providing any details on the beneficial owners of this income.

**4.10 TRI AI.** The TRI is the information provided by a FI benefiting from the status of AI. This status allows the institution to benefit from relief at source without providing details on the beneficial owners of this income but only by providing an allocation of the tax rate to be applied to its positions. So a minimum version of the TRI would be a list of the tax rates and the amount of securities subject to each rate (e.g. 100 shares should be taxed at 15% and 230 at 25%).

**4.11 Send TRI to WA.** Once the TRI from the AI has been generated, it should be sent to the WA that will apply the tax rates according to the information included in the TRI.

### 3.2.5 TREATMENT OF THE TRI BY THE WA

In most cases, the WA is a FI having its own clients. It is then likely that the WA will have to perform the same tasks as the other Financial Intermediaries for its DAH and IAH. However, the WA would just act as a regular AI and the tasks and checks performed should not differ. So, in this operating model, the WA is only considered through his responsibilities in terms of withholding the tax to the benefit of the tax administration of the SC.

**5.1 Reconcile Information.** Each AI will provide TRI for its positions that it considers as being entitled to this income. The amount included in the TRI should be reconciled with the amount mentioned in the books of the WA.

**5.2 Reconciled?** Each difference between the amount mentioned in the TRI and WA’s books has to be investigated. If the difference is solved without the involvement of the AI, the position is reconciled. If the differences cannot be solved, the position is not reconciled.

**5.3 Notify Error to AI.** If the positions mentioned in the WA’s books are correct, the WA must notify the error to the FI from which wrong TRI/wrong information has been received.

**5.4 Pooled Information.** If there are no reconciling differences or once the unreconciled items have been solved, the WA must pool the information. The WA can provide its tax administration with only TRI (allocation of the tax rate to be applied to its various positions), so no details on the beneficial owners of this income. This is because it did not receive additional information from the AI.

**5.5 Send TRI to SC.** The WA will then send the TRI to the SC according to the standards defined by the domestic legal framework in terms of frequency and format.

### 3.3 DESCRIPTION OF THE CASH FLOW

53. **Cash Flow.** Please find in Appendix 5 the cash flow (previewed below).

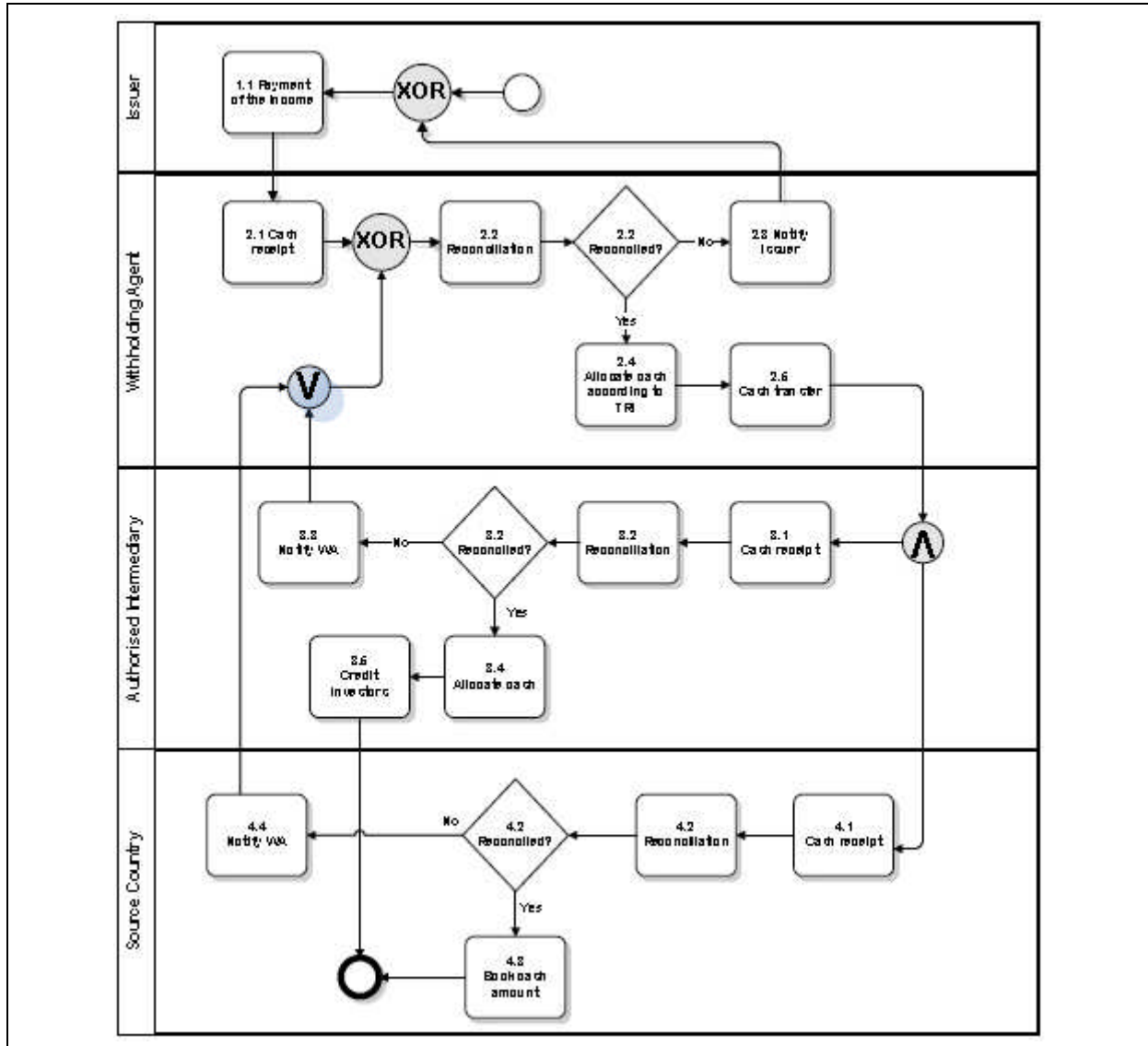


Figure 10: Description of the Cash Flow

#### 3.3.1 PAYMENT OF INCOME BY THE ISSUER

**1.1 Payment of the Income.** The first step in the flow is the payment of the income by the Issuer to the various WAs or central depository, depending on the market structure, and according to the terms and conditions previously announced to the market.

### 3.3.2 TREATMENT OF THE INCOME BY THE WA

In most cases, the WA is a FI having its own clients. It is then likely that the WA will have to perform the same tasks as the other Financial Intermediaries for its DAH and IAH. However, the WA would just act as a regular AI and the tasks and checks performed should not differ. So, in this operating model, the WA is only considered through its responsibilities in terms of withholding the tax to the benefit of the tax administration of the SC.

**2.1 Cash Receipt.** The WA receives the cash gross from the Issuer.

**2.2 Reconciliation.** The WA reconciles the amount received from the Issuer with the amount projected in its books according to its previous entitlement calculation. Each difference between the amount received from the Issuer and the amount expected has to be investigated. If the difference cannot be closed, the position is not reconciled.

**2.3 Notify Issuer.** If the difference is not due to the WA’s positions, the WA has to notify the Issuer of a potential error.

**2.4 Allocate Cash According to TRI.** Once reconciled, the WA can allocate the cash to its clients, applying the tax rates mentioned in their TRI. Clients are credited with the net amount (i.e. gross amount minus tax due, the tax due being credited to the SC by the WA).

**2.5 Cash Transfer.** The WA transfers the cash to its clients (among which there are AIs) and to the tax administration of the SC. It should be highlighted that the transfer of the cash to the tax administration of the SC could take place at a later stage (e.g. at the end of each month or one month after the income payment). This will be determined by the domestic legal framework.

### 3.3.3 TREATMENT OF THE INCOME BY THE AI/CI

**3.1 Cash Receipt.** The AI receives the cash from the WA.

**3.2 Reconciliation.** The AI reconciles the amount received from the WA with the amount projected in its books according to its previous entitlement calculation. Each difference between the amount received from the WA and the amount expected has to be investigated. If the difference cannot be closed, the position is not reconciled.

**3.3 Notify WA.** If the difference is not due to AI’s positions, AI has to notify the WA of a potential error.

**3.4 Allocate Cash.** Once reconciled, the AI can allocate the cash to its clients, according to the entitlement and the tax rates mentioned in the TRI received from other AIs.

**3.5 Credit Investors.** The AI transfers the cash to Investors, which could be beneficial owners or other FIs (AI, CI etc.).

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3.3.4 TREATMENT OF THE INCOME BY THE SC

4.1 Cash Receipt. The SC receives the cash from the WA.

4.2 Reconciliation. The SC reconciles the amount received from the WA with the amount and the tax rates included in the TRI. Each difference between the amount received from the WA and the amount expected has to be investigated. If the difference cannot be closed, the position is not reconciled

4.3 Notify WA. If the difference cannot be solved, SC has to notify the WA of a potential error.

4.4 Allocate Cash. Once reconciled, the cash amount can be recorded in the books of the SC.

3.4 DESCRIPTION OF THE EXCHANGE OF INFORMATION UNDER THE SC MODEL

54. Exchange of Information Under the SC Model. Please find enclosed as Appendix 6 the description of the exchange of information under the SC Model (previewed below).

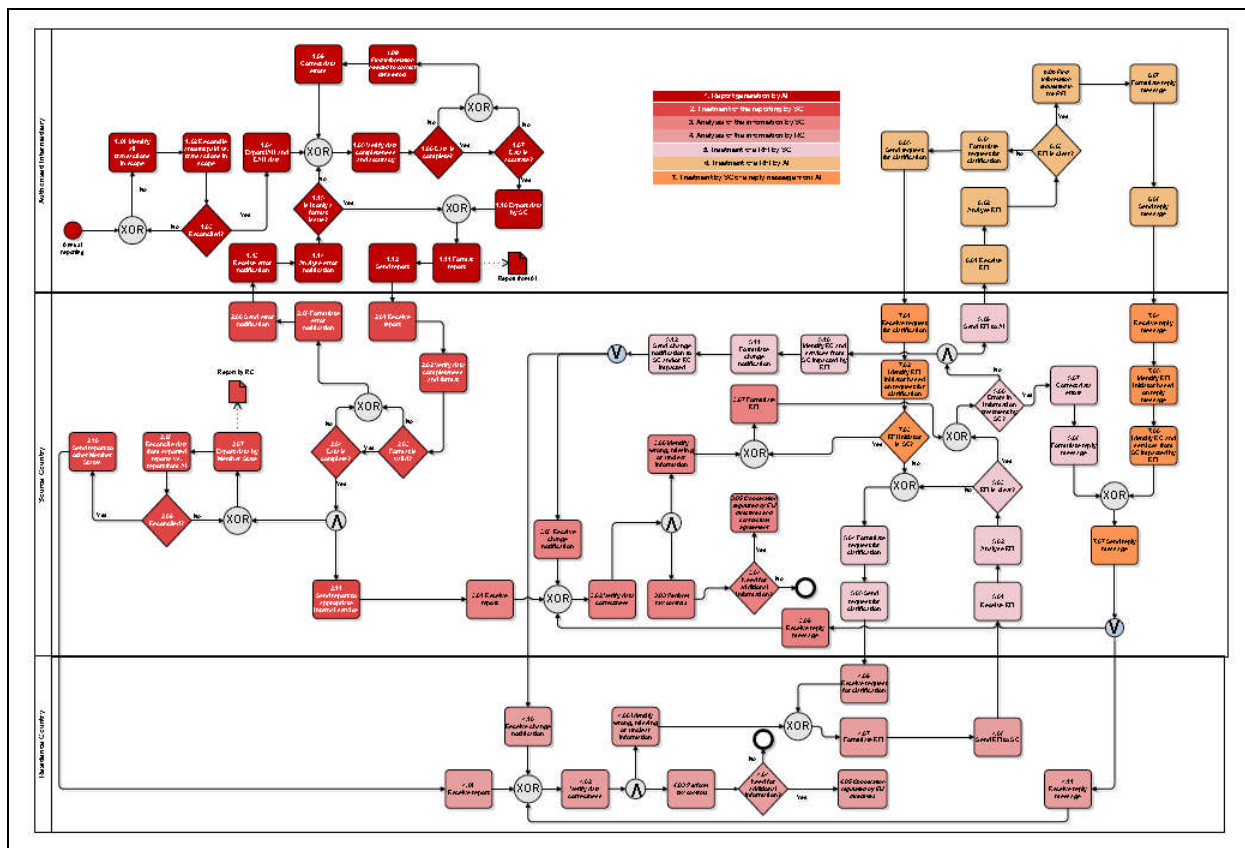


Figure 11: Description of the Exchange of Information under the SC Model

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### 3.4.1 REPORT GENERATION BY THE AI

The reporting will have to be sent annually (i.e. on or before 30 April of the year following any calendar year in which the AI receives Reportable Payments in its capacity as an AI). While the frequency and the timing of the report could still be amended according to various parameters, clear deadlines for the issuance of this report must be included in the Model when it is implemented.

**1.01 Identify all Transactions in Scope.** The AI must identify all the transactions that should be included in the reporting. The notion of “Reportable Payments” is defined in the Implementation Package. It includes all the securities income paid to Investors located in the EU but who are not resident in the SC and have benefited from a DTT as well as all securities income paid to Investors located in the EU and who are resident in the SC.

**1.02 Reconcile Amount Paid v. Transactions in Scope.** The AI will reconcile the transactions considered as in scope and the amounts effectively paid into the client’s account. As an example, it is likely that an automated export from the transactions in scope wrongly identifies some transactions that should not be subject to an exchange of information. Indeed, during the year, if cross-border securities income is credited to the wrong account and if this transaction is reversed the following day so as to correct the situation, it is possible that, at the end of the year, an automated export will consider the first credit as regular securities income that should be included in the reporting, while the debit will be disregarded because a debit could not be considered as income. It is a simple example but situations much more complex will arise and require a reconciliation exercise.

**1.03 Reconciled?** Each difference between the amounts to be included in the reporting and the amounts effectively paid has to be investigated. If the difference cannot be solved, the position is not reconciled. In such case, the AI should double check the process driving the identification of the transactions to be included in the reporting as well as the accuracy of the transactions processed during the past period. If an error is identified, it has to be corrected.

**1.04 Export DAH and IAH Data.** Once the amounts are reconciled, the AI should export all the required information on the DAH and the IAH (via CI) that will be included in the reporting, as defined in the Implementation Package (cf. subsection 4.5.1 of the final report).

**1.05 Verify Data Completeness and Accuracy.** The AI should perform checks to ensure the completeness and accuracy of the information mentioned in the reporting to meet the quality standards it needs to commit to being an AI.

**1.06 Data is Complete?** Among other checks, the AI will have to ensure that all the mandatory fields have been filled out and that no information is missing.

**1.07 Data is Accurate?** Besides the completeness of the reporting, another important criterion is the validity of the data. Indeed, one of the important challenges for the FIs is to keep up to date the information they have on their clients.



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**1.08 Find Information Needed to Correct Data Errors.** If for any reason any information is missing, is no longer valid or requires double checking, the AI will have to take all the appropriate actions to find the information needed.

**1.09 Correct Data Errors.** Once the missing information has been collected, updated or verified, the AI will update the reporting and the client file.

**1.10 Export Data by SC.** The AI has to sort out the data by SC. Indeed, each SC will receive the data on the income paid by Issuers located in its country.

**1.11 Format Report.** The report will have to be formatted according to specific requirements in terms of format and language. This format will be common for the reporting within the different MSs.

**Report From AI.** The formatted report is the document that will be sent to the SC.

**1.12 Send Report.** The report will be sent by the AI to the various SCs within given deadlines, as defined in the Implementation Package (cf. subsection 4.5.2 of the final report).

**1.13 Receive Error Notification.** If the SC identifies missing, incomplete or incoherent information or if the format is not valid, the SC will send an error notification to advise the AI having generated the reporting that it has to correct the reporting.

**1.14 Analyse Error Notification.** The AI analyses the error notification to determine whether it is a problem to do with the content or the format of the data and take the appropriate action.

**1.15 Is It Only a Format Issue?** Are the error(s) mentioned in the error notification sent by the SC only due to a problem that occurred in the formatting of the reporting? Depending on the answer, the AI will either format the report (going back to the step 1.11) or verify data completeness and accuracy (refer to step 1.05).

### 3.4.2 TREATMENT OF THE REPORTING BY THE SC

**2.01 Receive Report.** The SC receives reports on Reportable Payments made by AIs that have been approved by the SC.

**2.02 Verify Data Completeness and Format.** The SC verifies that all the information that should be included in the reporting is actually included, and that the data format is a valid format. The initial quality check performed by the SC is not an exhaustive check. The SC is not responsible for confirming that the data included in the reporting by AI actually reflects what happened on the market or that the data is accurate according to the legal framework of other MSs.

**2.03 Format Is Valid?** The SC should verify and confirm that the format of the report sent by the AI fulfils the requirements set in the Model, as defined in the Implementation Package.

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**2.04 Data Is Complete?** The SC should check that all the data that should be included in the reporting is actually included. In addition, the SC may also verify that the data format is a valid format.

**2.05 Formulate Error Notification.** If the data is not complete or if the format is not valid, the SC should notify the AI, which will have to update or adjust the information.

**2.06 Send Error Notification.** Once the SC has formulated the error notification, it should send it to the AI.

**2.07 Export Data by MS.** Once the quality in terms of completeness and format has been confirmed, the SC has to compile all the information received from the various AIs by RC. The SC has to create one report by RC.

**Report by RC.** All data received from the AI is compiled by RC. Each RC will receive a report including income paid to its tax residents.

**2.08 Reconcile Data from Exported Reports v. Report from AI.** Before sending the report to the other MSs, the SC needs to verify that the data mentioned in the various reports to be sent to MSs matches data from the reports sent by the AI (e.g. that the total amount in the output matches the amount of the input).

**2.09 Reconciled?** Each difference between the amount mentioned in the reporting to the MSs and the amount mentioned in the reporting by the AI needs to be investigated. If the difference cannot be solved, the export should be repeated until the error is identified.

**2.10 Send Report to Other MSs.** Once the reports are reconciled, the SC sends them to the RC.

**2.11 Send Report to Appropriate Internal Service.** The data will also be sent to the department in charge of the analysis of the data.

### 3.4.3 ANALYSIS OF THE REPORTING BY THE SC

**3.01 Receive Report.** The department in charge of the analysis of the data receives the report.

**3.02 Verify Data Correctness.** The SC will verify that all the data included in the report is correct (e.g. all the income mentioned in the reporting was actually paid, the amounts by security or the applicable tax rates are correct, etc.).

**3.03 Perform Tax Controls.** The tax administrations will then perform the regular tax controls according to their own procedures (e.g. reconciliation with information received from WAs and other procedures developed by MSs to ensure that the Investors having benefited from a reduced tax rate under a DTT were actually entitled to it and, from a more general perspective, that an appropriate WHT rate was applied to the different types of income).

**3.04 Need for Additional Information.** Following the tax controls, the tax administrations may need to receive additional information, i.e. other than the information already included in

the report, in order to clarify some specific cases. If not, this will be the end of the processes on their part.

**3.05 Cooperation Regulated by the Existing Administrative Cooperation Framework and by the Contractual Agreement.** If the SC would like to receive additional information from a FI (i.e. information not required in the reporting) this request will be sent to the appropriate MS based on the existing administrative cooperation framework (DTTs, Administrative Cooperation Directive, Recovery Directive, etc.). This further cooperation between MSs is not included in the present description of the operating models. In addition, it is likely that the SC will have the opportunity to contact the AI directly as there is a direct contractual relationship between them. The additional elements of information that could be provided by the AI directly to the SC will vary from one MS to another according to the content of the bilateral contractual agreement binding the AI and the SC (taking into account the constraints applicable to the AI in terms of data protection, etc.).

**3.06 Identify Wrong, Missing or Unclear Information.** The SC department in charge of the reporting analysis will identify incorrect data or data that is not up to date to be included in the RFI (e.g. the SC would focus on Issuer data and applicable tax rates used).

**3.07 Formulate RFI.** The SC will formulate the RFI specifying the information considered as incorrect, incomplete or missing. The RFI will be standardised to meet specific requirements in terms of format and content. The SC will then forward the RFI to the appropriate services within the SC’s tax services, which will handle it and contact the AI.

**3.08 Receive Change Notification.** The department in charge of the analysis of the data receives a notification mentioning the data that a RC considers as wrong, missing or incomplete.

**3.09 Receive Reply Message.** The appropriate services within the SC receive the reply message to a RFI previously sent to an AI.

#### 3.4.4 ANALYSIS OF THE REPORTING BY THE RC

**4.01 Receive Report.** The RC receives the reports from the SC.

**4.02 Verify Data Correctness.** The RC will identify incorrect data or data that is not up to date (e.g. the RC will mainly verify the validity of the data on Investors description because the RC does not have much information about the Issuer or the tax/legal framework within the SC).

**4.03 Perform Tax Controls.** The tax administrations will then perform the regular tax controls according to their own procedures (e.g. tax return checks and other procedures developed by MSs to ensure that the Investors having benefited from a reduced tax rate under a DTT were actually entitled to it and, from a more general perspective, that an appropriate tax rate was applied to the different types of income).

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**4.04 Need for Additional Information.** Following the tax controls, the tax administrations may need to receive additional information, i.e. other than the information already included in the report, in order to clarify some specific cases. If not, this will be the end of the processes on their part.

**4.05 Cooperation Regulated by the EU Directives.** If the RC would like to receive additional information from a FI (i.e. information not required in the reporting) this request will be addressed to the appropriate MS based on the existing administrative cooperation framework (DTTs, Administrative Cooperation Directive, Recovery Directive, etc.). This further cooperation between MSs is not included in the present description of the operating models..

**4.06 Identify Wrong, Missing or Unclear Information.** Data that is not up to date or that is incorrect is identified to be included in the RFI. The RC will mainly verify the validity of the data on Investors description because the RC does not have much information about the Issuer or the tax legal framework within the SC.

**4.07 Formulate RFI.** The RC will formulate the RFI specifying the information considered as incorrect, incomplete or missing. The RFI will be standardised to meet specific requirements in terms of format and content. The RC will then forward the RFI to the SC, which will handle it and contact the AI.

**4.08 Send RFI to SC.** Once formulated and formatted according to Model requirements, the RFI is sent to the tax administrations of the SC, which will handle the request and forward it to the AI.

**4.09 Receive Request for Clarification.** The RC receives a Request for Clarification from the SC advising that a RFI previously sent by the RC needs to be clarified as the SC or the AI is not able to understand the request of the RFI.

**4.10 Receive Change Notification.** The RC receives a notification mentioning the data that is considered as wrong, missing or incomplete by a SC or another RC.

**4.11 Receive Reply Message.** The RC receives a reply message to an RFI previously sent to an AI via the SC.

### 3.4.5 TREATMENT OF A RFI BY THE SC

**5.01 Receive RFI.** The SC receives a RFI from the RC.

**5.02 Analyse RFI.** The SC is not really requested to perform an analysis of the RFI and could act as a mail box, limiting its involvement to a dispatching function, without having a look at the content or the purpose of the RFI. However, it would be more effective for the Model that the SC carries out a general analysis of the RFI. This analysis could be limited to assessing the understanding of the question and checking that it is not due to an error on the part of the SC.

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**5.03 RFI is Clear?** The SC should read the question to ensure that the question is understandable or at least is relevant in the domestic framework (e.g. if the RC requests a copy of a form that does not exist in the SC, it is clearly not relevant for the SC).

**5.04 Formulate Request for Clarification.** If the RFI is not clear or if the SC does not understand the question or if the question is not relevant in the domestic legal framework, the SC needs to formulate a Request for Clarification. In the Request for Clarification, the SC should clearly state what is not clear or not relevant (e.g. the RC requests a document from the Issuer that the AI does not have access to).

**5.05 Send Request for Clarification.** The SC should send the Request for Clarification to the MS having initiated the RFI before forwarding the RFI to the AI. This will definitely increase the overall efficiency of the Model.

**5.06 Errors in Information Treatment by SC?** Before forwarding the RFI to the AI, the SC should check whether the RFI does not relate to an issue that is due to the manner in which it treated the information it received from the AI. While such cases should be very limited, it cannot be ruled out that a technical issue or human error corrupted the report sent to the MSs.

**5.07 Correct Data Errors.** If the SC realises that the error relates to its treatment of the information, it should correct the wrong information. Depending on the type and the importance of the issue, the SC may carry out additional checks and corrections.

**5.08 Formulate Reply Message.** The SC formulates a reply message with the correction it made to the reporting. A corrective message should be sent to the author of the RFI as well as to all the MSs having received wrong information in the reporting, even if they have not sent a RFI.

**5.09 Send RFI to AI.** If the RFI is clear and does not result from an error in the information treatment by the SC, the RFI should be sent to the appropriate AI.

**5.10 Identify RC and Services from SC Impacted by RFI.** The SC should identify which tax administrations are impacted by the wrong information in the reporting because the information included in the RFI may be crucial for other MSs. Two examples: a RFI from a RC could allow a SC to identify Investors having benefited from a reduced tax rate while they were not entitled to it, or a RFI from a SC could allow a RC to identify income where a higher tax amount should have been paid by Investor(s).

**5.11 Formulate Change Notification.** The SC formulates a Change Notification including all the information mentioned in the RFI.

**5.12 Send Change Notification to SCs and/or RCs Impacted.** The SC sends the Change Notification to all SCs and/or RCs impacted.

### 3.4.6 TREATMENT OF A RFI BY THE AI

**6.01 Receive RFI.** The AI receives a RFI from the SC.

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**6.02 Analyse RFI.** Before taking any investigating action for the information targeted in the RFI, the AI should analyse the RFI to determine if it is understandable or if it is relevant in its context.

**6.03 RFI is Clear?** Does the AI understand the information it should provide?

**6.04 Formulate Request for Clarification.** If the AI does not understand the RFI or if the RFI is obviously not relevant, the AI should send a Request for Clarification to the SC. This request should explain why the RFI is not clear or not relevant (e.g. the SC requests the TIN of an Investor while there is no TIN in the Investor’s country, being the RC).

**6.05 Send Request for Clarification.** The Request for Clarification is sent to the SC.

**6.06 Find Information Requested in the RFI.** Once the RFI has been received and understood by the AI, the AI has to take the necessary actions to find the information requested. Those actions could be very different from one RFI to another. In some cases, the AI will have to contact its clients (DAH, IAH via CI or AI) or other FIs in the business chain. However, as those activities are clearly not part of the Model and are out of scope of this feasibility study, they are not included in the present description of the operating models.

**6.07 Formulate Reply Message.** Once the required information has been collected, the AI formulates the reply according to the requirements in terms of contents.

**6.08 Send Reply Message.** The AI sends a reply message to the SC.

### 3.4.7 TREATMENT BY THE SC OF A REPLY MESSAGE FROM THE AI

**7.01 Receive Request for Clarification.** If the AI requests clarification on the RFI as it was not understood or if it is considered as obviously not relevant, this Request for Clarification is sent to the SC that sent the RFI to the AI.

**7.02 Identify RFI Initiator Based on Request for Clarification.** Once the SC has received the Request for Clarification from the AI, the SC identifies the MS that initiated the RFI considered as unclear by the AI.

**7.03 RFI Initiator is SC?** The RFI could have been initiated by one of the RCs (which received the reporting from the SC) or by the SC itself.

- If the SC is the initiator of the RFI, the process goes back to step 3.06, as the SC has to reformulate the RFI to make sure that the AI will understand the question.
- If the RFI has not been initiated by the SC but rather by a RC, the process goes back to step 5.04, where the SC will send the Request for Clarification of the AI to the RC that initiated the RFI.

**7.04 Receive Reply Message.** The SC receives the reply message formulated and formatted by the AI.

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**7.05 Identify RFI Initiator Based on Reply Message.** The SC identifies the MS that initiated the RFI for which the AI sent a reply message.

**7.06 Identify RCs and Services from SC Impacted by RFI.** The reply message could mean a change in the information initially included in the reporting. Therefore, the SC has to identify the MSs that have received wrong information. It could be one or more RCs as well as internal services of the SC.

**7.07 Send Reply Message.** The SC sends the reply message to the MS having initiated the RFI and to the other MSs identified in steps 7.05.

**3.5 DESCRIPTION OF THE EXCHANGE OF INFORMATION UNDER THE AIC MODEL**

**55. Exchange of Information under the AIC Model.** Please find in Appendix 7 the description of the exchange of information under the AIC Model (previewed below).

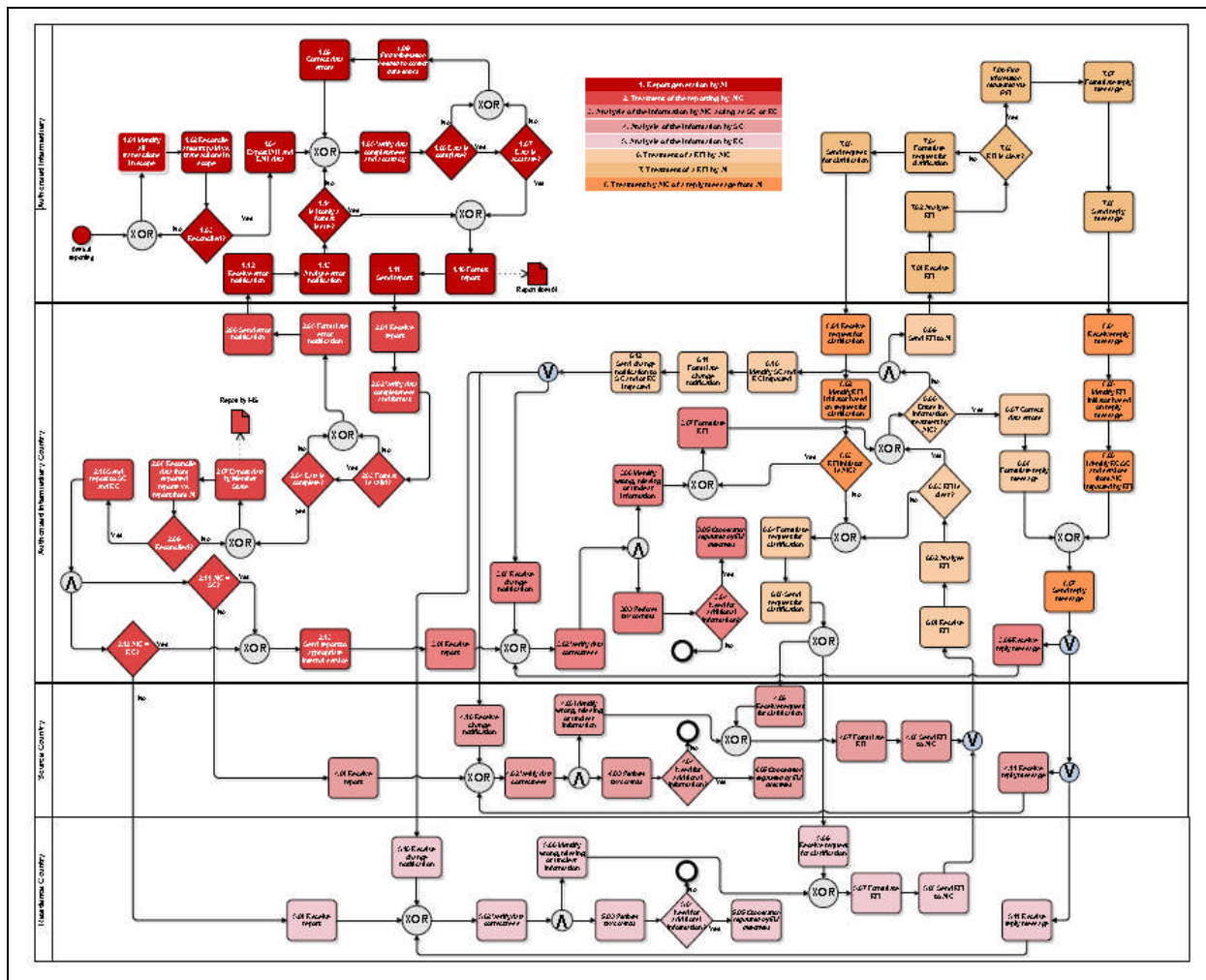


Figure 12: Description of the Exchange of Information under the AIC Model

### 3.5.1 REPORT GENERATION BY THE AI

The reporting will have to be sent periodically. While the frequency and the timing of the report are still to be determined according to various parameters, clear deadlines for the issuance of this report must be included in the Model when it is implemented.

**1.01 Identify All Transactions in Scope.** The AI must identify all the transactions that should be included in the reporting. The notion of “Reportable Payments” is defined in the Implementation Package. It includes all the securities income paid to Investors located in the EU but who are not resident in the SC and have benefited from a DTT as well as all securities income paid to Investors located in the EU and who are resident in the SC.

**1.02 Reconcile Amount Paid v. Transactions in Scope.** The AI will reconcile the transactions considered as in scope and the amounts actually paid into the client’s account. As an example, it is likely that an automated export from the transactions in scope wrongly identifies some transactions that should not be subject to an exchange of information. Indeed, during the year, if cross-border securities income is credited to the wrong account and if this transaction is reversed the following day so as to correct the situation, it is possible that, at the end of the year, an automated export will consider the first credit as regular securities income that should be included in the reporting, while the debit will be disregarded as a debit could not be considered as income. It is a simple example but situations much more complex will arise and require a reconciliation exercise.

**1.03 Reconciled?** Each difference between the amounts to be included in the reporting and the amounts actually paid has to be investigated. If the difference cannot be solved, the position is not reconciled. In such case, the AI should double check the process driving the identification of the transactions to be included in the reporting as well as the accuracy of the transactions processed during the past period. If an error is identified, it has to be corrected.

**1.04 Export DAH and IAH Data.** Once the amounts are reconciled, the AI should export all the required information on the DAH and the IAH (via CI) that will be included in the reporting, as defined in the Implementation Package (cf. subsection 4.5.1 of the final report).

**1.05 Verify Data Completeness and Accuracy.** The AI should perform checks to ensure the completeness and accuracy of the information mentioned in the reporting to meet the quality standards it needs to commit to being an AI.

**1.06 Data Is Complete?** Among other checks, the AI will have to ensure that all the mandatory fields have been filled out and that no information is missing.

**1.07 Data Is Accurate?** Besides the completeness of the reporting, another important criterion is the validity of the data. Indeed, one of the important challenges for the FIs is to keep up to date the information they have on their clients.

**1.08 Find Information Needed to Correct Data Error.** If for any reason any information is missing, is no longer valid or requires double checking, the AI will have to contact its client (the beneficial owner of the income or a CI if it is for an IAH).



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**1.09 Correct Data Error.** Once the missing information has been collected, updated or verified, the AI will update the reporting and the client file.

**1.10 Format Report.** The report will have to be formatted according to specific requirements in terms of format and language. This format will be common for the reporting within the different MSs.

**Report from AI.** The formatted report is the document that will be sent to the AIC.

**1.11 Send Report.** The report will be sent by the AI to the SC within given deadlines.

**1.12 Receive Error Notification.** If the SC identifies missing, incomplete or incoherent information or if the format is not valid, the SC will send an error notification to advise the AI having generated the reporting that it has to correct it.

**1.13 Analyse Error Notification.** The AI analyses the error notification to determine whether it is a problem to do with the content or the format of the data and take the appropriate action.

**1.14 Is it Only a Format Issue?** Are the error(s) mentioned in the error notification sent by the AIC only due to a problem that occurred in the formatting of the reporting? Depending on the answer, the AI will either format the report (going back to the step 1.10) or verify data completeness and accuracy (refer to step 1.05).

### 3.5.2 TREATMENT OF THE REPORTING BY THE AIC

**2.01 Receive Report.** The AIC receives reports from all the AIs located in its territory.

**2.02 Verify Data Completeness and Format.** The AIC verifies that all the information that should be included in the reporting is actually included, and that the data format is a valid format. The initial quality check performed by the AIC is not an exhaustive check. The AIC is not responsible for confirming that the data included in the reporting by the AI actually reflects what happened on the market or that the data is accurate according to the legal framework of other MSs.

**2.03 Format Is Valid?** AIC should verify and confirm that the format of the report sent by the AI fulfils the requirements set in the Model, as defined in the Implementation Package (42).

**2.04 Data Is Complete?** AIC should check that all the data that should be included in the reporting is actually included. In addition, the AIC may also verify that the data format is a valid format.

**2.05 Formulate Error Notification.** If the data is not complete or if the format is not valid, the AIC should notify the AI, which will have to update or adjust the information.

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42 As defined for the purposes of this feasibility study, the content of the reporting is the same under the AIC Model as under the SC Model. However, possibilities to amend the content of the reporting are considered in the fraud analysis (Chapter 9 of the final report).

**2.06 Send Error Notification.** Once the AIC has formulated the error notification, it should send it to the AI.

**2.07 Export Data by MS.** Once the quality in terms of completeness and format has been confirmed, the AIC has to compile all the information received from the various AIs by MS. The AIC has to create one report for each MS, by distinguishing between information to be provided to a MS as a SC, on the one hand, and information to be provided to a MS as a RC, on the other. A MS may be a SC and RC at the same time. The report for the SC will include data on Investors whom have been granted a reduced WHT on securities income as well as on securities income sourced in that MS paid to Investors who are resident therein. The report for the RC will include data on Investors who are resident therein and, on that basis, obtained a reduced WHT rate on securities income sourced in the SC.

**Report by MS.** All data received from the AI is compiled by MS. Each MS will receive a report including the relevant information depending on whether it is a SC, a RC or both.

**2.08 Reconcile Data from Exported Reports v. Report from AI.** Before sending the report to the other MSs, the AIC needs to verify that the data mentioned in the various reports to be sent to MSs match data from the reports sent by AI (e.g. that the total amount in the output matches the amount of the input).

**2.09 Reconciled?** Each difference between the amount mentioned in the reporting to the MSs and the amount mentioned in the reporting by the AI needs to be investigated. If the difference cannot be solved, the export should be repeated until the error is identified.

**2.10 Send Report to SC and RC.** Once the reports are reconciled, the AIC sends them to the SC and RC.

**2.11 AIC = SC?** For some transactions included in the reporting, the AIC will also be the SC. This is the case, for instance, where income is paid by an Issuer located in country A via an AI located in country A to an Investor having his tax residence in country B. If the Investor benefits from relief at source, this income will be subject to an exchange of information. In this scenario:

- AIC = country A;
- SC = country A;
- RC = country B.

Country B will act as the AIC but will also receive a report because country B is also fulfilling the duties of the SC. This report will be sent to the appropriate internal services.

**2.12 AIC = RC?** For some transactions included in the reporting, the AIC will also be the RC. This is the case, for instance, where income is paid by an Issuer located in country A via an AI located in country B to an Investor having his tax residence in country B. If the Investor benefits from relief at source, this income will be subject to an exchange of information. In this scenario:

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- AIC = country B;
- SC = country A;
- RC = country B.

Country B will act as the AIC but will also receive a report because country B is also fulfilling the duties of the RC. This report will be sent to the appropriate internal services.

**2.13 Send Report to Appropriate Internal Service.** The data will also be sent to the department in charge of the analysis of the data.

### 3.5.3 ANALYSIS OF THE INFORMATION BY THE AIC ACTING AS A SC OR A RC

The AIC country will send the reports to its own relevant services as well as to all the other MSs. The next steps that will be performed by the AIC will therefore be performed in its capacity as a RC or SC, depending on the data reported. The analysis of the information (v. treatment) is only applicable for income paid to an Investor who is a tax resident in the AIC, or paid by an Issuer from the AIC.

**3.01 Receive Report.** The department in charge of the analysis of the data receives the report.

**3.02 Verify Data Correctness.** The AIC will verify that all the data included in the report is correct (e.g. TINs are valid; addresses are correct and up to date).

**3.03 Perform Tax Controls.** The tax administrations will then perform the regular tax controls according to their own procedures (e.g. tax return checks and other procedures developed by MSs to ensure that the Investors having benefited from a reduced tax rate under a DTT were actually entitled to it and, from a more general perspective, that an appropriate WHT rate was applied to the different types of income).

**3.04 Need for Additional Information.** Following the tax controls, the tax administrations may need to receive additional information, i.e. other than the information already included in the report, in order to clarify some specific cases. If not, this will be the end of the processes on their part.

**3.05 Cooperation Regulated by the EU Directives.** If the AIC would like to receive additional information from a FI (i.e. information not required in the reporting), this request will be addressed to the appropriate MS based on the existing administrative cooperation framework (DTTs, Administrative Cooperation Directive, Recovery Directive, etc.). This further cooperation between MSs is not included in the present description of the operating models.

**3.06 Identify Wrong, Missing or Unclear Information.** The AIC department in charge of the reporting analysis will identify incorrect data or data that is not up to date to be included in the RFI.

**3.07 Formulate RFI.** The AIC will formulate the RFI specifying the information considered as incorrect, incomplete or missing. The RFI will be standardised to meet specific requirements in terms of format and content. The AIC will then forward the RFI to the appropriate services within the AIC’s tax services, which will handle it and contact the AI.

**3.08 Receive Change Notification.** The department in charge of the analysis of the data receives a notification mentioning the data that is considered as wrong, missing or incomplete by a RC or a SC.

**3.09 Receive Reply Message.** The appropriate services within the AIC receive a reply message to a RFI previously sent to an AI.

#### 3.5.4 ANALYSIS OF THE INFORMATION BY THE SC

**4.01 Receive Report.** The SC receives the reports from the AIC.

**4.02 Verify Data Correctness.** The SC will verify that all the data included in the report is correct (e.g. all the income mentioned in the reporting was actually paid, the amounts by security or applicable tax rates are correct, etc.).

**4.03 Perform Tax Controls.** The tax administrations will then perform the regular tax controls according to their own procedures (e.g. reconciliation with information received from WAs and other procedures developed by MS to ensure that the Investors having benefited from a reduced tax rate under a DTT were actually entitled to it and, from a more general perspective, that an appropriate WHT rate was applied to the different types of income).

**4.04 Need for Additional Information.** Following the tax controls, the tax administrations may need to receive additional information, i.e. other than the information already included in the report, in order to clarify some specific cases. If not, this will be the end of the processes on their part.

**4.05 Cooperation Regulated by the EU Directives.** If the SC would like to receive additional information from a FI (i.e. information not required in the reporting), this request will be addressed to the appropriate MS based on the existing administrative cooperation framework (DTTs, Administrative Cooperation Directive, Recovery Directive, etc.). This further cooperation between MSs is not included in the present description of the operating models.

**4.06 Identify Wrong, Missing or Unclear Information.** Data that is not up to date or that is not correct is identified to be included in the RFI. Since the SC has only access to information about the Issuer and the applicable tax rates, this check is less relevant for the information regarding the beneficial owner of the income.

**4.07 Formulate RFI.** The SC will formulate the RFI specifying the information considered as incorrect, incomplete or missing. The RFI will be standardised to meet specific requirements in terms of format and content. The SC will then forward the RFI to the AIC, which will handle it and contact the AI.

**4.08 Send RFI to AIC.** Once formulated and formatted according to Model requirements, the RFI is sent to the tax administrations of the AIC, which will handle the request and forward it to the AI.

**4.09 Receive Request for Clarification.** The SC received a Request for Clarification from the AIC advising that a RFI previously sent by the SC needs to be clarified as the AIC or the AI is not able to understand the request of the RFI.

**4.10 Receive Change Notification.** The SC receives a notification mentioning the data that is considered as wrong, missing or incomplete by a RC.

**4.11 Receive Reply Message.** The SC receives a reply message to a RFI previously sent to an AI via the AIC.

### 3.5.5 ANALYSIS OF THE INFORMATION BY THE RC

**5.01 Receive Report.** RC receives the reports from the AIC.

**5.02 Verify Data Correctness.** The RC will verify that all the data included in the report is correct (e.g. TINs are valid; addresses are correct and up to date, etc.).

**5.03 Perform Tax Controls.** The tax administrations will then perform the regular tax controls according to their own procedures (e.g. tax return checks and other procedures developed by MSs to ensure that the Investors having benefited from a reduced tax rate under a DTT were actually entitled to it and, from a more general perspective, that an appropriate WHT rate was applied to the different types of income).

**5.04 Need for Additional Information.** Following the tax controls, the tax administrations may need to receive additional information, i.e. other than the information already included in the report, in order to clarify some specific cases. If not, this will be the end of the processes on their part.

**5.05 Cooperation Regulated by the EU Directives.** If the RC would like to receive additional information from a FI (i.e. information not required in the reporting), this request will be addressed to the appropriate MS based on the existing administrative cooperation framework (DTTs, Administrative Cooperation Directive, Recovery Directive, etc.). This further cooperation between MSs is not included in the present description of the operating models.

**5.06 Identify Wrong, Missing or Unclear Information.** Data that is not up to date or that is not correct is identified to be included in the RFI. The RC will mainly verify the validity of the data on Investors description because the RC does not have much information about the Issuer or the tax legal framework within the SC.

**5.07 Formulate RFI.** The RC will formulate the RFI specifying the information considered as incorrect, incomplete or missing. The RFI will be standardised to meet specific requirements in terms of format and content. The RC will then forward the RFI to the AIC, which will handle it and contact the AI.

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**5.08 Send RFI to AIC.** Once formulated and formatted according to Model requirements, the RFI is sent to the tax administrations in the AIC, which will handle the request and forward it to the AI.

**5.09 Receive Request for Clarification.** The RC received a Request for Clarification from the AIC advising that a RFI previously sent by the RC needs to be clarified as the AIC or the AI is not able to understand the request of the RFI.

**5.10 Receive Change Notification.** The RC receives a notification mentioning the data that is considered as wrong, missing or incomplete by a SC or another RC.

**5.11 Receive Reply Message.** The RC receives a reply message to a RFI previously sent to an AI via the AIC.

### 3.5.6 TREATMENT OF A RFI BY THE AIC

**6.01 Receive RFI.** The AIC receives a RFI from the other MSs.

**6.02 Analyse RFI.** The AIC is not committed to perform an analysis of the RFI and could act as a mail box, limiting its involvement to a dispatching function, without having a look at the content or the purpose of the RFI. However, it could be interesting for the Model that the AIC carries out a general analysis of the RFI. This analysis could be limited to assessing the understanding of the question and checking that it is not due to an error on the part of the AIC.

**6.03 RFI is Clear?** The AIC should read the question to ensure that the question is understandable or at least is relevant in the domestic framework. (e.g. the SC requests the TIN of an Investor while there is no TIN in the Investor’s country, being the RC, which would not be relevant).

**6.04 Formulate Request for Clarification.** If the RFI is not clear or if the AIC does not understand the question or if the question is not relevant in the domestic legal framework, the AIC needs to formulate a Request for Clarification. In the Request for Clarification, the AIC should clearly state what is not clear or not relevant (e.g. the RC requests a document from the Issuer that the AI does not have access to).

**6.05 Send Request for Clarification.** The AIC should send the Request for Clarification to the MS having initiated the RFI before forwarding the RFI to the AI. This will definitely increase the overall efficiency of the Model.

**6.06 Errors in Information Treatment by AIC?** Before forwarding the RFI to the AI, the AIC should check whether the RFI does not relate to an issue that is due to the manner in which it treated the information it received from the AI. While such cases should be very limited, it cannot be ruled out that a technical issue or human error corrupted the report sent to the MSs.

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**6.07 Correct Data Errors.** If the AIC realises that the error relates to its treatment of the information, it should correct the wrong information. Depending on the type and the importance of the issue, the AIC may carry out additional checks and corrections.

**6.08 Formulate Reply Message.** The AIC formulates a reply message with the correction it made to the reporting. A corrective message should be sent to the author of the RFI as well as to all the MSs having received wrong information in the reporting, even if they have not sent a RFI.

**6.09 Send RFI to AI.** If the RFI is clear and does not result from an error in the information treatment by AIC, the RFI should be sent to the appropriate AI.

**6.10 Identify SCs and RCs Impacted.** The AIC should identify which tax administrations are impacted by the wrong information in the reporting as the information included in the RFI may be crucial for other MSs. Two examples: a RFI from a RC could allow a SC to identify Investors having benefited from a reduced tax rate while they were not entitled to it, or a RFI from a SC could allow a RC to identify income where a higher tax amount should have been paid by Investor(s).

**6.11 Formulate Change Notification.** The AIC formulates a Change Notification including all the information mentioned in the RFI.

**6.12 Send Change Notification to SCs and/or RCs Impacted.** The AIC sends the Change Notification to all the RCs and/or SCs impacted.

### 3.5.7 TREATMENT OF A RFI BY THE AI

**7.01 Receive RFI.** The AI receives a RFI from the AIC.

**7.02 Analyse RFI.** Before taking any investigating action for the information targeted in the RFI, the AI should analyse the RFI to determine if it is understandable or if it is relevant in its context.

**7.03 RFI is Clear?** Does the AI understand the information it should provide?

**7.04 Formulate Request for Clarification.** If the AI does not understand the RFI or if the RFI is obviously not relevant, the AI should send a Request for Clarification to the AIC. This request should explain why the RFI is not clear or not relevant (e.g. the SC requests the TIN of an Investor while there is no TIN in the Investor’s country, being the RC).

**7.05 Send Request for Clarification.** The Request for Clarification is sent to the AIC.

**7.06 Find Information Requested Via the RFI.** Once the RFI has been received and understood by the AI, the AI has to take the necessary actions to find the information requested. Those actions could be very different from one RFI to another. In some cases, the AI will have to contact its clients (DAH, IAH via CI or AI) or other FIs in the business chain. However, as those activities are clearly not part of the Model and are out of scope of this feasibility study, they are not included in the present description of the operating models.

**7.07 Formulate Reply Message.** Once the required information has been collected, the AI formulates the reply according to the requirements in terms of contents.

**7.08 Send Reply Message.** The AI sends a reply message to the AIC.

### 3.5.8 TREATMENT BY THE AIC OF A REPLY MESSAGE FROM THE AI

**8.01 Receive Request for Clarification.** If the AI requests clarification on the RFI as it was not understood or if it is considered as obviously not relevant, this Request for Clarification is sent to the SC that sent the RFI to the AI.

**8.02 Identify RFI Initiator Based on Request for Clarification.** Once the AIC has received the Request for Clarification from the AI, the AIC identifies the MS that initiated the RFI considered as unclear by the AI.

**8.03 RFI Initiator Is AIC?** The RFI could have been initiated by a SC or a RC that received the report sent by the AIC, or by the AIC itself.

- If the report was generated by a RC or a SC, the process goes back to step 5.04 where the AIC will send a Request for Clarification of the AI to the RC or SC having initiated the RFI;
- If the report was generated by the AIC (indeed the AIC could be the SC if the income was paid by an Issuer in the AIC, or the RC if the Investor is a tax resident in the AIC), the process goes back to step 3.07 as the AIC has to reformulate the RFI to make sure that the AI will understand the question .

**8.04 Receive Reply Message.** Receipt of the reply message formulated and formatted by the AI.

**8.05 Identify RFI Initiator Based on Reply Message.** The SC identifies the MS that initiated the RFI for which the AI sent a reply message.

**8.06 Identify RCs/SCs and Services from AIC Impacted by RFI.** The reply message could entail a change in the information initially included in the reporting. Therefore, the AIC has to identify the MSs that have received wrong information. It could be one or more RCs/SCs as well as internal services of the AIC.

**8.07 Send Reply Message.** The SC sends the reply message to the MS having initiated the RFI and to the other MSs identified in steps 8.05.

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## APPENDIX 4: TRI FLOW

*See separate enclosure “Appendix 4 - TRI Process flowchart”.*

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## APPENDIX 5: CASH FLOW

*See separate enclosure “Appendix 5 - Cash flow flowchart”.*

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## **APPENDIX 6: EXCHANGE OF INFORMATION FLOW (SC MODEL)**

*See separate enclosure “Appendix 6 - SC Information exchange flowchart”.*

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## APPENDIX 7: EXCHANGE OF INFORMATION FLOW (AIC MODEL)

*See separate enclosure “Appendix 7 - AIC Information exchange flowchart”.*

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## APPENDIX 8: ADMINISTRATIVE COOPERATION DIRECTIVE: OTHER INTERACTIONS

### 8.1 ORGANISATION

56. **Organisation.** From an organisational perspective, it should be noted that the Administrative Cooperation Directive refers to the notion of “Competent Authority”.

The Competent Authority of a MS is defined as the authority which has been designated as such by that MS. In addition, when acting pursuant to this Directive, a central liaison office, a liaison department or a competent official shall also be deemed to be Competent Authorities (by delegation according to article 4 of the Directive).

In order for the Directive to interact effectively with the relief at source systems, in particular the provisions relating to the exchange of information, the participating countries should ensure that their Competent Authority (a central liaison office, a liaison department or the competent officials) is involved in the relief at source system, whatever the Model used (SC Model or AIC Model).

In other words, it would be appropriate for a MS participating in the relief at source system to involve the same persons/departments/offices of the Competent Authority as provided for in the framework of the Directive.

### 8.2 PERSONS COVERED BY THE DIRECTIVE

57. **Persons Covered by the Directive.** According to the Directive, “person” means,

- A natural person;
- A legal person;
- Where the legislation in force so provides, an association of persons recognised as having the capacity to carry out legal acts but not having the status of a legal person; or
- Any other legal arrangements of whatever nature and form, regardless of whether they have legal personality, owning or managing assets, which, including income derived therefrom, are subject to any of the taxes covered by this Directive.

In this respect, recital no. 7 states that “*clearer rules should also make it possible in particular to cover all legal and natural persons in the Union, taking into account the ever-increasing range of legal arrangements, including not only traditional arrangements such as trusts, foundations and investment funds, but any new instrument which may be set up by taxpayers in the Member States*”.

According to article 1 of the OECD Model Tax Convention, a DTT shall apply to persons who are residents of one or both of the Contracting States.

According to article 3 of the OECD Model Tax Convention (general definitions), the term “person” includes an individual, a company and any other body of persons.

It seems that the definition of person included in the Directive has a broader scope than the definition of person included in the OECD Model Tax Convention. As a result, it appears that each time a person (as defined in the OECD Model Tax Convention) can benefit from the relief at source pursuant to a DTT, it will in principle fall within the scope of the Directive. This point is of particular interest when looking at the application of the DTT benefits to CIVs (which can take the form of contractual arrangements (43)).

### 8.3 REQUEST FOR INFORMATION TO THE AIC

**58. Request for Information to the AIC.** As already mentioned, article 5 of the Directive mentions that at the request of the requesting authority, the requested authority shall communicate to the requesting authority any information that it has in its position (or that it obtains as a result of administrative enquiries – cf. below).

Both in the SC Model and in the AIC Model, the SC or the RC can, after having received first elements of information (respectively from the AI in the SC Model, from the AIC in the AIC Model) request the AIC for additional elements of information.

This applies irrespective of, as in the SC Model, whether or not there is a specific agreement between the AI and the SC. Of course, one should take into account the limit provided in article 17.1 of the Directive according to which the requesting MS should have exhausted its usual sources of information. Requests for information to the AIC in the framework of the SC Model should thus occur less often.

### 8.4 ADMINISTRATIVE ENQUIRIES

**59. Administrative Enquiries.** Administrative enquiries are provided in the framework of the exchange of information on request. According to the Directive, “administrative enquiry” means all controls, checks and other action taken by MSs in the performance of their duties with a view to ensuring the proper application of tax legislation.

In this respect, article 6 of the Directive provides the following:

- **Arrange to Obtain the Requested Information.** Article 6.1 provides that the requested authority shall arrange for carrying out any administrative enquiries necessary to obtain the requested information;
- **Reasoned Request for Specific Administrative Enquiry.** According to article 6.2, the request for information may contain a reasoned request for a specific administrative enquiry. If the requested authority takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof;

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43 We refer in this respect to the report of the OECD on The Granting of Treaty Benefits with Respect to the Income of CIVs adopted by the OECD Committee on Fiscal Affairs on 23 April 2010.

- **Procedure.** In order to obtain the requested information or to conduct the administrative enquiry requested, article 6.3 provides that the requested authority shall follow the same procedures as it would when acting on its own initiative or at the request of another authority in its own MS;
- **Communication of Original Documents.** Finally, article 6.4 provides that when specifically requested by the requesting authority, the requested authority shall communicate original documents provided that this is not contrary to the provisions in force in the MS of the requested authority.

It results from this provision that when an exchange of information upon request is possible, then the requested authority might have to carry out administrative enquiries in order to be able to provide the relevant information to the requesting authority.

It is interesting to note that the requested authority is free to decide whether an administrative enquiry is “necessary” or not. This has to be understood in its context. The requesting authority will often not be aware of information already available with the requested authority. When the requested authority already has the information, and provided that this information is up-to-date, then it would be logical to disregard the request for enquiry (the information can already be provided).

In that respect, one should check the internal legislation of each participating MS. In most cases, this limitation should most probably not constitute an issue, especially considering the overriding obligations laid down in article 18 of the Directive.

As regards the timing for the exchange of information on request, with or without administrative enquiry, it is referred to the comments on article 7.

## **8.5 PRESENCE IN ADMINISTRATIVE OFFICES AND PARTICIPATION IN ADMINISTRATIVE ENQUIRIES**

### **60. Presence in Administrative Offices and Participation in Administrative Enquiries.**

Article 11 of the Directive provides that officials authorised by the requesting authority may, with a view to exchanging the information, be present in the offices where the administrative authorities of the requested MS carry out their duties and be present during administrative enquiries carried out in the territory of the requested MS. It also provides that the officials of the requesting authority shall be given copies of the relevant documentation to which the officials of the requested authority have access.

Moreover, provided that it is authorised under the law of the requested MS, it can be agreed upon that officials of the requesting authority may interview individuals and examine records (with adverse consequences applied to the taxpayer in case of non-cooperation).

This cooperation is subject to two formal requirements. It has to be agreed upon between the MSs concerned and officials abroad should at all times be able to produce written authority stating their identity and their official capacity.

Article 11 of the Directive therefore provides a suitable legal framework for officials to be present abroad in the framework of their duties.

## 8.6 SIMULTANEOUS CONTROLS

61. **Simultaneous Controls.** According to recital no. 14 of the Directive, “*since the tax situation of one or more persons liable to tax established in several Member States is often of common or complementary interest, it should be made possible for simultaneous controls to be carried out on such persons by two or more Member States, by mutual agreement and on a voluntary basis*” with a view to exchanging the information so obtained.

Article 12 of the Directive provides the procedure in this respect:

- **Identification of the Person Concerned.** The Competent Authority in each MS shall identify independently the persons for whom it intends to propose a simultaneous control. It shall notify the Competent Authority of the other MSs concerned of any cases for which it proposes a simultaneous control, giving reasons for its choice. In addition, it shall specify the period of time during which those controls are to be conducted;
- **Decision.** The Competent Authority of each MS concerned shall decide whether it wishes to take part in simultaneous controls. It shall confirm its agreement or communicate its reasoned refusal to the authority that proposed a simultaneous control;
- **Appointment of a Representative.** The Competent Authority of each MS concerned shall appoint a representative with responsibility for supervising and coordinating the control operation.

In case they reach an agreement, MSs thus have the possibility to conduct simultaneous controls in their own territory on one or more persons of common/complementary interest. The information obtained will then be exchanged between the participating MSs.

Here again, the Directive provides in our view a suitable legal framework for conducting joint audits which could be useful in the framework of any of the two relief at source systems at stake in the present study.

For instance, the possibility of conducting joined controls could be used in the framework of enquiries concerning a specific AI about which the audit report provided by the Independent Reviewer would show some gaps in implementing the procedures of the applied Model.

For the sake of completeness, the simultaneous controls could be organised, according to recital no. 14 of the Directive, to persons “liable to tax” and would have to be carried out “on such persons”. One could therefore possibly try to argue that a control of an AI with a view to ensuring the correct application of WHT rules applied to its clients does not, strictly speaking, fall within the purpose of article 12 of the Directive even if the text of this article is not that restrictive.



In addition, as already underlined, the Directive only contains minimum rules and should therefore not affect MSs’ right to enter into wider cooperation under their national legislation or in the framework of bilateral or multilateral agreements. As a result, this criticism could be easily overruled on that basis provided that the legal framework is available somehow.

## 8.7 REQUEST FOR NOTIFICATION

### 62. Request for Notification.

According to recital no. 15 of the Directive, “*in view of the legal requirement in certain Member States that a taxpayer be notified of decisions and instruments concerning his tax liability and of the ensuing difficulties for the tax authorities, including cases where the taxpayer has relocated to another Member State, it is desirable that, in such circumstances, the tax authorities should be able to call upon the cooperation of the competent authorities of the Member State to which the taxpayer has relocated.*”

Article 13 of the Directive provides the conditions and procedures in this respect:

- **Direct Notification in Another MS.** The Competent Authority of a MS may notify any document by registered mail or electronically directly to a person within the territory of another MS.

When it is not possible (or where such notification would give rise to disproportionate difficulties), a MS can request to another MS to carry out notifications in accordance with the following:

- **Circumstances.** The notification can concern any instruments and decisions which derive from the administrative authorities of the requesting MS as far as it concerns the application in its territory of legislation on taxes covered by the Directive;
- **Conditions.** The notification has to be carried out in accordance with the rules governing the notification of similar instruments in the requested MS;
- **Content.** The request for notification shall indicate:
  - The subject of the instrument or decision;
  - The addressee’s name and address; and
  - Any other information which may facilitate identification of the addressee;
- **Response/Date of Notification.** The requested authority shall inform the requesting authority immediately of its response and, in particular, of the date of notification of the instrument or decision to the addressee.

Here again, the Directive provides in our view a suitable legal framework for notifying decisions and instruments in another MS which could be useful in the framework of any of the two relief at source Models at stake in the present study, either via direct notification or via indirect notification (specific request to the other MS) (44).

## 8.8 FEEDBACKS

63. **Feedbacks.** With a view to “*encourage administrative cooperation between member states*” (recital no. 16), the Directive provides in its article 14 with some rules on the provision of feedback on the information exchanged. The procedure is as follows:

- **Request for Feedback: Optional.** Article 14 of the Directive provides that when information is exchanged further to article 5 (exchange of information on request) or article 9 (spontaneous exchange of information), then the country having provided the information “may” request the countries having received information to send feedback thereon;
- **Feedback: Mandatory.** When the feedback has been requested, then the other country “shall” send the feedback as soon as possible and no later than three months after the outcome of the use of the requested information is known;
- **Practical Arrangements.** These will have to be determined in accordance with the procedure referred to in article 26.2;
- **Limitations.** The country requested to send a feedback must comply with its rules on tax secrecy and on data protection.

For the sake of completeness, when automatic exchange of information applies (*quod non* in the present study), MSs then have to send feedback once a year to the other MSs (the practical arrangements being agreed upon bilaterally).

It is interesting to note that the provision on feedback opens the way to quick communications between MSs; the Directive indeed provides that the feedback can be provided “as soon as possible”. Thus, it opens the door to almost any kind of feedback as soon as they are agreed upon between the participating countries.

The request for feedback is an integral part of the relief at source system (either in the SC Model or in the AIC Model). Indeed, it is required from an IT perspective in the process of information (e.g. the SC provides information to the RC; the AIC provides information to the RC and the SC, etc.).

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44 Similarly to what has been mentioned above with respect to the application of simultaneous controls, the recital of the Directive states that the taxpayer would be notified of “his tax liability” (although the text of article 13 is less specific).

It could also be used for instance in the SC Model when the SC provides the RC with information on the residence of some taxpayers as confirmation of the correct residence status of such taxpayers (although in such case, as mentioned above, the spontaneous exchange of information and exchange of information on request might be more appropriate/are somewhat overlapping).

## 8.9 DISCLOSURE OF INFORMATION AND DOCUMENTS

64. **Disclosure of Information and Documents.** According to recital no. 18 of the Directive, “*it is important for the efficiency of administrative cooperation that information and documents obtained under this Directive could (...) be used by the Member State that received them also for other purposes. It is also important that Member States could transmit that information to a third country, under certain conditions.*”

The disclosure of information and documents is provided for in article 16 of the Directive:

- **Purposes.** The information received in the framework of the Directive can be used for the following purposes:
  - The administration and enforcement of the domestic laws concerning the taxes covered in the Directive;
  - The assessment and enforcement of other taxes and duties covered by Council Recovery Directive of 16 March 2010;
  - The assessment and enforcement of compulsory social security contributions;
  - In connection with judicial and administrative proceedings (albeit without prejudice to the general rules and provisions governing the rights of defendants and witnesses in such proceedings); and
  - In some cases, for other purposes as well (only with the permission of the MS communicating the information/the “originating country” (cf. below), and only in so far as this is allowed under the legislation of the receiving MS; the permission being in any case granted if the information can be used for similar purposes in the MS communicating information);
- **Official Secrecy/Protection.** The information exchanged in the framework of the Directive is covered by the obligation of official secrecy and benefits from the protection extended to similar information under the national law of the MS receiving it;
- **Evidence.** Information received from another MS pursuant to this Directive can be invoked as evidence on the same basis as for information collected locally;
- **Transmission of Information from a MS to a Third MS.** When a MS considers that information received from another MS is likely to be useful for the above purposes to a third MS, it may circulate that information. The transmission is subject to the following conditions:

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- The transmission must be in accordance with the rules and procedures laid down in the Directive;
- The “transmitting country” must inform the country from which the information originates about its intention to share that information with a third MS (the “originating country” may oppose such a sharing within 10 working days);
- **Transmission of Information from a Third Country to a Third MS.** Furthermore article 24 of the Directive provides for similar possibilities with respect to information from third countries. Under the following conditions, a MS receiving information (the transmitting country) from a third country (the “originating third country”) can provide that information to another MS:
  - The information received from the originating third country is foreseeably relevant to the administration and enforcement of the domestic laws of the MS receiving it in first instance (the transmitting country) concerning the taxes referred to in article 2;
  - An agreement with the originating third country allows the transmission of information to another MS;

In such case, the transmitting country can proceed to,

- A spontaneous exchange of information towards other MSs for which that information might be useful, and
- An exchange of information on request towards any requesting MS;
- **Transmission of Information from a MS to a Third Country.** The other way round, a MS may transmit information received from another MS to a third country under the following conditions:
  - The transmission must be done in accordance with the domestic provisions of the transmitting country on the communication of personal data to third countries;
  - The originating country has consented to that communication;
  - The third country receiving the information has given an undertaking to provide the cooperation required to gather evidence of the irregular or illegal nature of transactions which appear to contravene or constitute an abuse-of-tax legislation.

Obviously, being able to use information received from other countries for other purposes than the one initially aimed at by the exchange of information in question offers legal certainty to the country receiving and using the information. An example is given by the information routinely exchanged in the framework of a given Model which would then have to be used as evidence before the Courts.

In addition, the possibility to forward the information received from a MS to another MS could also be quite useful in specific cases.

For instance, when a MS receives information from another MS about an AI not (fully) compliant with the relief at source Model in place, that MS could then decide to forward that information to other MSs. The possibility offered by the Directive to transmit information from/to third countries, under slightly different conditions, reinforces the possibility to have third countries participating in the relief at source Model that will be applied within the EU.

As mentioned above, when the information is used for “other purposes” than for taxes, then a specific permission is to be requested to the communicating country (or, when the information has been forwarded by another MS, the originating country). Accordingly, depending on the liabilities of the AI (contractual liability or something else), a specific permission might have to be requested.

## 8.10 PRACTICALITIES

65. **Standard Forms and Computerised Formats.** From a practical perspective, article 20 of the Directive provides for the formats that the exchange of information and requests made pursuant to the Directive should in principle take:

- **Request for Information and for Administrative Enquiries: Standard Form if Possible.** As regards requests for information and for administrative enquiries pursuant to Article 5 and their replies, acknowledgements, requests for additional background information, inability or refusal pursuant to article 7, the Directive provides that:
  - It shall, as far as possible, be sent using a standard form adopted by the European Commission in accordance with the procedure referred to in article 26(2);
  - The standard forms may be accompanied by reports, statements and any other documents, or certified true copies or extracts thereof;
  - It shall include at least the following information to be provided by the requesting authority: the identity of the person under examination or investigation and the tax purpose for which the information is sought;
  - In addition, the requesting authority may, to the extent known and in line with international developments, provide the name and address of any person believed to be in possession of the requested information as well as any element that may facilitate the collection of information by the requested authority;
- **Spontaneous Exchange of Information: Standard Form.** As regards the spontaneous exchange of information and its acknowledgement pursuant to articles 9 and 10 respectively, requests for administrative notifications pursuant to article 13 and feedback information pursuant to article 14, the Directive provides that it shall be sent using the standard form adopted by the European Commission in accordance with the procedure referred to in article 26(2);

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- **Automatic Exchange of Information: Standard Computerised Format.** Automatic exchange of information pursuant to article 8 shall be sent using a standard computerised format aimed at facilitating such automatic exchange and based on the existing computerised format pursuant to article 9 of the Savings Directive of 3 June 2003 on taxation of savings income in the form of interest payments, to be used for all types of automatic exchange of information, adopted by the European Commission in accordance with the procedure referred to in article 26(2).

66. **Other Practical Arrangements.** Article 21 of the Directive provides for some other practical arrangements which can also have some impacts on the working of the relief at source Model to be put in place.

- **CCN.** Information communicated pursuant to the Directive shall, as far as possible, be provided by electronic means (i.e. using electronic equipment for the processing, including digital compression, and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means) using the CCN (i.e. the common platform based on the common communication network, developed by the Union for all transmissions by electronic means between Competent Authorities in the area of customs and taxation);
- **Development of the CCN.** The European Commission shall be responsible for whatever development of the CCN is necessary to permit the exchange of that information between MSs. MSs shall be responsible for whatever development of their systems is necessary to enable that information to be exchanged using the CCN. MSs shall waive all claims for the reimbursement of expenses incurred in applying this Directive except, where appropriate, in respect of fees paid to experts;
- **Maintenance.** Persons duly accredited by the Security Accreditation Authority of the European Commission may have access to that information only in so far as it is necessary for the care, maintenance and development of the CCN;
- **Language and Translations.** Requests for cooperation, including requests for notification, and attached documents may be made in any language agreed upon between the requested and requesting authority. Those requests shall be accompanied by a translation into the official language or one of the official languages of the MS of the requested authority only in special cases when the requested authority states its reason for requesting a translation.

Although the above only concerns practical arrangements, these can nevertheless have an impact on the working of the relief at source Model to be put in place (once again, whatever the Model used).

## 8.11 DATA PROTECTION

As already indicated above, the Directive refers in some instances to domestic provisions with respect to data protection.

This is the case with respect to,

- Feedback, where article 14 of the Directive provides that the country requested to send a feedback must comply with its rules on data protection; and
- The transmission of information to a third country, where article 24.2 mentions that the transmission of information should be done in accordance with the domestic provisions on the communication of personal data to third countries.

Besides, the Directive also lays down a specific provision as regards data protection (article 25). According to the Directive, *“all exchange of information pursuant to this Directive shall be subject to the provisions implementing Directive 95/46/EC. However, Member States shall, for the purpose of the correct application of this Directive, restrict the scope of the obligations and rights provided for in Article 10, Article 11(1), Articles 12 and 21 of Directive 95/46/EC to the extent required in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.”*

This provision is commented in recital no. 27 of the Directive as follows *“all exchange of information referred to in this Directive is subject to the provisions implementing Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. However, it is appropriate to consider limitations of certain rights and obligations laid down by Directive 95/46/EC in order to safeguard the interests referred to in Article 13(1)(e) of that Directive. Such limitations are necessary and proportionate in view of the potential loss of revenue for Member States and the crucial importance of information covered by this Directive for the effectiveness of the fight against fraud.”*

Article 25 therefore confirms that the flows of exchange of information are covered by the current EU data protection framework, especially Directive 95/46/EC. However, in the framework of the Directive, the scope and obligations resulting from Directive 95/46/EC are limited. Such limitations to the data protection being indeed considered as necessary and proportionate in view of the potential loss of revenue for MSs and the crucial importance of information covered by this Directive for the effectiveness of the fight against fraud.

The analysis of Directive 95/46/EC and regulation No 45/2001 are covered in chapter 7 of the final report. In that respect, the opinion of the European Data Protection Supervisor on the proposal for a Council Directive on administrative cooperation in the field of taxation (2010/C

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## APPENDIX 8: ADMINISTRATIVE COOPERATION DIRECTIVE: OTHER INTERACTIONS

101/01) are taken into account as far as it enlightens potential issues with respect to the Model to be put in place (either the SC Model or the AIC Model) (45).

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45 One should take into account however that this opinion has been drafted on the basis of the initial proposal by the European Commission that had already drastically changed as regards disclosure of documents during the negotiation process when the opinion of the European Data Protection Supervisor was published.



## APPENDIX 9: ANALYSIS OF THE LIMITATIONS TO THE EXCHANGE OF INFORMATION UPON REQUEST

(cf. Routing and SC Model)

67. **Limitations.** Article 7.5 of the Administrative Cooperation Directive provides for some cases where the requested MS can disregard the request for information. These limits to the exchange of information are provided in article 17 of the Directive.

There are four limitations:

1. **Usual Source of Information Exhausted.** A requested authority in one MS shall provide a requesting authority in another MS with the requested information provided that the requesting authority “*has exhausted the usual sources of information which it could have used in the circumstances*” for obtaining the information requested, without running the risk of jeopardising the achievement of its objectives.

Considering that the SC has already used the usual sources of information it has with respect to the Investors (in particular, information from the AIs), and taking into account the purpose of the request which is to double check that information, then it is likely that the most appropriate way to do so is via a request to the RC. There are therefore arguments to consider that the usual sources of information in the meaning of article 17.1 are *de facto* exhausted.

2. **Contradiction to Internal Legislation.** This Directive shall impose no obligation upon a requested MS to carry out enquiries or to communicate information, if it would be contrary to its legislation to conduct such inquiries or to collect the information requested for its own purposes.

In that respect, one should check the internal legislation of each participating MS. In most cases, this limitation should most probably not constitute an issue, especially considering the overriding obligations laid down in article 18 of the Directive (cf. below).

3. **Reciprocity.** The Competent Authority of a requested MS may decline to provide information where the requesting MS is unable, for legal reasons, to provide similar information.

Here again, one should check the internal legislation of each participating MS. In most cases, this limitation should most probably not constitute an issue.

4. **Public Policy.** The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

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Information exchanged in the framework of the relief at source system should pass that test, especially considering the overriding obligations provided in article 18 of the Directive (cf. below).

68. **Obligations.** While reading the limitations mentioned above, in particular limitations 2 and 4, one could think of the MS currently still having **bank secrecy** in its own domestic law. However, article 18.2 of Directive prohibits declining to supply information only because this information is held by a bank, other FI, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person (the latter being especially important when talking about dividends and thus indirectly, ownership interest in companies).

Finally, and in any case, the requested MS has the obligation to provide the information even if the requested information is **useless for its own tax purposes**. This obligation is prescribed by article 18.1 of the Directive. In the framework of the SC Model, it is obvious that the information requested (whether or not a given person is resident for tax purposes) is relevant for the requested country. Arguing that the requested information would be useless to the requested MS is thus in any case not applicable.

69. **Comparison with Former Directive 77/799/EEC.** It is worthwhile to note that the exchange of information on request, the spontaneous exchange of information, the limitations and obligations to the exchange of information provided in the Administrative Cooperation Directive are different from the ones (formerly) provided in Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the MSs in the field of direct taxation and taxation of insurance premiums. The comparison of these texts tends to demonstrate the effectiveness of the new Directive.

- **Limitations.** The former Directive 77/799/EEC providing for the limits to the exchange of information was written as follows (article 8):

*1. This Directive shall impose no obligation to have enquiries carried out or to provide information if the Member State, which should furnish the information, would be prevented by its laws or administrative practices from carrying out these enquiries or from collecting or using this information for its own purposes.*

*2. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.*

*3. The competent authority of a Member State may refuse to provide information where the State concerned is unable, for practical or legal reasons, to provide similar information.*

Some of the former limitations have disappeared in the new Directive. It refers here for instance to the bank secrecy (invoked as a legal domestic non-disclosure obligation or as public policy interest), the administrative practices or the practical impossibility to provide the information;

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- **Time Limits.** Furthermore, there were no precise time limits to exchange the contemplated information, which might have had the consequence of not binding the MS participating in the system (it was closer to a “best efforts” obligation than an obligation to achieve a specific result). The former Directive was in that respect written as follows (article 5):

*Time limit for forwarding information. The competent authority of a Member State which, under the preceding Articles, is called upon to furnish information, shall forward it **as swiftly as possible**. If it encounters obstacles in furnishing the information or if it refuses to furnish the information, it shall forthwith inform the requesting authority to this effect, indicating the nature of the obstacles or the reasons for its refusal* (46).

70. **Comparison with the OECD Model Tax Convention (Article 26).** The same concerns in terms of limitations and timing (47) exist as regards article 26 of the OECD Model Tax Convention. Indeed, that article does not provide for time limits for the provision of information and refers to administrative practices/the normal course of the administration so that an effective enforcement of the automatic exchange of information would most probably be less effective than in the EU framework.

71. Based on the above, the limitations provided in article 17 of the Directive should in our view not apply to the requests for information submitted by the SC to the RC.

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46 In that respect, the following statement was made in the Communication from the Commission concerning the need to develop a coordinated strategy to improve the fight against fiscal fraud (COM(2006) 254 final): “*The findings of this report, the Communication and subsequent discussions between the Commission and the Member States indicate that Directive 77/799/EEC should be given more efficient tools, based on what already exists for indirect taxation (revision of Article 8 of the Directive, **limiting the deadlines for replying**, presence of officials of other Member States during on-the-spot checks, etc.).*”

47 Although time limits will most probably be introduced in the commentary of article 26 which is under approval to the Committee on Fiscal Affairs.

## APPENDIX 10: RECOVERY DIRECTIVE: PROCEDURE AND OTHER INTERACTIONS

### 10.1 PROCEDURE

72. **Procedures.** Articles 10 to 20 of the Recovery Directive provide the procedure applicable in case of request for recovery and in case of request for precautionary measures. These articles cover the following items:

- **Information from the Applicant MS to the Requested MS.** As soon as any relevant information relating to the matter which gave rise to the request for recovery comes to the knowledge of the applicant MS, it shall forward it to the requested MS (article 10.2);
- **Claims Disputed.** Subject to some exceptions, the applicant MS may not make a request for recovery if and as long as the claim/instrument permitting its enforcement in the applicant MSs are disputed (article 11.1);
- **Appropriate Recovery Procedures in the Applicant MS.** Before the applicant MS makes a request for recovery, appropriate recovery procedures available in the applicant MS must be applied (article 11.2). This is subject to two exceptions:
  - **No Assets for Recovery.** Where it is obvious that there are no assets for recovery in the applicant MS or that such procedures will not result in the payment in full of the claim, and the applicant authority has specific information indicating that the person concerned has assets in the requested MS;
  - **Disproportionate Difficulty.** Where calling upon such procedures in the applicant MS would give rise to disproportionate difficulty;
- **Uniform Instrument.** Any request for recovery must be accompanied by a uniform instrument permitting enforcement in the requested MS (article 12.1) and the request for recovery may be accompanied by other documents relating to the claim issued in the applicant MS (article 12.2);
- **Execution of the Request for Recovery.** In a nutshell, any claim in respect of which a request for recovery has been made must be treated as if it was a claim of the requested MS. The requested authority shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of the requested MS applying to claims concerning the same or a similar tax or duty (or shall apply the procedures concerning the tax levied on personal income). Currency, interest for late payment, instalments (and interest in that respect) are also targeted by the Directive (article 13);
- **Disputes.** Competent bodies, communication between the applicant MS and the requested MS in this respect and the consequences in terms of recovery (suspension of the enforcement and precautionary measures) are ruled by the article 14 of the Directive;

- **Amendment or Withdrawal.** Amendments to and withdrawal of the request for recovery (including the reasons in this respect) are dealt with in the article 15;
- **Request for Precautionary Measures.** Articles 16 and 17 of the Directive provide the procedure in case of request for precautionary measures;
- **Limits to the Requested Authority's Obligations.** Limits are provided in article 18 of the Directive (cf. section 5.2.2 of the final report);
- **Statute of Limitations.** Periods of limitation, suspension, interruption or prolongation of periods of limitation are laid down in article 19;
- **Costs.** Recovery of the costs linked to recovery, claims between MSs with respect to the reimbursement of costs arising from mutual assistance (including specific problems, large amount in costs or even organised crime), costs and losses incurred in case of unfounded actions or invalid instruments are ruled by the article 20 of the Directive.

Provided that the claims against the AI fall within the scope of the Recovery Directive (which will depend on the way the relief at source Model is transposed in national legislation/arranged with Financial Intermediaries), then the above provisions prescribe a suitable framework to enforce recovery, whenever needed, with the AI (or more generally, with a Financial Intermediary responsible for the errors).

## 10.2 OTHER INTERACTIONS

73. Just as for the Administrative Cooperation Directive, the Recovery Directive presents other interactions with the contemplated Models, some of which are similar to those provided in the Administrative Cooperation Directive, others being more specific. These interactions are briefly summarised below:

- **Persons Covered by the Directive.** The persons covered by the Recovery Directive are the same as in the Administrative Cooperation Directive (cf. section 5.1 of the final report);
- **Organisation.** Just as in the Administrative Cooperation Directive, the Recovery Directive refers to the notion of “Competent Authority” (cf. section 5.1 of the final report);
- **Request for Information and Administrative Enquiries.** Similarly to what is provided in the Administrative Cooperation Directive, the Recovery Directive provides in its article 5.1 that at the request of the applicant MS, the requested MS shall provide any information which is “foreseeably relevant” to the applicant MS in the recovery of the claims covered by the Directive. Moreover, the requested MS shall arrange for carrying out any administrative enquiries necessary to obtain such information.

However, article 5.2 of the Directive provides two cases where the requested MS is not obliged to supply information:

- **Contradiction to Internal Legislation.** The requested MS is not obliged to supply information which it would not be able to obtain for the purpose of recovering similar claims arising in the requested MS;

In that respect, one should check the internal legislation of each participating MS. In most cases, this limitation should most probably not constitute an issue, especially considering the overriding obligations laid down in article 5.3 of the Directive;

- **Public Policy.** The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or where the disclosure would be liable to prejudice the security of or be contrary to the public policy of the requested MS.

Here again, the Recovery Directive provides for similar provisions as in the Administrative Cooperation Directive as it prohibits declining to supply information only because this information is held by a bank, other FI, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person (the latter being especially important when talking about dividends and thus indirectly ownership interests in companies);

- **Presence in Administrative Offices and Participation in Administrative Enquiries.** Article 7 of the Recovery Directive provides that officials authorised by the requesting authority may be present in the offices where the administrative authorities of the requested MS carry out their duties, may be present during administrative enquiries carried out in the territory of the requested MS and may assist the competent officials of the requested MS during court proceedings in that MS. Moreover, provided that it is permitted under the legislation of the requested MS, it can be agreed upon that officials of the requesting authority may interview individuals and examine records.

This cooperation is subject to two formal requirements. It has to be agreed upon between the MSs concerned and officials abroad should at all times be able to produce written authority stating their identity and their official capacity;

- **Exchange of Information without Prior Request.** Article 6 of the Recovery Directive provides that where a refund of taxes or duties, other than value-added tax, relates to a person established or resident in another MS, the MS from which the refund is to be made may inform the MS of establishment or residence of the upcoming refund;
- **Assistance for the Notification of Documents.** Article 8 of the Recovery Directive provides the procedure with respect to notification of documents relating to claims;

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## APPENDIX 10: RECOVERY DIRECTIVE: PROCEDURE AND OTHER INTERACTIONS

- **Practicalities.** Article 20 and following of the Recovery Directive provide for some general rules governing all types of assistance requests, including standard forms (electronic means) and means of communication (use of the CCN), use of languages, disclosure of information and documents (obligation of official secrecy, use of documents for other purposes than those provided for in the Directive such as assessment and enforcement of compulsory social security contributions, transmission to third MSs, use of documents as evidence).

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## APPENDIX 11: SAVINGS DIRECTIVE: SUMMARY

74. **Aim.** The ultimate aim of the Savings Directive is to enable savings income in the form of interest payments made in one MS to beneficial owners who are individual residents for tax purposes in another MS to be made subject to an effective tax charge in accordance with the laws of the latter MS. The MS had to take the necessary measures to ensure that the tasks necessary for implementing the Directive are carried out by paying agents established within their territory, irrespective of the place of establishment of the debtor of the debt claim producing interest.

75. **Beneficial Owner.** Any individual who receives an interest payment or any individual for whom an interest payment is secured, unless he provides evidence that it was not received or secured for his own benefit (article 2.1).

76. **Reasonable Identification Steps.** Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured could act on behalf of another individual who could be the beneficial owner, it has the obligation to take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it must regard the individual in question as the beneficial owner (article 2.2).

77. **Minimum Standards in Terms of Identification Procedure.** The Directive establishes minimum standards with respect to identification of beneficial owners and their tax residence (article 3).

- **Name, Address and TIN.** The identification requirements vary according to when relations between the paying agent and the recipient of interest are entered into:
  - **Client before 1 January 2004.** For contractual relations entered into before 1 January 2004, the paying agent had to establish the identity of the beneficial owner, consisting of his **name and address**, by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (as amended) (48);
  - **Client or Non-Client Transactions after 1 January 2004.** For contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent must establish the identity of the beneficial owner, consisting of the **name, address** and, if there is one, the **TIN** allocated by the MS of residence for tax purposes. These details must be established as follows:

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48 Formerly Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.



- **Passport or Identity Card.** These details must be established on the basis of the passport or official identity card produced by the beneficial owner with two exceptions:
- **Address: Other Documentary Proof.** If it does not appear on that passport or on that official identity card, the address shall be established on the basis of any other documentary proof of identity produced by the beneficial owner;
- **Absence of TIN: Date and Place of Birth.** If the TIN is not indicated on the passport, on the official identity card or any other documentary proof of identity, including, possibly, the Certificate of Residence for tax purposes, produced by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card;
- **Residence for Tax Purposes.** Residence shall be considered to be situated in the country where the beneficial owner has his permanent address:
  - **Client before 1 January 2004.** The paying agent must establish the residence of the beneficial owner by **using the information at its disposal**, in particular pursuant to the regulations in force in its State of establishment and to Directive 2005/60/EC;
  - **Client or Non-Client Transactions after 1 January 2004.** The paying agent must establish the residence of the beneficial owner as follows:
    - **Passport, ID or Other Document.** The address is established on the basis of the address indicated on the passport, the official identity card or, if necessary, any documentary proof of identity produced by the beneficial owner;
    - **Discrepancies.** For individuals producing a passport or official identity card issued by a MS who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the Competent Authority of the third country in which the individual claims to be resident. Failing to produce such a certificate, the MS which issued the passport or other official identity evidence shall be considered to be the country of residence.

78. **Paying Agent.** The definition of paying agent is twofold. An economic operator can be either paying agent upon payment of interest to another party or paying agent upon receipt of such a payment (only one economic operator being paying agent in a given chain of payments).

- **Paying Agent upon Payment.** Any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim producing the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest;

- **Paying Agent upon Receipt.** Any entity established in a MS to which interest is paid or for which interest is secured for the benefit of the beneficial owner is in principle considered a paying agent upon such payment or securing of such payment.

This provision shall not apply (and the entity will then possibly be treated as paying agent upon payment provided the other relevant conditions are met) if the economic operator has reasons to believe, on the basis of official evidence produced by that ‘entity’, that:

- It is a legal person (with limited exceptions); or
- Its profits are taxed under the general arrangements for business taxation; or
- It is a UCITS recognised in accordance with Directive 85/611/EEC.

The “entity” shall, however, have the option of being regarded as a UCITS for the purposes of this Directive.

An economic operator paying interest to, or securing interest for, such an “entity”<sup>(49)</sup> established in another MS which is considered a paying agent upon receipt shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the Competent Authority of its MS of establishment, which shall pass this information on to the Competent Authority of the MS where the entity is established.

79. **Competent Authority.** Competent authority is defined as follows:

- For MSs, any of the authorities notified by the MSs to the European Commission;
- For third countries, the Competent Authority for the purposes of bilateral or multilateral tax conventions or, failing that, such other authority as is competent to issue Certificates of Residence for tax purposes.

80. **Interest Payment.** In the Savings Directive, interest payment has a broader meaning than in the OECD Model Tax Convention.

- **Interest Flow.** Indeed, as in the OECD Model Tax Convention, the interest payment covers interest paid or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures (penalty charges for late payments being not regarded as interest payments); but it also covers,
- **Interest Accrued.** Interest accrued or capitalised upon the sale, refund or redemption of debt claims;

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<sup>49</sup> As an example, a contractual investment fund exempt from income tax without EU Passport is considered as a paying agent upon receipt, unless it has opted to be treated as a UCITS for the purpose of the Savings Directive.

- **Funds.** Income deriving from interest payments (50);
  - distributed by; or
  - realised upon the sale, refund or redemption of shares or units of,
    - a UCITS, an entity having opted to be treated as UCITS, or a UCI established outside the territory of the EU (subject to other conditions such as a so-called “asset test”).

81. **Territorial Scope.** The Savings Directive applies to interest paid by a paying agent established within the territory to which the Treaty applies under article 299 of the Treaty establishing the European Community.

82. **Information Reporting by the Paying Agent.** Where the beneficial owner is resident in a MS other than that in which the paying agent is established, the minimum amount of information to be reported by the paying agent to the Competent Authority of its MS of establishment shall consist of:

- The identity and residence of the beneficial owner;
- The name and address of the paying agent;
- The account number of the beneficial owner or, where there is none, the identification of the debt claim giving rise to the interest;
- Information concerning the interest payment. The content of such information varies according to the category of interest at stake (some options being in addition left to the respective MS):
  - The amount of interest paid or credited;
  - The amount of interest or income, or the full amount of the proceeds from the sale, redemption or refund (unless the amount of annualised interest is communicated instead, pursuant to the option left to the respective MS in this respect);
  - The taxable income upon distribution, or the full amount of the distribution;
  - In the case of a paying agent upon receipt, the amount of interest attributable to each of the members of the entity who meet the conditions to be considered as beneficial owners in the meaning of the Savings Directive;

However, MSs may restrict the minimum amount of information to:

- The total amount of interest or income; and
- The total amount of the proceeds from sale, redemption or refund.

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50 Either directly, either through an ‘entity’ as mentioned above.

### 83. Automatic Exchange of Information

- The Competent Authority of the MS of the paying agent communicates the information to the Competent Authority of the MS of residence of the beneficial owner;
- The communication is automatic and takes place at least once a year, within six months following the end of the tax year of the MS of the paying agent, for all interest payments made during that year;
- The provisions of the Administrative Cooperation Directive (formerly Directive 77/799/EEC), except for the limits to the exchange of information provided therein, apply to the exchange of information under the Savings Directive (provided that the provisions of the Savings Directive do not derogate therefrom).

84. **Withholding for the State of Residence.** For the sake of completeness, the Savings Directive provides for a transitional period during which Luxembourg and Austria<sup>(51)</sup> are not required to apply the exchange of information (unless the beneficial owner opts for such an exchange of information) but must then ensure a minimum effective tax charge with respect to beneficial owners who are individual residents for tax purposes in another MS. Such minimum effective tax charge takes the form of a 35% WHT<sup>(52)</sup> fully creditable in the MS of residence of the beneficial owner. The charging of WHT by the MS of the paying agent does in fact not preclude the MS of residence of the beneficial owner from taxing the income in accordance with its national law.

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<sup>51</sup> Formerly Belgium as well.

<sup>52</sup> The MS levying WHT retains 25% of the revenue and transfers 75% to the MSs of residence of the beneficial owners.

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## APPENDIX 12: COMMON GOOD PRACTICES

### 12.1 INTRODUCTION

85. **Common Good Practices Applied by MSs.** In the scoring exercise and as mentioned in the assumptions and definitions section (section 9.1 of the final report) of the fraud analysis, it is assumed that these common good practices are already applied by the MS. The analysis of the fraud risks evidences that a single approach based only on WHT related mitigation measures would not be the most effective response to the fraud risks in each of the two Models (AIC and SC). An integrated approach and a combination of several measures (both general and (non-)WHT related) would be far more effective. The following table summarises the common good practices that need to be taken into account and the next section describes each of these practices in more detail.

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APPENDIX 12: COMMON GOOD PRACTICES

12.2 OVERVIEW OF THE COMMON GOOD PRACTICES

<i>Relations</i>	<i>Model</i>	<i>Risks</i>	<i>Data matching &amp; crosschecking</i>	<i>Data quality procedures</i>	<i>Computerised audits &amp; data mining</i>	<i>Suspicious transaction monitoring</i>	<i>Audit procedures on financial institutions</i>	<i>Whistleblowing scheme</i>	<i>Notification obligation</i>	<i>Compliance controls</i>	<i>Training and integrity management</i>	<i>IT security measures</i>	<i>Reinforcement of CJs accountability towards AI</i>
<b>A. Investor / RC</b>	1. AIC / SC	Investor avoids declaring cross-border securities income in tax return.	✓	✓	✓	✓		✓			✓	✓	
	2. AIC / SC	Investor provides incorrect/false information to obtain Certificate of Residence.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
<b>B. AI / SC</b>	1. SC	Reports sent to SC include incorrect information in respect of beneficial owners, residence information or payment details.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	2. AIC / SC	AI requests relief at source for Investor not entitled to it.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	6. SC	AI avoids replying for requests of information from SC.					✓		✓	✓	✓		
	7. SC	AI avoids reporting to SC.					✓		✓	✓	✓		
<b>C. WA / SC</b>	1. AIC / SC	WA avoids paying tax to SC or pays only part of tax to SC.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	2. AIC / SC	WA communicates wrong allocation in TRI to SC.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<b>D. AI / AIC</b>	1. AIC	Reports sent to AIC include incorrect information in respect of beneficial owners, residence information or payment details.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	2. AIC	AI avoids reporting to AIC.					✓		✓	✓	✓		
	3. AIC	AI avoids replying to requests for information from AIC.					✓		✓	✓	✓		
<b>E. Investor / AI</b>	1. AIC / SC	Investor provides incorrect information and/ or documents to attest own identity and residence to AI, or Investor avoids updating own residence status.	✓		✓	✓	✓	✓			✓	✓	✓
<b>F. WA / AI</b>	1. AIC / SC	AI communicates wrong allocation in TRI to WA.	✓	✓	✓	✓	✓			✓		✓	✓

Table 5: Overview of the common good practices

### 12.3 DATA MATCHING AND CROSSCHECKING

86. As each of the Models is focused on the information flows between the actors in the Model, the main good practice for all actors will be a state-of-the-art information technology system that matches the information received and the own available information, or of the information received from one actor with the information received from another actor. An effective and accurate matching system will detect fraud more easily and more quickly.

No matter what role a MS tax administration has, it will have to be able to match the information received from other MSs’ tax administrations or from FIs, AIs or WAs with the tax information available in the MS:

- As a RC, the information coming from the SC (under the SC Model) or from the AIC (under the AIC Model) has to match and be crosschecked with the information included in Investors’ personal tax returns;
- As a SC, the information declared by the Issuing parties will have to match with the information sent by the WA and by the AIC (under the AIC Model) or by the AI itself (under the SC Model).

### 12.4 DATA QUALITY PROCEDURES

87. Data transfer between the actors is essential in each Model. Every actor involved, irrespective of its role, should perform data quality procedures on a continuous basis. The procedures should ensure that the data received by another actor and reported to another actor is compliant with reporting requirements. Data quality procedures provide information about:

- Inconsistent data;
- Incomplete data;
- Missing/unknown data;
- Unreadable data; etc.

### 12.5 COMPUTERISED AUDITS AND DATA MINING TECHNIQUES

88. Computerised audits and data mining techniques should be applied to the data transferred from actor to actor, and so do thorough investigations of all errors of mismatching, indicators of fraudulent behaviour, and inconsistencies. Computerised audits would include the following number of checks:

- Changes of residence information;
- Historical data checks;
- Reconciliations of information included in the reports with information from the various databases;

- Changes in TRI;
- Changes in TIN; etc.

## 12.6 SUSPICIOUS TRANSACTION MONITORING

89. Suspicious transaction monitoring is an electronic method that automatically detects irregularities and suspicious transactions. This method is commonly and widely spread in the financial services sector. FIs should apply suspicious transaction monitoring that covers the fraud risks identified for both Models, including those fraud risks that are linked to the relation with the Investor.

## 12.7 AUDIT PROCEDURES ON FINANCIAL INSTITUTIONS

90. Given the importance of FIs in the Models, regular and to-the-point audit procedures should be performed by the AIC (under the AIC Model) and by the SC (under the SC Model) on these FIs. A European approach to manage this relief at source system, particularly in terms of audits and the protection of withholding revenue for all MSs, would increase audit efficiency and consistency between all FIs. The AI is key in both Models in respect of information reporting. Audits on this institution could include checks on:

- KYC procedures applied, when Investors join the relief at source system,
- Client maintenance procedures applied to existing clients, in order to identify outdated or inaccurate KYC information;

Procedures applied when unacceptable requests by important clients are made;

- Information gathering procedures;
- The TRI information reporting process;
- The TIN information reporting process;
- The WHT and income payment process; etc.

## 12.8 WHISTLEBLOWING SCHEME

91. Every actor, including tax administrations, can design and implement a best practice whistleblowing system. The most effective whistleblower schemes preserve the confidentiality of whistleblowers and provide assurance that the latter will not be retaliated against for reporting their suspicions of wrongdoing including wrongdoing by those accused. Legal protection for whistleblowers might vary from country to country, including the country where the original or part of the transaction takes place and should therefore be taken into account in the design process.



## 12.9 NOTIFICATION OBLIGATION

92. FIs and WAs should have the obligation to report to their tax administration whenever the Models are being abused or are subject to attempted abuse. Non-compliance with this obligation should have consequences going from official warning to suspension of activities.

## 12.10 COMPLIANCE CONTROLS

93. All actors involved should design and implement compliance controls/procedures that assess compliance with procedures and requirements as set out in each Model. Regulatory compliance is a key element of the Models and should be present at every actor involved in such a manner that it ensures that all requirements as stipulated by the Models have been put in place.

## 12.11 TRAINING AND INTEGRITY MANAGEMENT

94. There is a need for a change in the culture of the tax administrations, which can be met by the organisation of ongoing joint training sessions and/or seminars for cross-EU tax officials or by exchanges and study visits to other MSs or even by pioneer investigations offering experience on how fraud risks can most efficiently and effectively be covered.

On top of that, focus should be given to integrity management that aims, in the long run, to create a culture with high ethical standards in which any fraudulent act is considered unacceptable. Tax fraud is nowadays not necessarily perceived as unacceptable – certainly not at the level of Investors. Integrity management strives to change these rooted thinking patterns in a manner that such behaviour is considered intolerable and is consequently reported, investigated and/or subject to warning, fine or other punishment under the law.

## 12.12 IT SECURITY MEASURES

95. **Cybercrime Definition.** Cybercrime is an economic crime committed by using computers and the internet. It includes distributing viruses, illegally downloading files, phishing and pharming, and stealing personal information like bank account details. A cybercrime is involved only if a computer, or several computers, and the internet play a central – and not an incidental – role in the crime.

96. **Information Security Standards.** The International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) have jointly published the ISO/IEC 27000 series. These information security standards provide best practice recommendations on information security management, risks and controls within the context of an overall Information Security Management System (ISMS), similar in design to management systems for quality assurance (the ISO 9000 series) and environmental protection (the ISO 14000 series).

97. **Implement Appropriate Information Security Controls.** These standards are broad in scope but they provide organisations of all shapes and sizes with a view on privacy, confidentiality and IT or technical security issues.

All actors involved in the SC Model or in the AIC Model should assess their information security risks, and implement appropriate information security controls according to their needs, using the guidance and suggestions where relevant. Given the dynamic nature of information security, the parties involved should incorporate continuous feedback and improvement activities that seek to address changes in the threats, vulnerabilities or impacts of information security incidents.

98. **Secured Data Transfer.** Data transfer is a key element present in both Models. Data should be transferred under the Model in such a format that it is unusable by anyone other than an authorised user. In other words, the data has to be encrypted. Only an authorised user, who possesses the cryptographic key, should be able to transform the encrypted data back into its original usable form. Cryptography is used in information security to protect information from unauthorised or accidental disclosure while the information is in transit (either electronically or physically) and while information is in storage. In the context of the AIC Model, the data transfer will be performed via the CCN. This network secures the transfer of data, and a second version is already under development.

### 12.13 REINFORCEMENT OF THE CI’S ACCOUNTABILITY TOWARDS THE AI

99. As already mentioned, both Models (AIC and SC) provide that the liability of the AI will remain, even if the AI complied with all the procedures and guidelines defined in the Model. The various procedures impose on the AI some specific checks and at the same time authorise the FI to rely on some sources. As a consequence, it is in the interest of the AI to ensure that the contractual agreement it concludes with the CI is quite explicit in terms of each other’s roles and responsibilities, key review indicators, penalties applicable to the CI for not fulfilling its obligations and duties, etc..

Besides the direct interest of the AI in better covering its liability, adding clear information in the contractual agreement between the AI and the CI will also be beneficial to the Models in the fight against fraudulent behaviours.

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## **APPENDIX 13: OVERVIEW OF THE FRAUD RISKS IN THE CURRENT AND FUTURE SITUATIONS IF THE RECOMMENDATIONS ARE IMPLEMENTED**

Cf. next page.

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## APPENDIX 13: OVERVIEW OF THE FRAUD RISKS IN THE CURRENT AND FUTURE SITUATIONS IF THE RECOMMENDATIONS ARE IMPLEMENTED

Relations	Current situation	Model	Risks	As is situation		To be situation				If recommendations are implemented			
						SC		AIC		SC		AIC	
				Likelihood	Impact	Likelihood	Impact	Likelihood	Impact	Likelihood	Impact	Likelihood	Impact
A. Investor / RC	1. REFUND / RELIEF	1. AIC / SC	Investor avoids declaring cross-border securities income in tax return.	3	3	3	3	3	3	1	3	1	3
	2. REFUND / RELIEF	2. AIC / SC	Investor provides incorrect/false information to obtain Certificate of Residence.	1	2	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
B. AI* / SC	1. REFUND / RELIEF	1. SC	Information (report or request for relief or refund) sent to SC includes incorrect information in respect of beneficial owners, residence information or payment details.	2	3	1	3	n.a.	n.a.	1	3	n.a.	n.a.
	2. REFUND / RELIEF	2. SC	AI (FI in current situation) requests relief at source for Investor not entitled to it.	2	3	1	3	n.a.	n.a.	1	3	n.a.	n.a.
	3. REFUND	n.a.	FI requests refund for type of income that does not qualify for refund.	2	3	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
	4. REFUND	n.a.	FI requests refund on behalf of Investor for income that has been subject to relief at source.	2	3	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
	5. REFUND	n.a.	FI requests multiple times same refund on behalf of Investor.	2	3	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
	n.a.	6. SC	AI avoids replying to requests for information from SC.	n.a.	n.a.	1	1	n.a.	n.a.	1	1	n.a.	n.a.
	n.a.	7. SC	AI avoids reporting to SC.	n.a.	n.a.	2	2	n.a.	n.a.	1	2	n.a.	n.a.
C. WA / SC	1. RELIEF	1. AIC / SC	WA avoids paying tax to SC or pays only part of tax to SC.	1	3	0	2	0	2	0	2	0	2
	n.a.	2. AIC / SC	WA communicates wrong allocation in TRI to SC.	n.a.	n.a.	1	2	1	2	0	2	0	2
D. AI / AIC	n.a.	1. AIC	Reports sent to AIC include incorrect information in respect of beneficial owners, residence information or payment details.	n.a.	n.a.	n.a.	n.a.	1	3	n.a.	n.a.	1	3
	n.a.	2. AIC	AI avoids reporting to AIC.	n.a.	n.a.	n.a.	n.a.	2	2	n.a.	n.a.	1	2
	n.a.	3. AIC	AI avoids replying to requests for information from AIC.	n.a.	n.a.	n.a.	n.a.	0	1	n.a.	n.a.	0	1
	4. REFUND / RELIEF	4. AIC	AI (FI in current situation) requests relief at source for Investor not entitled to it.	2	3	n.a.	n.a.	1	3	n.a.	n.a.	1	3
E. Investor / AI*	1. REFUND / RELIEF	1. AIC / SC	Investor provides incorrect information and/or documents to attest own identity and residence to AI*, or Investor avoids updating own residence status.	3	2	3	1	3	1	3	1	3	1
F. WA / AI	n.a.	1. AIC / SC	AI communicates wrong allocation in TRI to WA.	n.a.	n.a.	1	2	1	2	1	1	1	1

Table 6: Overview of the Fraud risks in the current and future situation if the recommendations are implemented

## APPENDIX 14: FRAUD RISK METHODOLOGY AND APPROACH

### 14.1 SCENARIOS SELECTED

100. **Three Scenarios.** In the framework of this study, three main scenarios were selected to further investigate. The fraud risks identified may occur in the different scenarios.

### 14.2 CROSS-BORDER SCENARIO

101. **WA in SC and AI in RC.** The Cross-Border Scenario is the scenario where the Issuer is located in the same country as the WA, whereas the AI is located in the same country as the Investor.

The Cross-Border Scenario is probably the most common one and also the less risky in terms of fraud. The reason for this is that, since the AI is located in the RC, the RC does not have to develop any specific tools to allow an exchange of information at EU level as the RC could obtain this information locally. The RC has the possibility to force the AI to provide its tax administration with all relevant information to ensure the tax compliance of its tax residents. The AI having to comply with the national law, the RC could introduce in the local legal framework the measures needed to have the possibility to gather the required information directly from the financial sector.

From a SC perspective, the tax administration still has an interest in the exchange of information and needs the cooperation of the RC to confirm that the Investor is really a tax resident of the RC.

### 14.3 REVERSED CROSS-BORDER SCENARIO

102. **WA and AI in SC.** The Reversed Cross-Border Scenario is the situation where the Issuer, the WA and the AI could be located in the same country and the Investor would still be located in a different country.

The AI being located in the SC, it is relatively easy for the SC to check or request any information from the AI. However, the tax residence of the Investor will still have to be confirmed by the RC. In comparison with the classical “Cross-Border Scenario”, the RC also needs the cooperation of the SC to receive all the information. So both countries need to cooperate to ensure that there is no fraud and that the right tax amount is paid by the Investor.

It is interesting to note that there is no operational difference for this scenario between the SC Model and the AIC Model, as the SC is also acting as AIC.

## 14.4 TRIANGULAR SCENARIO

103. **WA in SC.** The Triangular Scenario is the situation where the Issuer is located in the same country as the WA, while the AI and the Investor are located in different countries.

The Triangular Scenario is probably the most complex situation from a fraud perspective. The relevant information is indeed divided among three countries and it requires a high level of cooperation from all of them to be in a position to have all the elements at their disposal and therefore mitigate the fraud risks. In this scenario, the RC and the SC both have an interest in the systems analysed as they will have access to information that they will not be able to obtain by themselves.

104. **Triangular Scenario as a Basis.** The various risks analysed were considered in the perspective of the Triangular Scenario. Indeed, this scenario is the most complex and requires the highest level of cooperation between the MSs. The two remaining scenarios can be somehow considered as a simplification of the Triangular Scenario, requiring less cooperation from the tax administrations in the fight against tax fraud.

This assumption is based on two main principles:

- If, in the context of the Triangular Scenario, the system mitigates or removes the risk, then it will also do so for the two other scenarios, being less conducive to the occurrence of fraud;
- Conversely, if a risk is not removed or is even increased by the system, then the system as such will be unable to prevent this risk, whatever its impact on the two others scenarios. Additional measures will need to be developed in order to mitigate that specific risk.

## 14.5 FRAUD RISK IDENTIFICATION METHODOLOGY

105. **Approach Based on Relationships.** Detailed fraud risk identification under the current situation of refund and relief at source, and under the AIC and SC Models is included in this fraud risk analysis section. The identification of fraud risks is based on the different relationships between all actors/stakeholders involved. Those relations are organised in two categories:

- Tax information relations, for relations where information is sent to, by or between tax administrations;
- Business relations, for relations between actors from the financial market, including Investors and Issuers.

## 14.6 FRAUD RISK ASSESSMENT METHODOLOGY

106. **Fraud Risk Assessment definition.** A fraud risk assessment of each Model is made to specifically consider:

1. The fraud risks to which each Model is exposed;
2. An assessment of the most threatening risks (i.e. evaluation of risks for impact and likelihood of occurrence); and,
3. The identification of the controls that are in place to mitigate the key risks.

107. **Fraud Risks vs. Normal Framework.** A fraud risk assessment should not be read and understood as a normal risk assessment considering the fact fraud often occurs outside normal and accepted business frameworks. An example: in the normal business framework, someone would assess the risk of fraud committed by an Authorised Intermediary as extremely low considering the high risk of reputational damage and possible severe consequences. However, fraud acts outside the accepted framework; these logic rules should thus not be taken for granted and the evaluation of fraud risks is done with a high level of professional scepticism, setting aside any prior beliefs about generally accepted rules and behaviour.

108. **No Statistical Analysis.** It should be noted that the risk assessments made for each Model are not based on historical fraud statistics. They have been supported, however, by inputs collected from the MSs to which a reference will be made anonymously in some specific cases. A score is given to the different risks identified for each Model on the basis of its likelihood of occurrence and the (financial, reputational and other) impact. The scoring of the likelihood and impact of the risks is based on:

- PwC’s forensic audit experience,
- Tax workshops held internally within PwC with tax and fraud experts,
- Input of MSs tax administrations through questionnaires,
- Input of the European Commission, DG TAXUD.

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109. **Likelihood Criteria.** The likelihood or the chance that a particular risk will occur is measured using the following criteria:

CRITERIA	DESCRIPTION
0 – Unlikely	Probability of occurrence is generally accepted as almost zero, and no change in process/parties involved/territories/environment that could increase the probability of occurrence is expected.
1 – Remote	Even if no occurrence is expected, and there is no indication that it will occur frequently, the theoretical risk exists but with a low or seldom level of occurrence.
2 – Possible	Occurrence is expected to be limited, but frequency remains minor. Also, in the case of purely theoretical risks for which no occurrence is expected, a set of realistic conditions is or could be present that may cause the risk to materialise.
3 – Likely	Regular or repeated occurrence is expected. Also, so many conditions co-exist that the risk, even if not materialising, has a high probability of occurring.

Table 7: Likelihood Criteria

110. **Impact Consideration.** The level of impact of a risk (being the outcome of a risk if it occurs) is determined by the following items:

1. Potential direct financial impact;
2. Image and reputational risk;
3. Regulatory and compliance risk;
4. Safeguarding of information;
5. Impact on stakeholders.

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\*  
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**APPENDIX 15: FRAUD RISKS DESCRIPTIVE ANALYSIS**

RELATION	RISKS	DESCRIPTION
A. Investor / RC	Investor avoids declaring cross-border securities income in tax return.	Investors that deliberately misrepresent conceal or avoid the true state of their cross-border securities income to the tax administrations in order to reduce their tax liability.
	Investor provides incorrect/false information to obtain a Certificate of Residence, or Investor submits a forged or counterfeit Certificate of Residence.	<p>In most cases, a resident of a country is any person that is subject to tax under the domestic laws of that country by reason of domicile, residence, place of incorporation or similar criteria. The basis for calculating the WHT due by the Investor is the latter’s residence status.</p> <p>The fraud risk describes the situation where an Investor intentionally provides incorrect or even false information to obtain a Certificate of Residence of a certain country in order to benefit from an incorrect tax rate and consequentially refund/relief at source (current model) or incorrect relief at source (future models). Investors might also forge or counterfeit a Certificate of Residence to benefit from the most advantageous tax rate.</p>

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## APPENDIX 15: FRAUD RISKS DESCRIPTIVE ANALYSIS

RELATION	RISKS	DESCRIPTION
B. <b>FI</b> (Current situation) or <b>AI</b> (AIC/SC Model) / <b>SC</b>	Relief/refund requests (current situation) or information reports (AIC/SC Model) sent to SC include incorrect information in respect of beneficial owners, residence information or payment details.	<p>The SC sends detailed information/data to the RC; the SC, however, completely relies on the information provided to him by the FI/AI. The risk exists that information provided by the FI/AI to the SC is incorrect/altered/adapted/manipulated /etc.</p> <p>The information provided by the FI/AI to the AIC/SC is considered as fraudulent if:</p> <ul style="list-style-type: none"> <li>• it is a false representation of a material <sup>(53)</sup> nature;</li> <li>• the AI knows that the representation is false and/or there is a reckless disregard for the truth;</li> <li>• the AIC receiving the representation reasonably and justifiably relied on it;</li> <li>• financial damages result from all of the above, regardless of who is suffering them.</li> </ul>
	FI or AI requests relief at source for income that does not qualify for relief at source.	An FI/AI that intentionally requests relief at source for an Investor that is not entitled to it, whether or not the request is made in collusion with the Investor.
	FI requests a refund for a type of income that does not qualify for relief at source.	An FI that intentionally requests a refund of paid taxes for income that does not qualify for any refund.
	FI requests a refund on behalf of an Investor for income that has been subject to relief at source.	An FI that intentionally requests a refund on behalf of an Investor for income that has been subject to relief at source commits a fraudulent act.

53 The term “material” as used in this context is a legal standard whose definition varies from jurisdiction to jurisdiction; it should not be confused with the concept of materiality as used in auditing, in which one considers the effect of fraud and errors related to financial statement reporting.

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RELATION	RISKS	DESCRIPTION
	FI requests multiple times the same refund on behalf of an Investor.	An FI that intentionally requests multiple times the same refund on behalf of an Investor commits a fraudulent act.
	AI avoids replying to requests for information sent by SC.	<p>Besides providing fraudulent information and intentionally avoiding reporting to the SC, the AI can avoid replying to requests from the SC.</p> <p>An AI that intentionally avoids replying to requests for information from the SC in all or one of its aspects (regardless of financial damages) is considered as committing a fraudulent act.</p>
	AI avoids reporting to SC.	<p>The SC relies on the information provided by the AI. Non-compliance by the AI with the reporting requirements applicable in its territory can originate from several factors, not all of which are fraud related.</p> <p>An AI that intentionally avoids meeting its reporting requirements to the SC in all or one of its aspects is considered as committing a fraudulent act; disregard for financial impact by one or more parties involved.</p>

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## APPENDIX 15: FRAUD RISKS DESCRIPTIVE ANALYSIS

RELATION	RISKS	DESCRIPTION
C. WA / SC	WA avoids paying tax to SC or pays only part of tax to SC.	A WA is responsible for withholding tax on payments of sourced income to foreign Investors and to transfer such tax to the tax administration of the SC. A WA that intentionally avoids paying tax or only pays part of the tax commits a fraudulent act.
	WA communicates wrong allocation in TRI to SC.	The WA is responsible for correctly reporting the income paid and the withholding applied in order to ensure complete and accurate data for the TRI flow. Any form of intentionally providing an incorrect allocation of tax amounts paid is considered as a fraudulent act.
D. AI / AIC	Reports sent to AIC include incorrect information in respect of beneficial owners, residence information or payment details.	<p>The AIC sends detailed information/data to the RC and/or SC; the AIC, however, completely relies on the information provided to him by the AI. The risk exists that information provided by the AI to the AIC is incorrect/altered/adapted/manipulated /etc.</p> <p>The information provided by the AI to the AIC is considered as fraudulent if:</p> <ul style="list-style-type: none"> <li>• it is a false representation of material nature;</li> <li>• the AI knows that the representation is false and/or there is a reckless disregard for the truth;</li> <li>• the AIC receiving the representation reasonably and justifiably relied on it;</li> <li>• financial damages result from all of the above, regardless of who is suffering them.</li> </ul>

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RELATION	RISKS	DESCRIPTION
	AI avoids reporting to AIC.	<p>The AIC relies on the information provided by the AI. Non-compliance by the AI with the reporting requirements applicable in its territory can originate from several factors, not all of which are fraud related.</p> <p>An AI that intentionally avoids meeting its reporting requirements to the AIC in all or one of its aspects is considered as committing a fraudulent act; disregard of financial impact by one or more parties involved.</p>
	AI avoids replying to requests for information sent by AIC.	<p>Besides providing fraudulent information and intentionally avoiding reporting to the AIC, the AI can avoid replying to requests from the AIC.</p> <p>An AI that intentionally avoids replying to requests for information from the AIC in all or one of its aspects (regardless of financial damages) is considered as committing a fraudulent act.</p>
	AI requests relief at source for income that does not qualify for relief at source.	An AI that intentionally requests relief at source for an Investor that is not entitled to it commits a fraudulent act.
E. Investor / FI or AI	Investor provides incorrect/false information and/or documents (e.g. forged or counterfeit Certificate of Residence) to attest own identity and residence to FI/AI, or Investor avoids updating own residence status.	An Investor that intentionally provides incorrect/false information or avoids updating its residence status to the FI or AI commits identity fraud. The fraud occurs when Investors want to benefit from the lowest tax rate and therefore simulate that they are resident in a particular country. This fraud is a type of identity fraud and occurs when a false identity or someone else’s identity details are used to support unlawful activity.

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<b>RELATION</b>	<b>RISKS</b>	<b>DESCRIPTION</b>
F. WA / AI	AI communicates wrong allocation in TRI to WA.	The AI is responsible for correctly reporting all relevant information and the correct allocation in the TRI to the WA. Any form of intentionally providing incorrect, altered, delayed etc. information in the TRI is considered as a fraudulent act.

Table 8: Fraud Risks Descriptive Analysis

## APPENDIX 16: APPROACH OF THE IT ARCHITRECTURE FEASIBILITY STUDY

111. The IT architecture feasibility study uses the following approach.

### 16.1 DEVELOP AN ARCHITECTURE

112. This part of the approach defines how the two logical architectures, one for each Model, are developed and the standardised relief at source architecture is derived. The approach leverages TOGAF 9 and PwC’s enterprise architecture methodology.

#### 16.1.1 UNDERSTAND THE OPERATING MODEL

113. The logical architecture is driven by business requirements. To ensure a strong alignment between the business (the AIC or SC Model) and the logical architecture supporting the business, a proper understanding of the operating model to be supported is necessary.

The two operating models in scope cover the information exchange of TAs with AIs and peer TAs to enable a standardised relief at source system. A flow chart and process description describe each operating model.

A first analysis of the documentation shows that the process steps are grouped into phases. The IT architecture study interprets these phases as high-level use cases. In addition, the analysis indicates that, from a business process point of view, the main difference between both Models lies in the actors’ responsibility for distinct process steps. Depending on the Model and the flow of dividends, a TA has to act as a SC, RC or AIC.

#### 16.1.2 DEFINE THE REQUIRED INFORMATION OBJECTS PER BUSINESS PROCESS STEP

114. Based on the documentation, the study determines the required information objects by leveraging Six Sigma’s SIPOC concepts (54). Each process step is regarded as the ‘P’ in SIPOC. The information objects are the inputs and/or outputs used in each of these steps, thus the ‘I’ and ‘O’ in SIPOC.

This results in the following deliverables:

- Information object glossary;
- Lists of all IT functionalities and information objects required per use case;
- Lists of all IT functionalities and information objects required per process step.

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54 SIPOC = supplier, input, process, output, customers.

### 16.1.3 DEFINE THE REQUIRED IT FUNCTIONALITIES PER PROCESS STEP GIVEN THE DESCRIPTION OF THE STEPS AND THE INFORMATION OBJECTS USED

115. For each business process step, the study identifies the required IT functionalities based on the description of the steps and the information objects used as input and/or output. The CRUD concept (55) serves as an initial basis for this.

This leads to the following deliverables:

- Lists of all IT functionalities and information objects required per use case;
- Lists of all IT functionalities and information objects required per process step.

### 16.1.4 GROUP THE IDENTIFIED INFORMATION OBJECTS AND IT FUNCTIONALITIES INTO LOGICAL APPLICATION COMPONENTS

116. After determining the required information objects and IT functionalities, the study identifies the logical application components providing these information objects and IT functionalities. Subsequently the information objects and IT functionalities are grouped into logical application components, while taking aspects like roles and responsibilities, degree of functional similarity and reuse into account.

The outcome is the following set of deliverables:

- Logical application component glossary;
- Lists of all IT functionalities and information objects provided per logical application component;
- Lists of all logical application components used per use case;
- Lists of all logical application components used per process step.

### 16.1.5 IDENTIFY THE INTERFACES REQUIRED BETWEEN LOGICAL APPLICATION COMPONENTS

117. The study identifies the interfaces required between logical application components. It leverages the transitive nature of the following three fundamental IT architecture relationships between IT functionalities and logical application components.

- An IT functionality is provided by a logical application component;
- An IT functionality (caller) can use one or more IT functionalities (providers);
- A logical application component can only interface with other logical application components which are installed within the same premises.

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55 CRUD = create, read, update, delete.



Based on these fundamental rules, two logical application components A and B have an interface with each other if one or more IT functionalities provided by A call(s) at least one or more IT functionalities provided by B.

If logical application components A and B are installed in the premises of two different actors (TA or AI), the related information objects are transferred by means of more formal ‘send’ and ‘receive’ procedures. The study describes the related interfaces via the logical application component ‘Transfer component’.

For each Model, the following deliverables are created:

- Lists of all interfaces between IT functionalities and information objects exchanged;
- Lists of all interfaces between logical application components and their information objects exchanged;

#### 16.1.6 CONSTRUCT VARIOUS APPLICATION ARCHITECTURE VIEWS

118. Based on the application architecture relationships modelled in the steps above, the study constructs several application architecture views. These views provide a better visualisation of the architecture artefacts and their relationships:

- Logical application landscape posters including the IT functionalities and information objects provided;
- Logical application landscape posters including the information objects and interfaces provided;
- Logical use case posters including the logical application components and information objects used.

#### 16.1.7 COMPARE BOTH APPLICATION ARCHITECTURES AND DERIVE AN ARCHITECTURE

119. The study analyses both logical architectures. It measures the overlap of information objects, IT functionalities and logical application components used. Due to the big overlap between both architectures, this study derives a standardised relief at source architecture to support both Models:

- Logical application landscape poster as a common architecture for both Models, including the IT functionalities and information objects provided.

#### 16.1.8 DEFINE THE REQUIRED PLATFORM SERVICES

120. The above defined standardised relief at source architecture requires a certain IT infrastructure. The study puts forward a first set of functional requirements with respect to this IT infrastructure.

The study identifies the required technology/vendor/product independent platform services by leveraging TOGAF’s Technical Reference Model:

- Platform service glossary.

#### 16.1.9 GROUP THE IDENTIFIED PLATFORM SERVICES INTO LOGICAL TECHNOLOGY COMPONENTS

121. The platform services identified are subsequently grouped into logical technology components, while taking aspects like roles and responsibilities, degree of functional similarity and reuse into account.

This translates into the following deliverables:

- Logical technology component glossary;
- List of all platform services provided per logical technology component;
- List of all logical technology components needed for each logical application component.

#### 16.1.10 CONSTRUCT VARIOUS IT INFRASTRUCTURE ARCHITECTURE VIEWS

122. Similar to the application architecture views developed, the study constructs IT infrastructure architecture views to provide a better visualisation of the IT infrastructure requirements:

- Logical application and infrastructure landscape poster including the information objects and interfaces provided;
- Logical infrastructure landscape poster including the platform services and interfaces provided.

#### 16.1.11 DEFINE A FIRST SET OF NON-FUNCTIONAL REQUIREMENTS

123. Besides the functional requirements (support of the two operating models), the two defined logical application architectures also need to adhere to non-functional requirements. Although this is not at the core of the IT part of the feasibility study, an initial descriptive set of non-functional requirements is set forth.

Similar to the logical IT infrastructure, the study describes a set of non-functional requirements for the architecture:

- Set first set of non-functional requirements.

#### 16.1.12 CONDUCT AN INFORMATION SECURITY ASSESSMENT

124. The study conducts an information security assessment by looking at the confidentiality, integrity and availability (CIA) aspects of the information objects used.

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Based on a CIA framework, the assessment determines a CIA rating per information object. The assessment then leverages the following three fundamental transitive relationships to derive CIA ratings for each logical application component:

- An information object is provided by a logical application component;
- An information object is used by an IT functionality;
- An IT functionality is provided by a logical application component.

Hence the CIA rating of a logical application component is based on its information objects provided. To ensure the right level of information security, the CIA rating of a logical application component is determined by the highest classification of its information objects used or provided. If, for example, a logical application component provides three information objects with the CIA ratings C2I3A1, C1I3A3 and C1I4A1, the CIA rating of this logical application component is C2I4A3.

The interpretation of the CIA ratings leads to specific non-functional requirements for these logical application components and their information objects and IT functionalities provided.

This results in a second specific set of non-functional requirements described in Appendix 18.

**16.1.13 EVALUATE THE ARCHITECTURE**

125. After deriving the architecture, the feasibility study of the IT architecture evaluates it. The evaluation focuses on (1) the coexistence of the two Models, (2) the integration with back-office systems of AIs and TAs and (3) the integration of third countries.

**16.2 IDENTIFY A WAY FORWARD TO IMPLEMENT THE ARCHITECTURE**

126. This study uses a set of strategic implementation choices to derive several hypothetical ways forward to implement the standardised relief at source architecture. It then uses a set of findings to identify, from an IT architecture point of view, a way forward independent from the Model.

**16.2.1 IDENTIFY A SET OF STRATEGIC IMPLEMENTATION CHOICES AND HYPOTHETICAL WAYS FORWARD**

127. Strategic implementation choices shape the way the IT solution will be developed, deployed and integrated. These choices impact the required implementation effort. Hence the study identifies a set of strategic implementation choices. The combination of these strategic implementation choices leads to a set of hypothetical ways forward.

**16.2.2 EVALUATE THE HYPOTHETICAL WAYS FORWARD**

128. After deriving the hypothetical ways forward, the IT architecture feasibility study evaluates them using a set of findings.

### 16.2.3 IDENTIFY THE WAY FORWARD

129. Based on the evaluation, a way forward is identified.

## 16.3 IDENTIFY A PREFERRED MODEL FROM AN IT ARCHITECTURE POINT OF VIEW

130. Taking the architecture and way forward into account, the study compares both Models and identifies, from an IT architecture point of view, a preferred Model. The study uses a feasibility maturity model to compare the AIC and SC Models. It focuses on the gaps and challenges a MS faces when implementing the standardised relief at source architecture.

### 16.3.1 DEFINE A FEASIBILITY MATURITY MODEL

131. In order to properly evaluate both Models from an IT architecture point of view, the study defines a feasibility maturity model. The model is based on objectives, criteria and measurements. It takes the developed architecture and identified way forward, which were described in previous steps, into account.

### 16.3.2 CONDUCT INTERVIEWS WITH IT REPRESENTATIVES OF PARTICIPATING MSS

132. MSs are contacted and asked to participate in an IT interview. With each IT contact, a 1.5 hour IT interview is conducted. A questionnaire serves as a basis for the interviews. It helps determine (a) the current IT functionalities of a MS and (b) the issues which could hamper the implementation of a standardised relief at source system from an IT architecture perspective.

### 16.3.3 APPLY THE FEASIBILITY MATURITY MODEL

133. The feasibility maturity model then uses the interview outcomes and translates them into gaps and challenges scores.

### 16.3.4 COMPARE BOTH MODELS ON THE GAPS FACED BY A MS

134. After applying the feasibility maturity model, the AIC and SC Models are compared on the resulting gaps face by MSs when implementing the standardised relief at source architecture. This comparison consists of three parts. The first part covers the gap between both Models and the current Savings Directive with respect to the functional domain. The second part focuses on the functional IT gap of the current IT architecture of MSs with respect to the standardised relief at source architecture. The third part presents the gap scores calculated by the feasibility maturity model.

### 16.3.5 COMPARE BOTH MODELS ON THE CHALLENGES FACED BY A MS

135. After the gap assessment, the study analyses the challenges linked to the Models faced by MSs when implementing the standardised relief at source architecture. This comparison consists of three parts. The first part analyses the implications of the logical architecture with respect to the physical architecture under each Model. The second part compares both Models

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with regard to implementation aspects like barriers, dependencies and risks. At the end, a cost function provides an initial estimation of the implementation cost.

#### 16.3.6 IDENTIFY THE PREFERRED MODEL

136. Based on the gap and challenges assessment of both Models, the study identifies the preferred Model from an IT architecture point of view.

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## APPENDIX 17: ARCHITECTURE ARTEFACTS AND VIEWS

137. This appendix lists and briefly describes the various architecture artefacts and views.

### 17.1 INFORMATION OBJECT GLOSSARY

138. This Excel file – one for both Models – lists all information objects used. It includes a short description and CIA rating (56) per information object.

*See separate enclosure “Appendix 17 - 01. IO Glossary”.*

### 17.2 INFORMATION OBJECT MODELS

139. These two PDF files – one for each Model – depict the information objects and their mutual relationships.

*See separate enclosures “Appendix 17 - 02. AIC - Information object model” and “Appendix 17 - 02. SC - Information object model”.*

### 17.3 LISTS OF ALL IT FUNCTIONALITIES AND INFORMATION OBJECTS REQUIRED PER USE CASE

140. These two Excel files – one for each Model – list the IT functionalities and information objects used per actor and high-level use case.

*See separate enclosures “Appendix 17 - 03. AIC- IT Functionalities & IOs per actor and HL use case” and “Appendix 17 - 03. SC- IT Functionalities & IOs per actor and HL use case”.*

### 17.4 LISTS OF ALL IT FUNCTIONALITIES AND INFORMATION OBJECTS REQUIRED PER PROCESS STEP

141. These two Excel files – one for each Model – list the IT functionalities and information objects used per actor and process step.

*See separate enclosures “Appendix 17 - 04. AIC - IOs and ITFs per PSA” and “Appendix 17 - 04. SC - IOs and ITFs per PSA”.*

### 17.5 LOGICAL APPLICATION COMPONENT GLOSSARY

142. This Excel file – one for both Models – lists all logical application components used. It includes a short description and CIA rating (derived from the related information objects) per logical application component.

*See separate enclosure “Appendix 17 - 05. LAC Glossary”.*

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56 Confidentiality, Integrity and Availability rating. See Appendix 19

## **17.6 LISTS OF ALL IT FUNCTIONALITIES AND INFORMATION OBJECTS PROVIDED PER LOGICAL APPLICATION COMPONENT**

143. These two Excel files – one for each Model – list the IT functionalities and information objects provided per logical application component.

*See separate enclosures “Appendix 17 - 06. AIC IOs and ITFs per LAC” and “Appendix 17 - 06. SC IOs and ITFs per LAC”.*

## **17.7 LISTS OF ALL LOGICAL APPLICATION COMPONENTS USED PER USE CASE**

144. These two Excel files – one for each Model – list the logical application components used per actor and high-level use case.

*See separate enclosures “Appendix 17 - 07. AIC LACs per UC and actor” and “Appendix 17 - 07. SC LACs per UC and actor”.*

## **17.8 LISTS OF ALL LOGICAL APPLICATION COMPONENTS USED PER PROCESS STEP**

145. These two Excel files – one for each Model – list the logical application components used per actor and per process step.

*See separate enclosures “Appendix 17 - 08. AIC LACs per PSA” and “Appendix 17 - 08. SC LACs per PSA”.*

## **17.9 LISTS OF ALL INTERFACES BETWEEN THE IT FUNCTIONALITIES AND INFORMATION OBJECTS EXCHANGED**

146. These two Excel files – one for each Model – list the calling IT functionalities, providing IT functionalities and information objects exchanged per IT functionality interface.

*See separate enclosures “Appendix 17 - 09. AIC interfaces between ITFs” and “Appendix 17 - 09. SC interfaces between ITFs”.*

## **17.10 LISTS OF ALL INTERFACES BETWEEN THE LOGICAL APPLICATION COMPONENTS AND THEIR INFORMATION OBJECTS EXCHANGED**

147. These two Excel files – one for each Model – list the calling logical application components, providing logical application components and information objects exchanged per logical application component interface.

*See separate enclosures “Appendix 17 - 10. AIC Interfaces between LACs” and “Appendix 17 - 10. SC Interfaces between LACs”.*

### **17.11 LOGICAL APPLICATION LANDSCAPE POSTERS INCLUDING THE IT FUNCTIONALITIES AND INFORMATION OBJECTS PROVIDED**

148. These two PDF files – one for each Model – depict the logical application components used per actor, including the IT functionalities and information objects provided by these components.

*See separate enclosures “Appendix 17 - 11. AIC - LA landscape posters incl. provided ITFs and IOs” and “Appendix 17 - 11. SC - LA landscape posters incl. provided ITFs and IOs”.*

### **17.12 LOGICAL APPLICATION LANDSCAPE POSTERS INCLUDING THE INFORMATION OBJECTS AND INTERFACES PROVIDED**

149. These two PDF files – one for each Model – depict the logical application components used per actor, including the information objects provided and the interfaces between them.

*See separate enclosures “Appendix 17 - 12. AIC - LA landscape posters incl. provided IOs and interfaces” and “Appendix 17 - 12. SC - LA landscape posters incl. provided IOs and interfaces”.*

### **17.13 LOGICAL USE CASE POSTERS INCLUDING THE LOGICAL APPLICATION COMPONENTS AND INFORMATION OBJECTS USED**

150. These two PDF files – one for each Model – depict the logical application components and information objects used per actor and their high-level use cases.

*See separate enclosures “Appendix 17 - 13. AIC - LA use case poster incl. LACs and IOs” and “Appendix 17 - 13. SC - LA use case poster incl. LACs and IOs”.*

### **17.14 LOGICAL APPLICATION LANDSCAPE POSTER AS COMMON ARCHITECTURE FOR BOTH MODELS, INCLUDING THE IT FUNCTIONALITIES AND INFORMATION OBJECTS PROVIDED**

151. This PDF file – one for both Models – provides the common architecture for both the AIC and SC Models in terms of required logical application components, IT functionalities and information objects.

*See separate enclosure “Appendix 17 - 14. LA landscape posters incl. provided ITFs and IOs”.*

### **17.15 PLATFORM SERVICE GLOSSARY**

152. This Excel file – one for both Models – lists all platform services used by the logical technology components. It includes a short description and classification per platform service.

*See separate enclosure “Appendix 17 - 15. PS Glossary”.*



## **17.16 LOGICAL TECHNOLOGY COMPONENT GLOSSARY**

153. This Excel file – one for both Models – lists all logical technology components used. It includes a short description per logical technology component.

*See separate enclosure “Appendix 17 - 16. LTC Glossary”.*

## **17.17 LIST OF ALL PLATFORM SERVICES PROVIDED PER LOGICAL TECHNOLOGY COMPONENT**

154. This Excel file – one for both Models – lists all logical technology components and their platform services provided.

*See separate enclosure “Appendix 17 - 17. LTCs and Provided PSs per actor”.*

## **17.18 LIST OF ALL LOGICAL TECHNOLOGY COMPONENTS NEEDED FOR EACH LOGICAL APPLICATION COMPONENT**

155. This Excel file – one for both Models – lists all logical application components and their required logical technology components, including the relationship type between them.

*See separate enclosure “Appendix 17 - 18. LACs and their LTCs per actor”.*

## **17.19 LOGICAL APPLICATION AND INFRASTRUCTURE LANDSCAPE POSTER INCLUDING THE INFORMATION OBJECTS AND INTERFACES PROVIDED**

156. This PDF file – one for both Models – presents the logical technology components needed per actor, including the logical application components and information objects provided by these components and interfaces between them.

*See separate enclosure “Appendix 17 - 19. LT landscape poster incl. provided IOs and interfaces”.*

## **17.20 LOGICAL INFRASTRUCTURE LANDSCAPE POSTER INCLUDING THE PLATFORM SERVICES AND INTERFACES PROVIDED**

157. This PDF file – one for both Models – shows the logical technology components needed per actor, including the platform services provided and interfaces between them.

*See separate enclosure “Appendix 17 - 20. LT landscape poster incl. provided PSs”.*

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## 17.21 SET FIRST SET OF NON-FUNCTIONAL REQUIREMENTS

158. Appendix 18 describes a set of descriptive non-functional requirements. It includes a short description and classification per non-functional requirement. In addition, Appendix 19 contains a set of specific non-functional requirements derived from the information security assessment.

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## APPENDIX 18: SET OF DESCRIPTIVE NON-FUNCTIONAL REQUIREMENTS

159. This appendix covers a set of descriptive non-functional requirements with respect to the standardised relief at source architecture. Inspired by the standard for software quality ISO/IEC 9126, this study identifies the following non-functional requirements:

### 18.1 FUNCTIONALITY

160. Functionality describes a set of attributes that bear on the existence of a set of functions and their specified properties. The functions are those that satisfy stated or implied needs.

- **Accuracy.** Data used as input to the system or created as output of the system have to be accurate (unerring).
- **Audit and Control.** The system must allow for audit trails from the reported output of the system back to its initial inputs.
- **Confidentiality.** The system must allow for respecting the confidentiality settings of the information objects used.
- **Extensibility.** The system must allow for flexibly extending the embedded functionality scope.
- **Functional Compliance.** The system must perform according to its specifications.
- **Integrity.** The processing of input data with respect to reported outputs should not affect the data integrity.
- **Interoperability.** The system has to allow for easy, timely and low cost integration with other systems. This requires standard interfacing functionalities.
- **System reporting.** The system has to cater for standard system reporting functionalities (statistics on system operations).
- **Security.** The system has to provide for extensive security controls on the access, use and interaction with other systems.
- **Data ownership.** The system has to allow for dedicated information object owners who are responsible for keeping data up to date, accurate and available.

### 18.2 PORTABILITY

161. Portability describes a set of attributes that bear on the ability of software to be transferred from one environment to another.

- **Ability to install.** The installation impact of the system has to be low. It has to be easily deployable with low impact on existing systems.

### 18.3 MAINTAINABILITY

162. Maintainability describes a set of attributes that bear on the effort needed to make specified modifications.

- **Configuration management.** The configuration of the system should allow for adequate maintenance and future functionality extensions.
- **Documentation.** The system and its embedded functionalities must be documented to enable efficient system support, maintenance and future extensions.
- **Maintenance compliance.** Maintenance on the system has to be carried out according to pre-specified guidelines with respect to development, testing, migration and deployment.
- **Scalability.** The system has to be scalable in terms of volumes of data processed.
- **Stability.** The system has to be stable when in operating mode. The number of production incidents has to be below pre-specified thresholds.
- **Supportability.** The system should be developed and constructed so that support functions for the system are facilitated.

### 18.4 USABILITY

163. Usability describes a set of attributes that bear on the effort needed for use, and on the individual assessment of such use, by a stated or implied set of users.

- **Resource consumption.** The resources required for operating the system need to be optimised.

This takes into account the number of FTEs required for normal use and support of the system and environmental footprint of the system.

- **Network bandwidth.** The network bandwidth has to be sufficient to meet a pre-defined user experience threshold.
- **Accessibility.** The system has to allow for predefined accessibility in conjunction with access security.
- **Availability.** The system with its provided IT functionality and information objects has to be able to meet the availability requirements specified via service level agreements.
- **Performance.** The performance of the system in terms of response time has to meet predefined maximum thresholds.
- **User friendliness.** The system has to be easy in use, easy to learn and contain an intuitive user interface.

## 18.5 RELIABILITY

164. Reliability describes a set of attributes that bear on the capability of software to maintain its level of performance under stated conditions for a pre-specified period of time.

- **Back-up facilities.** The system has to allow for taking and storing back-ups at pre-defined frequency intervals. Back-ups must be able to be restored at any time.
- **Disaster Recovery Plan.** The system has to be able to meet the requirements specified in the Disaster Recovery Plan.
- **Failure management.** The system has to be able to adequately detect, record and fix system failures.
- **Fault tolerance.** The system has to be able to operate under pre-specified fault tolerance thresholds.

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## APPENDIX 19: INFORMATION SECURITY ASSESSMENT OF THE ARCHITECTURE

165. This appendix contains the information security assessment of the architecture.

166. The information security assessment focuses on three principles:

- **Confidentiality:** Protecting sensitive information from unauthorised disclosure or intelligible interception.
- **Integrity:** Safeguarding the accuracy, completeness and timeliness of information, IT systems and computer software (including the ability to audit).
- **Availability:** Ensuring that information and vital services are accessible to authorised users when required.

167. The information security assessment uses the following CIA framework.

CLASSIFICATION	CONFIDENTIALITY	INTEGRITY	AVAILABILITY
4 (highest)	<b>C4   Secret</b> Named individuals allowed access with enhanced security in an environment resistant to penetration	<b>I4   Double intervention</b> Named individuals allowed access with enhanced security in an environment resistant to penetration (4-eye principle)	<b>A4   Failsafe</b> Failsafe hardware with fully redundant capabilities
3	<b>C3   Confidential</b> Named individuals allowed access in a protected environment	<b>I3   Individual</b> Named individuals allowed access in a protected environment	<b>A3   Hot standby</b> Hot standby computer hardware, systems, or transmission capabilities
2	<b>C2   Restricted</b> Role-based access restrictions	<b>I2   Standard</b> Role-based access	<b>A2   Cold standby</b> Cold standby computer hardware or systems

CLASSIFICATION	CONFIDENTIALITY	INTEGRITY	AVAILABILITY
1 (lowest)	<b>C1   Public</b> No access restrictions	<b>I1   Nominal</b>	<b>A1   Recoverable</b> Information is backed up and recoverable

Table 9: CIA ratings and classifications

168. Based on this CIA framework, the assessment determines a CIA rating per information object. The CIA rating of each information object can be found in the IO glossary (cf. Appendix 17).

169. The following three rules describe the relationships to derive CIA ratings for each logical application component:

- An information object is provided by a logical application component;
- An information object is used by an IT functionality;
- An IT functionality is provided by a logical application component.

170. Hence the CIA rating of a logical application component is based on its information objects provided. To ensure the right level of information security, the CIA rating of a logical application component is determined by the highest classification of its information objects used or provided. If, for example, a logical application component provides three information objects with the CIA ratings C2I3A1, C1I3A3 and C1I4A1, the CIA rating of this logical application component is C2I4A3.

171. The information security assessment leads to the following CIA ratings of the logical application components used as shown in the table below:

LOGICAL APPLICATION COMPONENT	CONFIDENTIALITY	INTEGRITY	AVAILABILITY
AI Account administration component	C3   Confidential	I4   Double intervention	A2   Cold standby
AI Client administration component	C3   Confidential	I3   Individual	A2   Cold standby
AI Reconciliation component	C3   Confidential	I2   Standard	A2   Cold standby
AI Reporting component	C3   Confidential	I3   Individual	A2   Cold standby

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## APPENDIX 19: INFORMATION SECURITY ASSESSMENT OF THE ARCHITECTURE

LOGICAL APPLICATION COMPONENT	CONFIDENTIALITY	INTEGRITY	AVAILABILITY
AI Transaction administration component	C3   Confidential	I3   Individual	A2   Cold standby
AI Validation component	C3   Confidential	I2   Standard	A2   Cold standby
Contact administration component	C2   Restricted	I2   Standard	A2   Cold standby
RaS Communication component	C3   Confidential	I3   Individual	A2   Cold standby
TA Reconciliation component	C3   Confidential	I2   Standard	A2   Cold standby
TA Reporting component	C3   Confidential	I3   Individual	A2   Cold standby
TA Tax controlling component	C3   Confidential	I3   Individual	A2   Cold standby
TA Validation component	C3   Confidential	I2   Standard	A2   Cold standby
Transfer component	C3   Confidential	I3   Individual	A2   Cold standby
TA Orchestration component	C3   Confidential	I3   Individual	A2   Cold standby
AI Orchestration component	C3   Confidential	I3   Individual	A2   Cold standby

Table 10: Logical application components and their CIA rating

172. The interpretation of the CIA ratings leads to specific non-functional requirements for these logical application components.

173. A confidentiality rating of ‘C2 | Restricted’ leads to the following specific non-functional requirements:

- Information objects should not be accessible to the public;
- Access to information objects should be restricted and based on roles;
- Access to logical application components should be restricted and based on roles.



174. Next to all specific non-functional requirements of a C2 rating, a confidentiality rating of ‘C3 | Confidential’ leads to the following additional specific non-functional requirements:

- All specific non-functional requirements of a C2 rating are valid;
- Information objects extracted from back-office databases and/or systems must be encrypted while being stored and/or transferred to prevent unauthorised access;
- Access to information objects should be limited to a certain set of named individuals. It should be role-based and password-protected;
- (Un)successful (attempts to) access logical application components should be recorded.

175. An integrity rating of ‘I2 | Standard’ leads to the following specific non-functional requirements:

- Rights like creating, viewing, altering, deleting or exporting information objects should be restricted and based on roles;
- Information objects (while being stored and/or transferred) should be provided with digital signatures to enable users and systems to detect whether an information object has been altered or its integrity has been compromised;
- Functionality of logical application components should be restricted and based on roles.

176. Next to all specific non-functional requirements of an I2 rating, an integrity rating of ‘I3 | Individual’ leads to the following additional specific non-functional requirements:

- All specific non-functional requirements of an I2-rating are valid;
- Rights like creating, viewing, altering, deleting or exporting information objects should be limited to a certain set of named individuals;
- The processing of information objects (e.g. create, view, alter, delete, export) needs to be recorded: who did what when?

177. Next to all specific non-functional requirements of an I3 rating, an integrity rating of ‘I4 | Double intervention’ leads to the following additional specific non-functional requirements:

- All specific non-functional requirements of an I3 rating are valid;
- The processing of information objects (e.g. create, view, alter, delete, export) needs to be approved by a second person, based on the four-eye principle.

178. An availability rating of ‘A2 | Cold standby’ leads to the following specific non-functional requirements:

- Information objects need to be backed up (once a week) and recoverable (within 72 hours);
- A 99% availability of information objects needs to be guaranteed during office hours (9:00 – 17:00).

179. The following table no. 3 shows the applicability of these 18 specific non-functional requirements to the logical application components:

LOGICAL APPLICATION COMPONENT	1	2	3	5	6	7	8	9	10	12	13	14	16	17	18
AI Account administration component	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
AI Client administration component	X	X	X	X	X	X	X	X	X	X	X	X		X	X
AI Reconciliation component	X	X	X	X	X	X	X	X	X					X	X
AI Reporting component	X	X	X	X	X	X	X	X	X	X	X	X		X	X
AI Transaction administration component	X	X	X	X	X	X	X	X	X	X	X	X		X	X
AI Validation component	X	X	X	X	X	X	X	X	X					X	X
Contact administration component	X	X	X				X	X	X					X	X
RaS Communication component	X	X	X	X	X	X	X	X	X	X	X	X		X	X
TA Reconciliation component	X	X	X	X	X	X	X	X	X					X	X
TA Reporting component	X	X	X	X	X	X	X	X	X	X	X	X		X	X
TA Tax controlling component	X	X	X	X	X	X	X	X	X	X	X	X		X	X
TA Validation component	X	X	X	X	X	X	X	X	X					X	X

Table 11: Logical application components and their related non-functional requirements

180. These specific non-functional requirements have to be viewed as an addition to the descriptive non-functional requirements listed in Appendix 18.

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## APPENDIX 20: FEASIBILITY MATURITY MODEL

181. This appendix describes the feasibility maturity model used to compare both Models while taking into account the standardised relief at source architecture and identified way forward, which are both Model-independent.

### 20.1 OBJECTIVE OF THE FEASIBILITY MATURITY MODEL

182. The objective of the feasibility maturity model to assess the maturity of MSs with regard to the implementation of a standardised relief at source system is twofold:

- **Gaps faced by a MS when implementing the architecture.** To determine the extent to which the current IT systems of a MS already cover the standardised relief at source architecture.
- **Challenges faced by a MS when implementing the architecture.** To determine the barriers, dependencies and risks a MS faces when implementing the standardised relief at source architecture.

### 20.2 CRITERIA USED BY THE FEASIBILITY MATURITY MODEL

183. The study assesses the gaps and challenges faced by a MS with two sets of criteria. The first set covers the functional domains of the supporting IT solution. The second set comprises implementation aspects to assess these functional domains. As a consequence, combining a functional domain and an implementation aspect determines a criterion.

#### 20.2.1 FUNCTIONALITY CRITERIA

184. The functionality criteria are derived from the operating models and the architecture. The feasibility maturity model identifies eight functional domains. It uses these functional domains as functional criteria to assess the existing IT functionalities of the current IT systems used in the participating MSs.

- **A TA receives information from an AI.** Does the TA concerned receive standardised transaction/TIN level reports in XML format automatically generated by AIs?
  - If so, are these reports sent via monitored SFTP connection?
  - If so, are these reports encrypted and signed?
  - If so, how are these reports encrypted and stored?
- **A TA exchanges and processes the RFIs and requests for clarification with an AI**
  - Is the TA capable of sending standardised encrypted and signed XML messages to AIs (RFI or request for clarification)?
  - If so, how are these messages created and centrally stored?

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- Are e-Forms used?
- **A TA processes the information received from an AI**
  - Does the TA import and automatically validate standardised transaction/TIN level reports sent by an AI?
  - Are the resulting validation messages automatically sent to the sending AI impacted?
- **A TA draws up the reports to be sent to other TAs**
  - Does the TA concerned create standardised transaction/TIN level reports?
  - Once the report is created, are the data automatically reconciled with the source data?
- **A TA receives reports from other TAs**
  - Does the TA concerned receive standardised transaction/TIN level reports in XML format sent by AIs?
  - If so, are these reports encrypted, signed and sent via monitored CCN?
  - If so, how are these reports encrypted and centrally stored?
- **A TA processes the reports received from other TAs**
  - Does the TA import and automatically validate standardised transaction/TIN level reports sent by another TA?
  - Are the resulting validation messages automatically sent to the sending TA impacted?
- **A TA exchanges and processes the RFIs and requests for clarification with a TA**
  - Is the TA capable of sending standardised encrypted and signed XML messages to other TAs (RFI or request for clarification)?
  - If so, how are these messages created and centrally stored?
  - Are e-Forms used?
- **Generic IT infrastructure of a TA**
  - Is a workflow engine/business process management system in place?
  - How and where are contact details of AIs and TAs maintained?

### 20.2.2 ASPECT CRITERIA

185. The feasibility maturity model uses aspect criteria to assess the functional criteria described above from different points of view. They either assess gaps or challenges faced by a MS when implementing the standardised relief at source architecture.

ASPECT CRITERIA	GAPS OR CHALLENGES
Gaps	Gaps
Barriers	Challenges
Reuse	Challenges
Dependencies	Challenges
Risks	Challenges

Table 12: Assessment classification of aspect criteria

186. These aspect criteria are defined as follows:

- **Gaps.** A gap expresses the extent to which existing IT functionalities of the current IT systems of MSs cover the required functionality domain. It thus refers to the usability of the existing IT functionality of a MS to cope with the requirements defined in the standardised relief at source architecture.
- **Reuse.** The reuse aspect models whether or not the IT components developed can be reused across MSs. In case the required components are developed collaboratively, they can be reused across MSs.
- **Barriers.** A barrier refers to an element that may prevent or hamper a MS from starting to implement the architecture. It reflects (a) the initial availability of budget and/or resources and (b) the required initial buy-in from interacting AIs and MSs for the MSs concerned as barriers.
- **Dependencies.** A dependency is defined as an element that can hinder or hamper a MS when implementing the architecture. Three types of dependencies are reflected in the model:
  - The required willingness of AIs and MSs to cooperate during the implementation;
  - The required negotiations with respect to standardisation of reporting formats and communication templates;
  - The continued availability of budget and resources during implementation.

- **Risks.** A risk is an unexpected factor that results in delaying or cancelling the implementation. This can be due to (a) an underestimation of the required expertise, (b) an underestimation of the dependencies or complexity or (c) possibility of budget and time overruns.

### 20.3 MEASUREMENTS USED FOR THE FEASIBILITY MATURITY MODEL

187. This part defines the measurements which are used by the feasibility maturity model to assess quantitatively the criteria listed above.

#### 20.3.1 MEASUREMENTS FOR GAPS AND CHALLENGES

188. The feasibility maturity model measures quantitatively each combination of functional criterion and aspect criterion. It determines the scores for a given MS always with respect to a developed baseline scenario. The assessment corrects the measurements of the baseline scenario upwardly or downwardly to reflect the current situation of a MS.

189. The measurements depend on the aspect being assessed:

- **Gaps.** For ‘gaps’, a value between ‘0’ and ‘100’ indicates the percentage of the identified functional gap for a functional criterion. A high score represents a high gap.
- **Reuse.** For ‘reuse’, the measure is either equal to ‘0’ or ‘1’. It indicates whether an IT functionality of a functional domain can be reused across MSs.
- **Barriers, dependencies and risks.** For ‘barriers’, ‘dependencies’ and ‘risks’, a value between ‘0’ and ‘100’ indicates a penalty for identified barriers, dependencies and risks. A high score represents a high penalty.

#### 20.3.2 A BASELINE SCENARIO USED TO ASSESS MSS

190. The model uses a baseline scenario to determine the measurements of the criteria for a respective MS. This baseline reflects the results for an ideal, hypothetical MS upon which corrections are made to reflect the results of a specific MS. Due to the reference to this common baseline scenario, the results for all participating MSs are inherently comparable. Appendix 24 contains the detailed results for all participating MSs.

As the baseline scenario describes an ideal, hypothetical MS, its current IT systems can cope with the current Savings Directive implementation and is perceived as ‘best in class’. Therefore, the current IT systems can be largely reused when implementing the standardised relief at source architecture.

- **A TA receives information from an AI.** XML reports are transferred via SFTP. The transfer is monitored and reports are encrypted and signed. Reports received are stored in a central database.
- **A TA exchanges and processes the RFIs and requests for clarification with an AI.** A communication platform enables the exchange of XML-based RFIs and requests for

clarification. The exchanged RFIs and requests for clarification are encrypted and signed. Their transfer is monitored and secure. The messages are stored in a central database upon receipt.

- **A TA processes the information received from an AI.** The reports received are automatically validated (by means of sanity and completeness checks) and imported. In case of errors, validation error notifications are automatically sent to inform the impacted AI.
- **A TA draws up the reports to be sent to other TAs.** The reports are automatically generated and then reconciled against the source data. In case of errors, reconciliation error notifications are automatically sent to inform the affected TA.
- **A TA receives reports from other TAs.** XML reports are transferred from TA 1 to TA 2 via CCN and are stored in a central database. The messages transferred are encrypted and signed. The transfer itself is monitored.
- **A TA processes the reports received from other TAs.** The reports received are automatically validated (by means of sanity and completeness checks) and imported. In case of errors, validation error notifications are automatically sent to inform the impacted TA.
- **A TA exchanges and processes the RFIs and requests for clarification with a TA.** A communication platform enables the exchange of XML-based RFIs and requests for clarification. The exchanged RFIs and requests for clarification are encrypted and signed. Their transfer is monitored. The messages are stored in a central database upon receipt.
- **Generic IT infrastructure of a TA.** A workflow engine or business process management system is available and can be leveraged. A central contact administration database is available and can be integrated with the workflow engine and/or other systems.

### 20.3.3 WORST-CASE SCENARIO USED TO ASSESS THIRD COUNTRIES

191. Besides the baseline scenario, the feasibility maturity model uses a ‘worst- case’ scenario. This scenario reflects a MS whose current IT architecture has little to no overlap with the architecture. Although this situation is not reflected in the sample of participating MSs, the model uses it to reflect third countries wanting to participate in a standardised relief at source system.

For the functional criteria, the following working assumptions apply under the worst-case scenario.

- **A TA receives information from an AI.** The TA does not receive data or reports from AIs via an automated system. Data transfers between an AI and a TA are done on an ad hoc basis without uniform reporting standards. Physical media (paper, CD/DVD, USB-stick) or e-mails are used to transfer the reports.

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- **A TA exchanges and processes the RFIs and requests for clarification with an AI.** RFIs and requests for clarification exchanged between TAs and AIs are not standardised. These messages are communicated via mail, e-mail, fax or telephone without using standard templates.
- **A TA processes the information received from an AI.** In case data or reports are received from an AI, the TA does not conduct pre-defined quality or sanity checks.
- **A TA draws up the reports to be sent to other TAs.** No standard exists for generating the reports to be sent to other MSs. This is done manually, and, if possible, in Excel.
- **A TA receives reports from other TAs.** Reports or data are sent to other TAs via mail (paper, CD/DVD, USB-stick), e-mail or fax. No specific standards or pre-defined communication channels exist.
- **A TA processes the reports received from other TAs.** In case reports or data are received from other TAs, no specific controls are made upon receipt. The data are stored where necessary.
- **A TA exchanges and processes the RFIs and requests for clarification with a TA.** RFIs and requests for clarification exchanged between TAs are not standardised. These messages are communicated via mail, e-mail, fax or telephone without using standard templates.
- **Generic IT infrastructure of a TA.** No workflow engine and central contact administration database are available.

#### 20.3.4 DEDUCTION OF THE GAP AND CHALLENGES SCORES FROM IT INTERVIEWS

192. The maturity model uses eight functional domains and four aspect criteria. Per functional domain a percentage is determined to close the gap and reach the baseline scenario (an ideal, hypothetical candidate) with respect to the requirements of a standardised relief at source system implementation. This leads to a cumulative maximum score of 800 (= 8 \* 100) per aspect criterion. The sum of the eight percentage points used for the baseline scenario leads to the score of the baseline per aspect criterion.

Per functional domain and within an aspect criterion, the feasibility maturity model uses key questions to determine how much a MS differs from the baseline scenario. The percentage points of a functional domain of a baseline scenario are therefore distributed over the different key questions. Hence the sum of percentage points of all key questions within a functional domain and within an aspect criterion is equivalent to the percentage points of this functional domain for a certain aspect criterion.

Based on the IT interviews, key questions were scored. A score between 0 and 1 determines to which extent a MS meets the criteria specified in the key questions. The score of a functional domain (within an aspect criterion) is therefore the sum of the scores allocated to



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the key questions of a functional domain. In the same way, the score of an aspect criterion is therefore the sum of its eight functional domain scores.

This implies that the delta between the score of a MS and the maximum score of 800 consists of (a) the difference of the MS with respect to the baseline scenario and (b) the difference of the baseline scenario with respect to the requirements for a standardised relief at source system implementation.

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## APPENDIX 21: DETAILED RESULTS OF THE INTERVIEWS WITH PARTICIPATING MSS

193. IT interviews are conducted with each of the eight participating MSs to assess the gaps and challenges faced by MSs when implementing the standardised relief at source system. The summaries listed below are based on the minutes of meetings which have been sent to the MSs after each interview.

### 21.1 RESULTS FOR COUNTRY A

- **A TA receives information from an AI**
  - Under the current Savings Directive, resident AIs send transaction/TIN level information to the TA of country A. This information is encrypted, signed and sent via predefined XML schemes. Upon receipt by the TA of country A, the data are stored in a central database.
- **A TA processes the information received from AIs or other TAs**
  - Data received from AIs based in country A are submitted to upfront quality and sanity checks before further processing and reporting to other TAs. These checks consist in verifying the completeness of the reports and executing basic tax controls.
- **A TA draws up the reports to be sent to other TAs**
  - Under the current Savings Directive, the TA of country A collects data on a yearly basis from all resident AIs and draws up reports per impacted RC. This functionality can be completely reused and amended for the required purposes. The reporting requirements are standardised across the countries falling within the current Savings Directive. The reports adhere to the FISC-153 standard. However, they are not reconciled with the source data upon completion.
- **A TA receives reports from other TAs**
  - In the context of the current Savings Directive, the TA of country A receives transaction/TIN level reports from other TAs via the CCN network.
- **A TA exchanges and processes the RFIs and requests for clarification with AIs or other TAs**
  - For exchanging RFIs and requests for clarification with other TAs, country A makes use of e-Forms. It is suggested to extend the functional use of these e-Forms to communications between AIs and the TA.

- **Generic IT infrastructure of a TA**

- A dedicated workflow engine or business process management system is in place for the TA of country A. All IT applications are developed and maintained externally.
- As regards budget and planning, no major obstacles are identified for implementing new systems or extending the functionality of the current Savings Directive implementation. The developments required can be integrated in the current project portfolio for country A. The main challenges lay in the roll-out of communication channels with non-resident AIs, as would be the case under the SC Model.

## 21.2 RESULTS FOR COUNTRY B

- **A TA receives information from an AI**

- The TA of country B operates fully electronically. Paper is no longer used as a means for transferring data.
- Under the current Savings Directive, AIs send encrypted and signed txt files via a server-to-server secured transfer mechanism to the TA of country B. For other purposes, XML files are sent via electronic certified mail.
- Overall, several communication protocols exist.
- The data received are stored in a central database.

- **A TA processes the information received from AIs or other TAs**

- Data received from resident AIs are submitted to upfront quality and sanity checks before further processing and reporting to other TAs. These checks consist of pre-defined controls on the data received.
- However, because in the past these controls have prevented any data set from being used due to the low data quality and resulting manual workload, the strict application of controls has been reduced.

- **A TA draws up the reports to be sent to other TAs**

- Under the current Savings Directive, the TA of country B is able to automatically create the reports required by other (resident) MSs. Data are reconciled with its source data before sending out. The reports adhere to the FISC-153 standard.

- **A TA receives reports from other TAs**

- In the context of the current Savings Directive, the TA of country B receives transaction/TIN level reports from other TAs via the CCN network.
- For the purpose of exchanging information in the OECD framework, encrypted mail (PGP) or CD ROMs are used.

- **A TA receives reports from other TAs**
  - For country B, a RFI or request for clarification is generated manually based on automatically generated validation reports. In the context of the current Savings Directive, the e-Form standard is used as a means of ad hoc communication.
- **Generic IT infrastructure of a TA**
  - No dedicated workflow engine or business process management system is in place for the TA of country B. The different activities required to generate reports or to communicate with AIs or other TAs are not managed automatically. All IT applications are developed, managed and maintained internally.
  - As regards budget and planning, no major obstacles are identified for implementing new systems or extending the functionality of the current Savings Directive implementation.
  - Resident AIs providing services to non-resident AIs are identified as main critical stakeholders.

### 21.3 RESULTS FOR COUNTRY C

- **A TA receives information from an AI**
  - The TA of country C requires automated reporting by the resident AIs as of 2013. Until then, the transfer of transaction/TIN level reports is only semi-automated.
  - Because of the local fiscal reporting requirements of the TA of country C, the data provided by the AIs contain far more attributes than requested under the current Savings Directive. The reports are sent to the TA via either CDs, secured FTP or web portal. Upon receipt of the data, correct records are stored in a central database. Incorrect records are not stored but transferred to a dedicated ‘risk analysis’ department for further investigation.
- **A TA processes the information received from AIs or other TAs**
  - Fiscal reports sent by both the resident AIs and other TAs are standardised in format and content.
  - Upon receipt of the data, correct records are stored in a central database. Incorrect records are not stored but transferred to a dedicated ‘risk analysis’ department for further investigation. The controls executed relate to basic sanity and quality checks on the data received. Concerning the latter, specific checks are made on flagged compulsory fields. Reports received from other MSs are also made available on local databases for further dedicated tax controls.

- **A TA draws up the reports to be sent to other TAs**
  - For the purposes of the current Savings Directive, the TA of country C receives transaction/TIN level reports from other TAs via the CCN network. The TA is able to automatically create the reports required by other MSs. The reports are made in Audit Command Language (ACL). Before reports are sent out, a basic reconciliation with the source data is being made.
  - When creating these reports for impacted RCs, a TIN is always requested from the AIs when available. In case a TIN is not used in certain RCs, the identification is based on ‘Date of Birth’ and ‘Place of Birth’.
- **A TA receives reports from other TAs**
  - In the context of the current Savings Directive, the TA of country C receives transaction/TIN level reports from other TAs via the CCN network (for connected MSs). For cooperation with third countries, the transfer is done via encrypted DVD (for MSs not connected).
- **A TA exchanges and processes the RFIs and requests for clarification with AIs or other TAs**
  - For country C, in the context of the current Savings Directive, e-Forms are used to exchange RFIs and requests for clarification.
- **Generic IT infrastructure of a TA**
  - No dedicated workflow engine or business process management system is in place for the TA of country C. The different activities required to generate reports or to communicate with AIs or other TAs are not managed automatically. All IT applications are developed, managed and maintained internally.
  - The contact administration is split over those for other MSs (and their respective Central Liaison Offices) and those for resident AIs. The former are stored and maintained on CIRCA (serviced by the EU), the latter are kept by an internal department of the TA of country C.

## 21.4 RESULTS FOR COUNTRY D

- **A TA receives information from an AI**
  - The TA of country D plans an electronic data transfer with the resident AIs. The data are encoded in XML and uploaded via a web portal. For dividend payments by resident ‘paying companies’ to non-resident beneficiaries, the TA of country D requires paying companies to report on a monthly basis. The reporting requirements cover shareholder (beneficiary) details and cash distribution details. For direct tax payments on deposits, a daily reporting channel exists between resident financial

institutions and the TA. All data transfers with the TA of country D are secure, encrypted and signed.

- **A TA processes the information received from AIs or other TAs**
  - All data reports which enter the central database of country D are standardised and submitted to upfront quality and sanity checks.
  - The standardisation of reporting and format requirements is led by the TA of country D and is well followed up by resident AIs. In specific cases, ad-hoc information requests can be sent to non-resident AIs or foreign TAs. For these purposes, data are sent in Excel format via secure e-mail.
  - The upload of XML data sets passes via automated validation controls. In case a data set fails one of the controls, an automated error message is generated.
- **A TA draws up the reports to be sent to other TAs**
  - The TA is capable of assembling transaction/TIN level reports received from different sending parties and to split this resulting data set according to the affected RCs. For this purpose, it has a custom built application at disposal. The report generation is semi-automatic.
- **A TA receives reports from other TAs**
  - In the context of the current Savings Directive, the TA of country D receives transaction/TIN level reports from other TAs via the CCN network.
- **A TA exchanges and processes the RFIs and requests for clarification with AIs or other TAs**
  - For country D, in the context of the current Savings Directive, e-Forms are used as means of ad-hoc communication.
- **Generic IT infrastructure of a TA**
  - A dedicated workflow engine or business process management system is in place for the TA of country D. All IT applications are developed, managed and maintained internally, with the support of external resources.
  - The contact administration is split over those for other MSs (and their respective Central Liaison Offices) and those for resident AIs.
  - The former are stored and maintained on CIRCA (serviced by the EU), the latter are stored on a central registration system.

## 21.5 RESULTS FOR COUNTRY E

- **A TA receives information from an AI**

- For the purpose of the current Savings Directive, the TA of country E plans an electronic data transfer with its resident AIs. Via a web portal, data can be uploaded and are subsequently transferred to a central database. The transfer is secured but the data themselves are not encrypted. In case a file cannot be signed, the file is also sent on paper.

- **A TA processes the information received from AIs or other TAs**

- The data received from external parties are submitted to basic sanity checks. However, no real validation is made. Once the data are uploaded in a central database, a dedicated tax team makes further checks.
- In case a data set is of lower quality, a fully manual process takes place to process the data.

- **A TA draws up the reports to be sent to other TAs**

- The TA is capable of assembling transaction/TIN level reports received from different sending parties and to split this resulting data set according to the affected RCs.
- No reconciliation of the reported data with the source data is made.

- **A TA receives reports from other TAs**

- In the context of the current Savings Directive, the TA of country E receives transaction/TIN level reports from other TAs via the CCN network. The files are neither encrypted nor signed.

- **A TA exchanges and processes the RFIs and requests for clarification with AIs or other TAs**

- For country E, in the context of the current Savings Directive, e-Forms are used to exchange RFIs and requests for clarification with other TAs.
- In case a RFI or request for clarification to AIs is required, the communication flow starts on paper and is continued via pdf files sent by e-mail.
- As a general rule, RFIs and requests for clarification are neither encrypted nor signed.

- **Generic IT infrastructure of a TA**

- A dedicated workflow engine or business process management system is in place for the TA of country E. The development of software is outsourced but all applications are hosted internally.
- No central contact administration database is available.

## 21.6 RESULTS FOR COUNTRY F

- **A TA receives information from an AI**

- For the purpose of the current Savings Directive, the TA of country F has installed two data transfer channels to obtain data from its resident AIs.
- Via a web portal, Excel files can be uploaded. These are subsequently transformed into XML.
- Via SFTP, txt files can be transferred to the TA. The files are signed but not encrypted.
- In very specific cases, the use of paper-based data sets can be approved. So far, no AI has been allowed to provide data on paper.

- **A TA processes the information received from AIs or other TAs**

- The specific processing of data sets received from external parties depends on the type of data transfer:
- Data sent by AIs via the web portal are submitted to online validation checks built into the portal. Subsequently, XML files are generated and uploaded into a back-office database.
- Data sent by AIs via SFTP are not submitted to a format validation but only to a content validation. In case validation errors occur, a validation error report is automatically created and made available to the AI via the web portal.

- **A TA draws up the reports to be sent to other TAs**

- The TA is capable of assembling transaction/TIN level reports received from different sending AIs and to split this resulting data set according to the affected RCs.
- No reconciliation of the reported data with the source data takes place. However, the system reports correct data which correspond to the source data.
- A set of reporting statistics is available from the system to the TA of country F.



- **A TA receives reports from other TA.**
  - In the context of the current Savings Directive, the TA of country F receives transaction/TIN level reports from other TAs via the CCN network. The files are neither encrypted nor signed.
  - Third countries can transfer data to the TA via paper or physical media (DVDs or CDs).
- **A TA exchanges and processes the RFIs and requests for clarification with AIs or other TAs**
  - For country F, in the context of the current Savings Directive, RFIs and requests for clarification are manually created and sent to the affected TAs (in case of complex errors).
  - A RFI or request for clarification to an AI can take two forms:
    - A RFI or request for clarification is sent via web portal (in case the file originally sent is also transferred via the web portal),
    - A RFI or request for clarification is sent via SFTP as txt file (in case the file originally sent is also transferred via SFTP).
- **Generic IT infrastructure of a TA**
  - A dedicated workflow engine or business process management system is not in place for the TA of country F.
  - All applications are developed internally, with the support of external consultants in case the required expertise is missing.
  - A central contact administration database is available.

## 21.7 RESULTS FOR COUNTRY G

- **A TA receives information from an AI**
  - The TA of country G enables data transfers with its resident AIs via a web portal. The data transferred are encrypted and signed.
  - Paper and physical media are also used. When DVDs or CDs are used, data are always protected with a password.
- **A TA processes the information received from AIs or other TAs**
  - Depending on the data transfer channel, the TA in country G applies different data treatment procedures. In case data is transferred:

- Via web portal (secured electronic transfer), data are automatically validated and stored in a central database.
  - Via physical media, data are manually transformed, automatically validated and stored in a central database.
  - On paper, the files are scanned and transformed into machine readable files. These are automatically validated and stored in a central database. In this case, manual intervention is required.
- **A TA draws up the reports to be sent to other TAs**
    - The TA is able to create automatically the reports required by RCs.
    - No reconciliation takes place.
  - **A TA receives reports from other TAs**
    - In the context of the current Savings Directive, the TA of country G receives transaction/TIN level reports from other TAs via the CCN network. For the purpose of exchanging information in the OECD framework, physical media or paper are used.
  - **A TA exchanges and processes the RFIs and requests for clarification with AIs or other TAs**
    - The TA of country G uses e-Forms to exchange the RFIs or requests for clarification with other TAs. Paper and e-mail are also used.
    - For RFIs or requests for clarification exchanged with AIs, paper, mail and telephone are used.
  - **Generic IT infrastructure of a TA**
    - A dedicated workflow engine or business process management system is in place for the TA of country G.
    - A separate contact administration database exists for TA contact details and AI contact details.

## 21.8 RESULTS FOR COUNTRY H

- **A TA receives information from an AI**
  - The TA of country H has a central system for data transfers with external parties. This also applies for data exchanges with its resident AIs. In the context of the current Savings Directive, AIs can log on to a web portal and upload standardised flat files (txt). These files are chunked into smaller files in case the file size exceeds a certain threshold. Every data exchange with resident AIs is encrypted and signed.

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- Non-resident AIs can – where necessary – log on to the web portal to transfer data files. In this case data are encrypted but not signed. Additional authenticating information is to be sent via e-mail.
- Overall, the standard transfer system of country H consists of 30 different modules for data exchange (including DVDs and scanning of paper documents).
- XML schemes are being used increasingly.
- **A TA processes the information received from AIs or other TAs**
  - All data reports which enter the systems of country H are standardised and submitted to upfront syntax and semantic checks. These controls take place before data are entered into the central database from where data are available for tax controls.
  - The TA of country H highlights the importance of maintaining a local reporting standard for their AIs whereas it stresses the importance of EU level standard setting for data transfers with other MSs.
  - In case a TIN is missing for a specific record, the affected record is flagged as incomplete and is manually corrected.
  - In case a full file cannot be validated against a pre-defined schema, the file is rejected. An error message is automatically generated.
- **A TA draws up the reports to be sent to other TAs**
  - For the purposes of the current Savings Directive, the TA of country H is able to automatically assemble data sets provided by different AIs and to create new reports out of these. In case errors are still found at this stage, a manual correction procedure is set up.
  - The reported data are not explicitly reconciled with the source data. However, the system operates properly.
- **A TA receives reports from other TAs**
  - For the purposes of the current Savings Directive, the TA of country H receives transaction/TIN level reports from other TAs via the CCN network. The TA is also capable of assembling transaction/TIN level reports received from third countries by means of secure mail (PGP) or encrypted zip files.
- **A TA exchanges and processes the RFIs and requests for clarification with AIs or other TAs**
  - For country H, in the context of the current Savings Directive, e-Forms are used as means of ad-hoc communication with other MSs.

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- However, RFIs or requests for clarification exchanged with AIs are also standardised and automated. In this case, the messages are also encrypted and signed.
- **Generic IT infrastructure of a TA**
  - A dedicated workflow engine or business process management system is in place for the TA of country H. All IT applications are developed, managed and maintained internally, with the support of external resources.
  - No central contact database is available for the TA of country H.

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## **APPENDIX 22: MAN-DAYS ESTIMATION FOR A FUNCTIONAL DOMAIN**

194. The following table depicts the initial estimations used to calculate the man-days needed by a MS to design, develop, test, deploy and integrate the IT components of a functional domain with medium complexity.

195. The frequency determines whether the costs (in man-days) only occur once or need to be allocated for each of the functional domains.

<b>STAGE</b>	<b>ACTIVITIES</b>	<b>MAN-DAYS NEEDED BY 1 MS FOR LOCAL DEV. OF 1 FCT. DOM.</b>	<b>MAN-DAYS NEEDED BY 1 MS FOR COLLAB. DEV. OF 1 FCT. DOM.</b>	<b>FREQUENCY: ONCE OR PER FUNCTIONAL DOMAIN</b>
Strategy and assess: prerequisites for implementation	Install a change management board	3	2	once
	Install a design authority	3	2	once
	Determine the physical IT architecture	3	2	once
	Determine which logical application components need to be developed	1	1	once
	Select suppliers for developing and testing the IT solution	3	2	once
Design the IT solution to support the operating model	Perform software analysis and develop the software design for the required components	40	15	per functional domain
	Design the required XML schemas	10	4	once
	Execute architecture conformance checks	10	4	per functional domain
	Continuous improvement of the IT solution architecture	3	2	once
	Set up the development and test environment	4	2	once

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STAGE	ACTIVITIES	MAN-DAYS NEEDED BY 1 MS FOR LOCAL DEV. OF 1 FCT. DOM.	MAN-DAYS NEEDED BY 1 MS FOR COLLAB. DEV. OF 1 FCT. DOM.	FREQUENCY: ONCE OR PER FUNCTIONAL DOMAIN
Construct the IT solution	Develop and/or procure the required components (57)	80	30	per functional domain
	Execute architecture conformance checks	10	4	per functional domain
	Continuous improvement of the IT solution software analysis & design	30	12	per functional domain
	Test the required components (UT/IT/ST)	30	12	per functional domain
Implement: Roll-out per MS	Coordinate releases	2	2	once
	Continuous improvement of the IT solution	4	4	once
	Launch change team	2	2	once
	Set up the development, test, acceptance and production environment	5	5	once
	Deploy solution	10	10	once
	Test solution	3	3	once
<b>SUM</b>		<b>256</b>	<b>120</b>	

Table 13: Estimated man-days needed by a MS to implement a functional domain of medium complexity

57 IT infrastructure costs and costs related to licenses are not included.

196. The estimation of the man-days needed by one MS to locally develop one functional domain is based on expert opinion. In case of collaborative development, the estimation of man-days looks different, as (a) activities are carried out jointly but will take more time as more MSs are involved. Hence the study uses the following formula to derive the estimation of man-days needed by one MS to develop collaboratively one functional domain:

$$\text{mandays needed by 1 MS for collab. dev. of 1 fct. comp.} = \text{ROUNDUP} \left( \frac{\text{mandays needed by 1 MS for locally dev. of 1 fct. comp.} \times 10}{27 \text{ MSs}} \right)$$

Equation 1: Estimation of man-days needed by one MS to develop collaboratively one functional domain

197. The EU Standard Cost Model calculates 250 € per man-day. However, as the work will be largely done by external suppliers, the cost function doubles this rate:

$$\text{Rate per manday} = 500 \text{ €}$$

Equation 2: Rate per manday

198. Under the assumption that a man-day costs 500€, the following two figures can be derived:

- **Costs needed for a functional domain of medium complexity developed locally**

The man-days and costs to design, develop, test, deploy and integrate locally the IT components of a functional domain with medium complexity are as follows:

$$\begin{aligned} \text{Mandays needed for a functional domain of medium complexity locally} &= 256 \\ \text{Costs needed for a functional domain of medium complexity locally} &= 128\,000 \text{ €} \end{aligned}$$

Equation 3: Costs needed for a functional domain of medium complexity developed locally

- **Costs needed for a functional domain of medium complexity developed collaboratively**

The man-days and costs to collaboratively design, develop, test and locally deploy and integrate the IT components of a functional domain with medium complexity are as follows:

$$\begin{array}{l} \text{Mandays needed for a functional domain} \\ \text{of medium complexity collaboratively} \end{array} = 120$$

$$\begin{array}{l} \text{Costs needed for a functional domain} \\ \text{of medium complexity collaboratively} \end{array} = 60\,000 \text{ €}$$

Equation 4: Costs needed for a functional domain of medium complexity developed collaboratively



## APPENDIX 23: COST FUNCTION

### 23.1 INTRODUCTION

199. This appendix describes the cost function used to determine an initial cost estimation of the IT solution’s implementation.

200. The cost function uses the aspects of gaps (gaps) and challenges (barriers, potential reuse, dependencies and risks) to determine an initial estimation of the required implementation effort. The objective of this cost function is to compare both Models. The results of the cost function should not serve the purpose of calculating of the required budget to implement the IT solution.

201. This cost function uses a set of assumptions. These assumptions describe the relation between the estimated implementation cost and the different implementation aspects (“aspect criteria” of the feasibility maturity model):

- **Gaps.** The cost function assumes a linear and positive relationship. The higher the functional gap, the bigger the implied cost when closing the gap. More functionality needs to be developed.
- **Barrier.** The cost function assumes a linear and positive relationship. The higher the barrier, the bigger the implied cost when implementing the IT components of a functional domain. Initially identified barriers need to be overcome before starting the design and development of IT components.
- **Reuse.** The cost function assumes a binary value and an inverse relationship with costs. If reuse is possible, the implied cost when implementing the IT components of a functional domain is lower. These costs are now born by a central entity developing the IT components.
- **Dependency.** The cost function assumes a linear and positive relationship. The higher the dependency, the bigger the implied cost when implementing the IT components of a functional domain. Dependencies need to be managed continuously when developing the IT component.
- **Risks.** The cost function assumes a linear and positive relationship. The higher the risk, the bigger the implied cost when implementing the IT components of a functional domain. Additional risk mitigating buffers need to be taken into account.

202. This leads to the following cost function to estimate the implementation cost.

## 23.2 COST FUNCTION

The following cost function calculates the estimated implementation cost:

$$\text{estimated implement. cost} = \sum_{\text{each fct.dom.}} \left( \begin{array}{l} \text{total development cost of this fct. dom.} \\ \text{taking into account its complexity,} \\ \text{reuse and the functional gaps} \\ + \\ \text{barriers markup for this fct. dom.} \\ + \\ \text{dependencies markup for this fct. dom.} \\ + \\ \text{risks markup for this fct. dom.} \end{array} \right)$$

Equation 5: Cost Function

The different elements of the cost function are defined as follows:

- **Total development cost of a functional domain taking into account its complexity, reuse and the functional gap**

In case of local development the following formula is used:

$$\text{total dev. cost of a fct. dom. taking into account its complexity, reuse and the functional gaps} = \begin{array}{l} \text{costs needed for} \\ \text{a fct. dom. of medium} \\ \text{complexity developed locally} \\ \times \\ \text{complexity factor of a fct. dom} \\ \times \\ \text{MS's functional IT gap value} \end{array}$$

Equation 6: Total development cost – local development

In case of collaborative development the following formula is used:

$$\text{total dev. cost of a fct. dom. taking into account its complexity, reuse and the functional gaps} = \begin{array}{l} \text{costs needed for} \\ \text{a fct. dom. of medium} \\ \text{complexity developed collab.} \\ \times \\ \text{complexity factor of a fct. dom.} \\ \times \\ \text{MS's functional IT gap value} \\ \times \\ (1 + \text{reuse markup factor}) \end{array}$$

Equation 7: Total development cost – collaborative development

- **Barriers markup**

The barriers markup consists of a base markup and a MS-related markup.

$$\text{barriers markup for a fct. dom.} = \left( \begin{array}{c} \text{barriers base markup} \\ + \\ \text{MS's specific barrier value} \\ \times \\ \text{barriers gap markup} \end{array} \right) \times \begin{array}{l} \text{total dev. cost of a fct. dom.} \\ \text{taking into account its compl.} \\ \text{reuse and the funct. gaps} \end{array}$$

Equation 8: Barriers Markup

- **Dependencies markup**

The dependencies markup consists of a base markup and a MS-related markup.

$$\text{dependencies markup for a fct. dom.} = \left( \begin{array}{c} \text{dep. base markup} \\ + \\ \text{MS's specific dep. value} \\ \times \\ \text{dep. gap markup} \end{array} \right) \times \begin{array}{l} \text{total dev. cost of a fct. dom.} \\ \text{taking into account its compl.} \\ \text{reuse and the funct. gaps} \end{array}$$

Equation 9: Dependencies Markup

- **Risks markup**

The risks markup consists of a base markup and a MS-related markup.

$$\text{risks markup for a fct. dom.} = \left( \begin{array}{c} \text{risks base markup} \\ + \\ \text{MS's specific risks value} \\ \times \\ \text{risks gap markup} \end{array} \right) \times \begin{array}{l} \text{total dev. cost of a fct. dom.} \\ \text{taking into account its compl.} \\ \text{reuse and the funct. gaps} \end{array}$$

Equation 10: Risks Markup

### 23.3 CONSTANTS USED IN THE COST FUNCTION

The following constants are used in the cost function:

- **Complexity factor of a functional domain**

The complexity factor models the impact of a functional domain’s complexity on the effort required to implement the functional domain.

$$\text{complexity factor of a fct. dom.} = \begin{pmatrix} \text{high} & \rightarrow & 1,5 \\ \text{medium} & \rightarrow & 1 \\ \text{low} & \rightarrow & 0,8 \end{pmatrix}$$

Equation 11: Complexity factor of a functional domain

- **Costs needed for a functional domain of medium complexity locally**

See Appendix 22.

- **Costs needed for a functional domain of medium complexity collaboratively**

See Appendix 22.

- **Reuse markup factor**

The reuse markup factor models the additional effort required to deploy and integrate a collaboratively developed IT components locally.

$$\text{Reuse markup factor} = 20\%$$

Equation 12: Reuse Markup Factor

- **Barriers base markup**

The barriers base markup factor models a management reserve related to the implementation aspect ‘barriers’.

$$\text{Barriers base markup factor} = 5\%$$

Equation 13: Barriers Base Markup Factor

- **Barriers gap markup**

The barriers gap markup factor models the additional effort required to deploy and integrate a collaboratively developed IT components locally.

$$\text{Barriers gap markup factor} = 20\%$$

Equation 14: Barriers Gap Markup Factor

- **Dependencies base markup**

The dependencies base markup factor models a management reserve related to the implementation aspect ‘dependencies’.

$$\text{Dependencies base markup factor} = 5\%$$

Equation 15: Dependencies Base Markup Factor

- **Dependencies gap markup**

The dependencies gap markup factor models the additional effort required to deploy and integrate a collaboratively developed IT components locally.

$$\text{Dependencies gap markup factor} = 30\%$$

Equation 16: Dependencies Gap Markup Factor -

- **Risks base markup**

The risks base markup factor models a management reserve related to the implementation aspect ‘risks’.

$$\text{Risks base markup factor} = 5\%$$

Equation 17: Risks Base Markup Factor

- **Risks gap markup**

The risks gap markup factor models the additional effort required to deploy and integrate a collaboratively developed IT components locally.

$$\text{Risks gap markup factor} = 20\%$$

Equation 18: Risks Gap Markup Factor

\* \*  
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## **APPENDIX 24: DETAILED RESULTS OF THE FEASIBILITY MATURITY MODEL**

203. The following embedded Excel files contain the detailed results of the feasibility maturity model. They contain the measurements used to determine the gaps and challenges scores of a participating MS, the baseline scenario and the worst-case scenario. They also include the calculation for the AI's initial implementation cost estimation.

### **24.1 COUNTRY A**

*See separate enclosure “Appendix 24 - 01 - FMM Results Country A”.*

### **24.2 COUNTRY B**

*See separate enclosure “Appendix 24 - 02 - FMM Results Country B”.*

### **24.3 COUNTRY C**

*See separate enclosure “Appendix 24 - 03 - FMM Results Country C”.*

### **24.4 COUNTRY D**

*See separate enclosure “Appendix 24 - 04 - FMM Results Country D”.*

### **24.5 COUNTRY E**

*See separate enclosure “Appendix 24 - 05 - FMM Results Country E”.*

### **24.6 COUNTRY F**

*See separate enclosure “Appendix 24 - 06 - FMM Results Country F”.*

### **24.7 COUNTRY G**

*See separate enclosure “Appendix 24 - 07 - FMM Results Country G”.*

### **24.8 COUNTRY H**

*See separate enclosure “Appendix 24 - 08 - FMM Results Country H”.*

### **24.9 BASELINE**

*See separate enclosure “Appendix 24 - 09 - FMM Results Baseline”.*

### **24.10 WORST CASE**

*See separate enclosure “Appendix 24 - 10 - FMM Results worst case”.*

## 24.11 GENERIC AI

*See separate enclosure “Appendix 24 - 11 - FMM Results AI”.*

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## APPENDIX 25: COST-BENEFIT ANALYSIS METHODOLOGY AND APPROACH

### 25.1 OBJECTIVE

204. **Cost-Benefit Analysis.** In order to determine whether the advantages of a particular action (i.e. implementation of a new WHT relief at source Model based on the guidelines of the FISCO Recommendation) are likely to outweigh its drawbacks, a CBA is performed. While not intended to be the only basis for decision making, CBA can be a valuable aid to policy and decision makers.

205. **Scope.** The CBA considers two Models: the AIC Model and the SC Model (58). Four groups of stakeholders constitute the stakeholder population under investigation: the EU MSs’ tax administrations; the Authorised/Financial Intermediaries; the Investors; and the EU budget. The analysis focuses on three situations:

- The current situation;
- The future situation implying the implementation of the AIC Model;
- The future situation implying the implementation of the SC Model.

The CBA also involves the identification of advantages and disadvantages of the selected Models in terms of e.g. effectiveness and efficiency. Special attention is paid to the consequences of operating two systems in parallel (i.e. one for the EU and one for third countries). The CBA will also estimate the economic and administrative impact.

The analysis is focused on European stakeholders groups. Five EU MSs in particular have accepted to participate in the study, as well as 16 Financial Intermediaries established in the EU.

### 25.2 APPROACH

We have opted for a pragmatic approach in regards economic data collection and analysis.

206. **Pragmatic Approach.** A pragmatic approach is warranted in order to ensure the collection of relevant data of sufficient quality. This is especially important as our data collection is carried out on a voluntary basis by the majority of stakeholders. Also, each stakeholder group has particular concerns, which necessitates a more sophisticated approach to data gathering than a “one-size-fits-all” questionnaire. At the same time, all data collection and subsequent analysis is rooted (as much as possible) in the proven methodology of the Standard Cost Model (SCM, see below). This allows for the drawing of inferences that are sufficiently robust.

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58 We refer to the chapter 5 for the detailed presentation of the two models.



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## 25.2.1 ECONOMIC DATA COLLECTION

### 25.2.1.1 INTRODUCTION

The economic data collection is executed on the basis of a purposefully developed questionnaire, which includes quantitative and qualitative questions. The quantitative sections are guided by the SCM. The data collection and interpretation typically involve the conduct of interviews (face-to-face or via telephone) with representatives of the stakeholder groups. Next to that, extensive desk research is performed, both for the elaboration of the questionnaire and the interpretation of the results.

207. **‘Standard Cost Model’ (SCM) Methodology** <sup>(59)</sup>. This methodology was developed in the Netherlands and was later adopted by the European Commission as a common EU methodology for measuring administrative costs of legislation. Since then, it has been further elaborated, described and refined by the SCM Network. According to the SCM Network, the SCM <sup>(60)</sup>

*“Is a method for determining the administrative burdens for businesses imposed by regulation. It is a quantitative methodology that can be applied in all countries and at different levels. The method can be used to measure a single law, selected areas of legislation or to perform a baseline measurement of all legislation in a country. Furthermore the SCM is also suitable for measuring simplification proposals as well as the administrative consequences of a new legislative proposal.”*

208. **Questionnaire and Interviews.** For the collection of relevant information from the various stakeholder groups, different questionnaires have been elaborated. The questionnaires are aimed at collecting both general and detailed information on the costs/benefits and the advantages/disadvantages of particular situations (i.e. the current and future situations). Upon completion of the questionnaire, follow-up interviews have been executed with representatives of the stakeholder groups to challenge the results and provide additional information.

209. **Desk Research.** A third way of collecting relevant economic data consists of doing a desk research. The desk research includes but is not limited to consulting sources, such as the OECD, the European Commission and the European Banking Federation. In addition, the relevant (electronic) databases of academic institutions have been consulted, in the absence of good data from the previous sources and upon acceptance of the European Commission.

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59 International Standard Cost Model Manual, SCM Network, <http://www.oecd.org/dataoecd/32/54/34227698.pdf>

60 International Standard Cost Model Manual, SCM Network, p. 2. <http://www.oecd.org/dataoecd/32/54/34227698.pdf>

### 25.2.1.2 MEMBER STATES’ TAX ADMINISTRATIONS

**210. Economic Data Collection.** We have developed a questionnaire specifically aimed at collecting economic data from representatives of tax administrations – that is, information pertaining to the costs incurred in complying with statutory requirements arising from the application of WHT relief at source procedure applied currently and those applied in a future situation.

The economic data collection was performed in four phases, sub-divided into eight steps as described in the exhibit below:

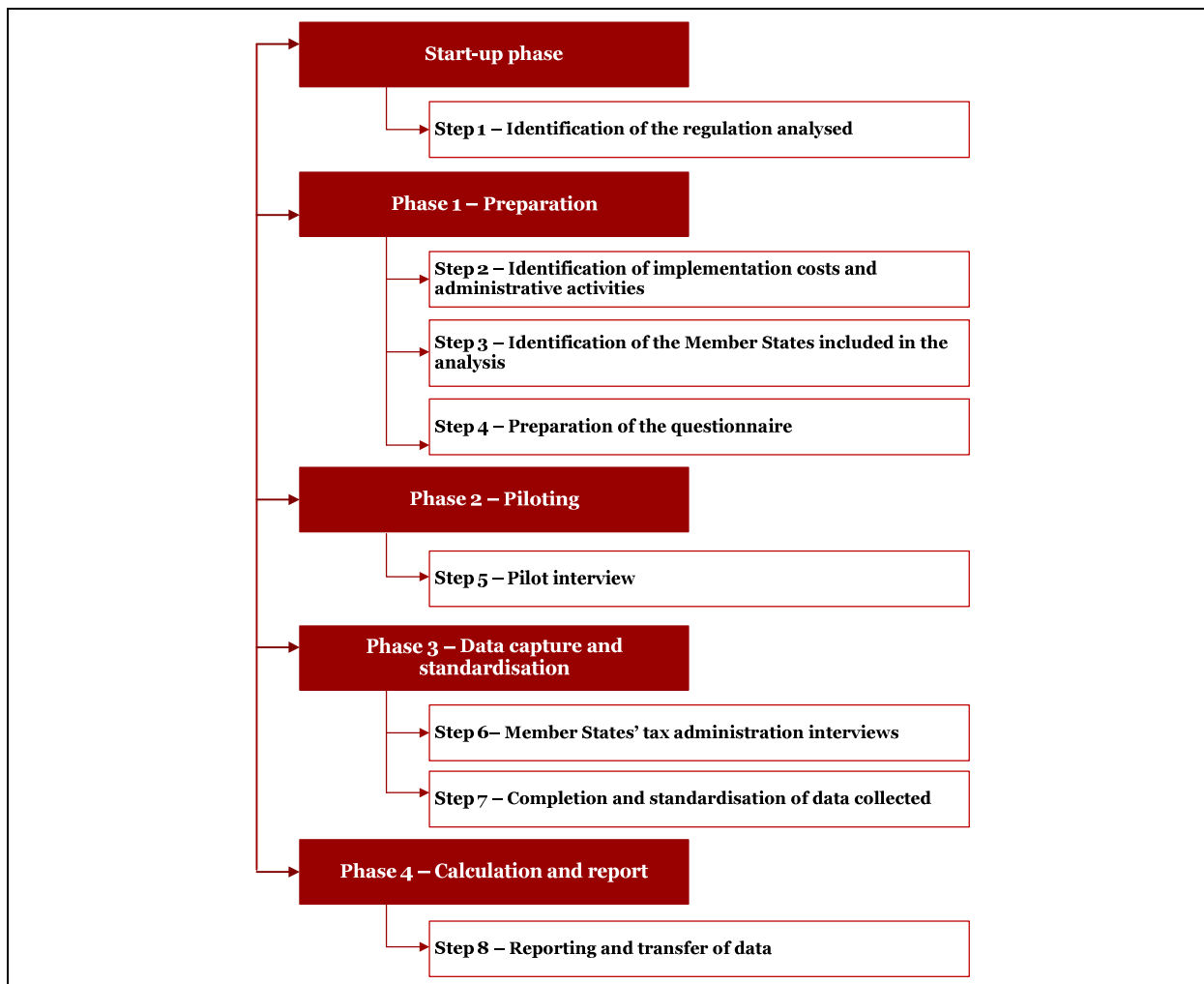


Figure 13: Process of Economic Data Collection for MSs’ Tax Administrations

- **Step 1 – Identification of the Regulation Analysed**

A preliminary and essential step is to review the current legislation in regards relief at source and refund procedures, as well as the FISCO Recommendation and the Implementation Package. This analysis allows us to define the scope and the limits of both future Models, and to draw up the list of activities that are necessary in each situation under the investigation.

This first step has led to an enhanced understanding of the current working Model of WHT and how the future may look like in case the AIC Model and/or SC Model are implemented.

- **Step 2 – Identification of the Implementation Costs and Administrative Activities**
  - **Implementation Costs**

The SCM method is a way of breaking down regulation into a range of manageable components that can be measured. Each manageable component entails ‘*information obligations*’ (IOs) (61) that come from European and/or national authorities and are imposed on businesses and/or citizens.

When regulatory initiatives are initiated at the European level, EU MSs need to take specific measures and actions that can be captured as so-called implementation costs. The implementation costs that are incurred by the EU Member States’ tax administrations due to the implementation of the relief at source and refund procedures are linked to:

- Issuance of the Certificate of Residence or other forms to be signed by the RC tax administration (current situation);
- Exchange of information (under EUSD – current situation, under AIC Model – future situation, and under SC Model – future situation);
- Relief at source procedures (current situation);
- Refund (current situation).

The implementation costs of EU MSs’ tax administrations can be attributed to cost parameters related to work done internally and/or to cost parameters related to work done by external advisors (e.g. fees for external experts, outsourcing costs, and cost of acquisitions) (62).

- **Administrative Activities**

The activities that tax administrations are required to enact in light of the implementation of regulation are subdivided into two categories:

- One-off (or start-up) activities are those that have to be performed once only (i.e. set up implementation costs);
- Recurring activities are those that the tax administration has to perform on a periodic basis (i.e. recurring implementation costs).

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61 This concept is defined by the SCM Manual as ‘*the obligations arising from regulation to provide information and data to the public sector or third parties.*’

62 See International Standard Cost Model Manual, p.34 (<http://www.oecd.org/dataoecd/32/54/34227698.pdf>).

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These two costs categories relate to the time spent by civil servants within the selected EU MSs’ tax administration and are calculated using the time spent, the frequency and the wage rate for each activity. The basic SCM formula in order to obtain the cost related to a certain activity is the following:

$$\text{Cost per administrative activity} = \text{Price} \times \text{Time} \times \text{Quantity (population} \times \text{frequency)}$$

where:

- “**Price**” consists of a tariff, wage costs plus overhead for administrative activities done internally or hourly cost for external service providers;
- “**Time**”, the amount of time required to complete the administrative activity;
- “**Quantity**” comprises of the size of the population affected and the frequency that the activity must be completed each year (63).

Time is assessed by the selected EU MSs’ tax administrations. As regards the wage level, the selected EU MSs’ tax administrations provided us with the resource type (support administrative personnel, executive administrative personnel or management) that performs the activity and the wage level corresponding to this resource type (64).

Next to the time-driven costs, there are ‘acquisition costs’ which consist of expenditure on necessary acquisitions, such as costs incurred for an external IT development or mailing costs.

In the current situation, we will specify activities that are performed today in light of the current exchange of information under EUSD (Savings Directive), refund, issuance of the Certificate of Residence and WHT relief at source procedures. It will provide a view on the implementation costs that EU MSs’ tax administrations face today.

In the future situation, we will make the distinction between the two Models. For each Model, we have specified activities for completing each of the activities. The EU MSs’ tax administrations are requested to identify the costs of these activities.

For each situation, we will assess the activities that are performed by the SC, the RC and/or AIC – if the AI is not situated in the SC or RC in the AIC Model.

- **Step 3 – Identification of the EU MSs Included in the Analysis**

The EU MSs have been selected on a voluntary basis. They expressed willingness to participate in the study to the European Commission. Ten EU MSs have been selected for the purpose of the CBA. This selection was aimed at covering all processes in relation with the refund or relief at source procedures:

63 The variable “quantity” will be only assessed for the EU MSs in scope.

64 In general, the wage applied in a MS administration is related to defined wage-scale that is published for certain MSs (e.g. Belgium).

1. Refund process;
2. Electronic refund process;
3. Quick refund process;
4. Relief at source process;
5. Issuance of a Certificate of Residence (of any document with the same purpose) process.

Each of the processes identified are covered by at least two EU MSs.

- **Step 4 – Preparation of the Questionnaire**

In order to gather the responses of the tax administrations in an efficient manner, a questionnaire (under word format) entitled ‘Questionnaire to FISCALIS Project Group Members’ was prepared. The questionnaire consists of four parts:

- Part I – Introduction: presents the SCM methodology and the CBA;
- Part II – General information: helps us to understand how the tax administration is organised and executes the required activities;
- Part III – Current situation: results in an estimate of the implementation costs associated with the current exchange of information under EUSD (Savings Directive), refund, issuance of the Certificate of Residence and WHT relief at source procedures;
- Part IV – Future situation: results in an estimate of the implementation costs associated with the two Models.

The questionnaire makes a number of distinctions:

- **Current versus Future Situation:** all the current activities that are performed by the tax administrations of the EU MSs are listed, as well as the activities that they will need to perform to comply with the recommendation in the future situation;
- **Quantitative versus Qualitative Assessment:** The questionnaire includes quantitative and qualitative questions. The quantitative questions center on the estimation of the costs incurred due to the application of WHT relief at source procedure. This estimation is performed via an excel sheet enclosed in the main word document and it is constructed on the basis of the SCM;

Qualitative questions are added to provide for additional and anecdotal feedback that may shed additional light on the quantitative results. They also give the opportunity to respondents to express (in more general terms) a number of advantages, disadvantages of the current and future situations;

- **AIC Model versus SC Model:** In the future situation, a distinction is made between the situation where the AIC Model is applied and the situation where the SC Model is applied;
- **Relief at Source versus Refund:** A distinction is made between the different procedures to withhold tax: relief at source procedure and refund procedure;
- **RC, SC and AIC:** Each EU MSs can play different roles within the WHT procedure. According to these different roles, the activities and, hence, costs will be different if the EU MS acts as a RC, a SC or an AIC. Moreover, these roles can also be combined.

The questionnaire was designed to be addressed to the representative of the EU MSs’ tax administration within the FISCALIS Project Group. The representatives were free to decide on the most appropriate staff member within the administration to complete the questionnaire and conduct the interview with a PwC consultant. An internal quality validation (including language check) of the questionnaire was carried out.

Next to this main questionnaire, a simplified version of this questionnaire has been drafted and sent to the MSs in order to increase the participation rate. This simplified version only contained a limited quantitative part of the initial questionnaire.

- **Step 5 – Pilot Interview**

The questionnaire was tested in a pilot interview with an eye to highlighting problems and identifying potential areas of misunderstanding. More specifically, the pilot enabled us to assess (non-exhaustive list):

- Whether the questions were capable of eliciting the required response;
- Whether the questions were ordered appropriately;
- Whether the questions were understood by the respondent;
- Whether additional questions were required or any questions could be deleted;
- Whether the instructions provided in the introductory note were adequate.

- **Step 6 – EU MSs’ Tax Administration Interviews**

The questionnaire was distributed to respondents within the selected EU MSs via e-mail by the European Commission.

Upon submission of the completed questionnaire, we conducted a follow-up telephone or face-to-face interview to further discuss and confirm the answers to the questions. Typically, two consultants of the PwC Project Team performed the interviews.

Our interlocutor during the follow-up interview was typically the same staff member who had completed the questionnaire.

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- **Step 7 – Completion and Standardisation of Data Collected**

All quantitative data was grouped in one data sheet and standardised in terms of currency and resource costs. An overhead percentage of 25% <sup>(65)</sup> has been applied to the internal <sup>(66)</sup> hourly wages cost (including social security charges).

In order to ensure consistent data input and tabulation, one PwC consultant was dedicated to this task.

- **Step 8 – Reporting and Transfer of Data**

The analysis of the qualitative and quantitative data is the last step. The results have been presented in the final report of our study.

### 25.2.1.3 AUTHORISED/FINANCIAL INTERMEDIARIES

**211. Business Representatives Questionnaire.** The data collection in regards the Authorised/Financial Intermediaries has also been done on the basis of a questionnaire. This questionnaire has been forwarded to 16 Financial Intermediaries which have been identified by the European Commission (previous members of the T-BAG) and by the EU MSs and national banking federations (two of them also took part to the study). They participate on a voluntary basis. The FIs cover 9 countries: Austria, Belgium, Finland, France, Germany, Luxemburg, The Netherlands, Romania and the United kingdom.

The questionnaire is divided in five sections:

- Introduction;
- Identification;
- General information;
- Cost estimation;
- Qualitative assessment.

The purpose of the questionnaire is to collect relevant data in order to perform the CBA and assess the advantages and disadvantages of the two Models in terms of general effectiveness and efficiency.

The questionnaire is distributed by the European Commission to the representatives of the T-BAG and to MSs. The latter will forward the questionnaire to representative of the

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<sup>65</sup> The SCM Manual describes different overhead percentages for specific countries and/or sectors. They vary from 25 to 50%. For the purpose of this study and in accordance with SCM recommendations, we decided to use the lower limit, i.e. 25%, as overhead. This working assumption allows us to guarantee uniformity for all companies and countries.

<sup>66</sup> This corresponds to the wage paid by the company for one or more of its own employees. The overhead percentage does not apply if the company has engaged an external service provider to carry out the activity.

Authorised/Financial Intermediaries established in their territories who are willing to participate in the study.

A pilot test is carried out in order to highlight problems and identifying potential areas of misunderstanding.

Where needed, follow-up interviews (by telephone) have been carried out after reviewing the Financial Intermediaries' submission. The purpose of the follow-up interviews is to discuss potential outliers and/or unexpected results and, more fundamentally, through discussion buttress the findings.

212. **DG MARK Study.** Next to the questionnaire, desk research has been performed in order to collect additional data, initially focussing on the DG MARKT study published in 2009 <sup>(67)</sup>.

#### 25.2.1.4 INVESTORS

The data collection in respect to the Investors is conducted through desk research. Several sources have been consulted:

- Websites: international organisations, e.g. IMF, Eurostat ;
- Studies from the European Commission: all relevant studies conducted by the European Commission are be considered. It was decided with the European Commission that the most important one is the DG MARKT study: « The Economic Impact of the European Commission Recommendation on Withholding Tax Relief Procedures and the FISCO Proposals», DG MARKT, 2009;
- Other studies: “Report of the informal consultative group on the taxation of CIVs and procedures for tax relief at source for cross-border Investors on possible improvements to procedures for tax relief at source for cross-border Investors, OECD, 2009.

#### 25.2.1.5 EU BUDGET

In order to capture relevant data on the impact on the EU budget, an interview with staff members (i.e. business managers, IT specialists and FISCALIS representatives) of the European Commission has been organised. This interview was aimed at identifying the major cost drivers that will affect the EU Budget in case of the implementation of the AIC and/or SC Models.

Afterwards, a detailed questionnaire has been sent to the EC in order to complete the quantitative and qualitative data based on the information collected during the interview.

Next to the meeting and questionnaire mentioned above, desk research has also been carried out. Several sources have been consulted:

- Websites: international organisations, e.g. IMF, Eurostat ;

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<sup>67</sup> “The Economic Impact of the Commission Recommendation on Withholding Tax Relief Procedures and the FISCO Proposals”, European Commission, 2009.



- Studies from European Commission: “The Economic Impact of the European Commission Recommendation on Withholding Tax Relief Procedures and the FISCO Proposals”, DG MARKT, 2009; “Tax Barriers Business Advisory Group – Draft report” August 2011;
- Other studies: “Report of the informal consultative group on the taxation of CIVs and procedures for tax relief for cross-border Investors on possible improvements to procedures for tax relief for cross-border Investors”, OECD, 2009.

### 25.2.2 ECONOMIC DATA ANALYSIS

All the data gathered for the four stakeholder groups have been analysed in depth in order to draw inferences on:

- The costs vs. benefits of the selected two Models;
- The general advantages and disadvantages of the selected two Models;
- The general economic and administrative impacts.

All quantitative data have been standardised in terms of currency and cost resources. This will allow the comparison of data.

The data have been cross-checked among the stakeholder groups in order to ensure the coherence of our conclusions. Indeed, an economy is characterized by several actors who constantly have interactions. Those interactions and the choice made by certain actors can considerably impact the other actors. For example, a WHT relief at source Model that negatively impacts the Financial Intermediaries (higher cost) would probably also negatively impact the Investors. This relationship may be explained by the fact that the Financial Intermediaries are likely to transfer their cost onto their clients, the Investors. Consequently, attention has been paid to the interconnections among the four stakeholder groups.

The data obtained through the fraud, IT and tax/legal analysis have been used in order to complete our CBA. For example, the IT cost is a major factor that needs to be considered in our CBA. The purpose is then to obtain a comprehensive CBA.

### 25.3 CAVEATS

In order to correctly interpret and use the results of the CBA, certain caveats need to be considered.

The CBA is executed on the basis of a limited sample of five EU MSs’ tax administrations and 16 case-study Financial Intermediaries. Although this research design is not likely to yield statistically relevant results, it will enable us to draw inferences that are methodologically robust.

Our approach and the results it generates hinge upon the respondents’ understanding of the AIC Model and SC Model. Therefore, we have spent considerable effort on explaining to the

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respondents the purpose of the study and the working Model underpinning the AIC and SC Model.

Finally, the results and conclusions are only as good as the data from which they are drawn. Therefore, we have done our utmost to collect relevant data of sufficient quality from the various stakeholder groups. However, the MSs and the FIs experienced difficulties to provide meaningful and timely quantitative data (collection data based on activity-based-costing methodology) and this can be explained by the following factors:

- **Timing:** As already mentioned several times in the report, the environment is evolving quite fast and the MSs and/or FIs had to deal with other priorities (i.e.: FATCA) at the same time and could not therefore devote the time they would have liked to the current exercise.
- **Data confidentiality:** some MSs mentioned that quantitative data on the costs for each process exist but cannot be transmitted because they are considered as confidential.
- **Partial view of the future models:** the respondents have a clear view of the main principles of the SC and AIC Models, but do not have a perfect understanding of the operational details of each Model as those are not yet defined. This hampered their ability to provide accurate and detailed cost information.
- **Level of knowledge of the respondents:** as the majority of the respondents hold a strategic position in the hierarchy of the TA of the MSs, they are less involved on day-to-day basis activities undertaken. It constraints their view on the precise time allocated to specific activities and slowed down the process for collecting the data.
- **Time-consuming exercise:** An activity-based-costing exercise is time-consuming. Certain stakeholders who have received the questionnaire clearly mentioned that they were not able to properly complete the questionnaire considering the delay imposed for the study purposes.
- **Absence of internal tools allowing an activity-based-costing exercise:** Linked to the time consuming aspect mentioned above, the MSs interviewed have not yet developed internal tools in order to support such an activity-based-costing exercise. Consequently, they struggled to find the information and provide it within the timing of the study.
- **Decentralised organisation:** certain processes are carried out at a local level (e.g. issuance of the Certificate of Residence) or are not performed by a dedicated team. The data collection by the tax administrations is then more difficult in such a “short time frame”.

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## **APPENDIX 26: CROSS BORDER INVESTMENTS (SHARE AND DEBT) IN 2010 AND INTEREST AND DIVIDEND RATES IN 2011**

*Cf. separate enclosure “Appendix 26 - Investments, Interest & Dividends”.*

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## APPENDIX 27: VOLUMETRICS CALCULATION

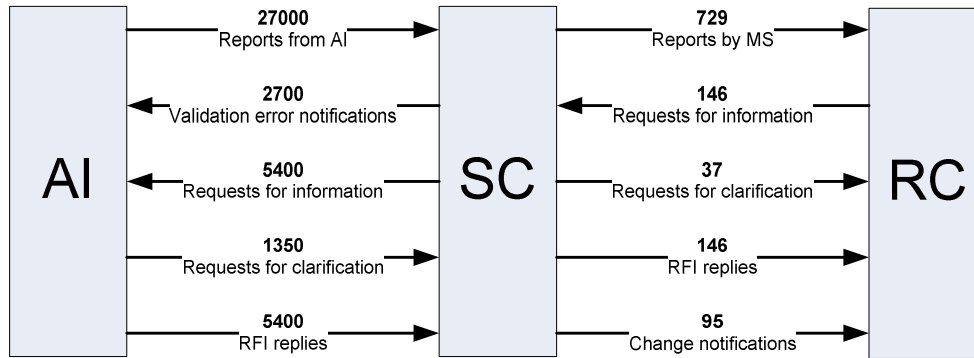
213. **Volumetrics calculation and assumptions.** This appendix contains the volumetrics calculation and assumptions used to compare the load of information exchanges under the AIC Model and the SC Model.

214. **Assumptions.** The volumetrics calculation is based on the following assumptions:

- 27 MSs will participate in the standardised relief at source system;
- Across all MSs, a 1,000 AIs will participate in the standardised relief at source system;
- 10% of the reports sent from AIs to TAs and exchanged between TAs have validation errors and cause a validation error notification for the sending party;
- 20% of the received reports will lead to a request for information as certain data is missing or incorrect;
- 25% of the requests for information will lead to a request for clarification as the request for information is not understood or incomplete;
- 65% of the requests for information will lead to a change notification.

215. **Exchanged information.** These assumptions lead to the following overview of exchanged messages between AIs and TAs.

# SC Model (annually)



# AIC Model (annually)

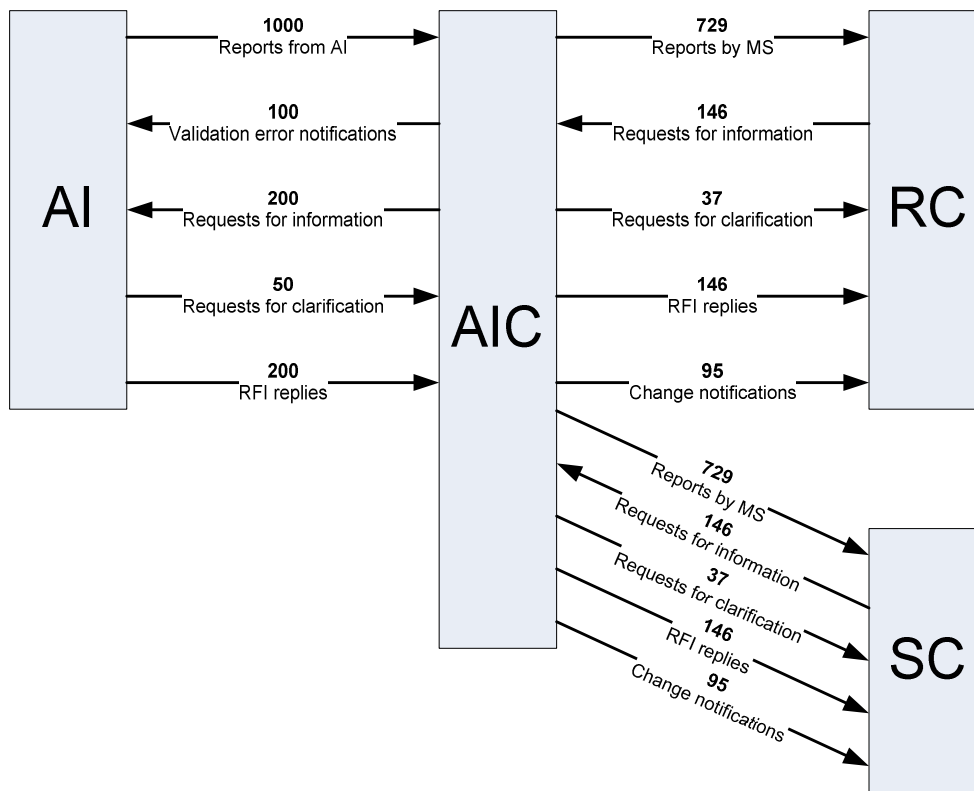


Figure 14: Exchanged messages in a standardised relief at source system

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## APPENDIX 27: VOLUMETRICS CALCULATION

216. **Calculation.** An analysis of the annual information flow illustrated above shows that the SC Model, compared to the AIC Model, relies on significantly more message:

- Under the current assumption the AIC Model would only need 8,94% of the messages required under the SC Model;
- Under the SC Model 43,003 message in total (across AIs, SCs and RCs) need to be exchanged;
  - 41,850 of these 43,003 message are exchanged between AIs and SCs;
  - 1153 of these 43,003 message are exchanged between SCs and RCs;
- Under the AIC Model 3,843 message in total (across AIs, AICs, SCs and RCs) need to be exchanged;
  - 1,550 of these 3,843 message are exchanged between AIs and AICs;
  - 1153 of these 3,843 message are exchanged between AICs and RCs;
  - 1140 of these 3,843 message are exchanged between AICs and SCs.

217. **Compared to Common Custom Network (CCN) workload.** A comparison of the amount of required annual message under both Models against the 1,2 billion annual messages, which are currently handled by 5 CCN, leads to the conclusion, that the additional messages caused by a standardised relief at source system are insignificant:

- Under the SC Model, the additional messages to be exchanged would lead to an increase of 0.0036% in annual messages;
- Under the AIC Model, the additional messages to be exchanged would lead to an increase of 0.0003% in annual messages.

218. **Conclusion.** The AIC Model needs significantly less additional messages per year compared to the SC Model (3,843 vs. 43,003 messages). Compared to the load of messages the CCN is currently handling per year (1.2 billion messages) the additional messages needed under a standardised relief at source system are insignificant.

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## APPENDIX 28: STANDARDISED RELIEF AT SOURCE ARCHITECTURE

### 28.1 INTRODUCTION

219. **Introduction.** This appendix first elaborates on the aspect of a common architecture. It then describes the structure behind the standardised relief at source architecture. It provides an overview of the architecture and concludes with its evaluation.

### 28.2 THE STANDARDISED RELIEF AT SOURCE ARCHITECTURE SUPPORTS BOTH MODELS

220. **Common Architecture.** In order to participate in a standardised relief at source system, a TA has to perform multiple roles (SC, RC and AIC). A comparison of the tasks a TA needs to perform under the AIC and SC Models shows a big overlap. This suggests also a big overlap of the IT architecture on the conceptual (IT functionality) and logical architecture level (IT components), as the IT architecture is directly derived from the two operating models. In addition, no decision has been made yet on which standardised relief at source system will be implemented. Hence this study develops a standardised relief at source architecture by first developing two architectures – one for each Model – and then deriving a common architecture from the two model-specific architectures. This common architecture supports both Models and offers therefore the required flexibility with regard to the decision on a standardised relief at source system.

221. **Alignment between the IT Architecture and the Description of the two Models.** By using the documentation of both operating models as two sets of high and mid-level functional business requirements, the study ensures a proper alignment between the architecture and the two Models to be supported.

222. **TOGAF based Methodology.** The study uses an architecture development method based on TOGAF. Appendix 16 describes this development method in detail.

223. **Structure Used to Document the Architecture.** For a better understanding of the architecture developed, the study first describes the structure used to document the architecture before providing an overview of the standardised relief at source architecture.

### 28.3 THE STRUCTURE BEHIND THE STANDARDISED RELIEF AT SOURCE ARCHITECTURE

224. **Architectural Artefacts.** The study documents the architecture with the help of architecture artefacts: information objects, IT functionalities, logical application components, interfaces, platform services, logical technology components. To get a better understanding of these architecture artefacts, the table below lists some examples per artefact type. The examples are taken from the architecture developed.

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ARCHITECTURAL ARTEFACT	EXAMPLES
Information objects	Relief at source reports exchanged between AIs and TAs; contact details.
IT functionalities	Generate/transfer/validate/reconcile/show a certain report.
Logical application components	Reporting component, validation component, contact data administration component.
Interfaces between IT functionalities and between logical application components	The IT functionality “validate report” uses “get report” to receive the to-be-validated report. Hence an interface is needed between the two IT functionalities “validate report” and “get report”.  As these two IT functionalities are provided by two different logical application components (“validation component” and “reporting component”), an interface between those two logical application components is required.
Platform services	Backup services, security access services, data storage services.
Logical technology components	Backup server, internet access, database server.

Table 14: Examples of architecture artefacts

225. **Appendices.** The architecture developed consists of several hundred architecture artefacts. These architecture artefacts are presented in architecture views like posters or lists. Appendix 17 contains all architecture artefacts and views. Appendix 18 contains a descriptive set of non-functional requirements. The information security assessment used to elaborate on confidentiality, integrity and availability aspects of the IT architecture can be found in Appendix 19.

## 28.4 AN OVERVIEW OF THE STANDARDISED RELIEF AT SOURCE ARCHITECTURE

226. **Overview of the Standardised Relief at Source Architecture.** The following overview tries to present the architecture developed. It starts listing the identified high-level use cases. It then presents the different logical application components used per use case. As the used logical application components depend on an IT infrastructure, the supporting logical technology components are listed. At the end, some architecture drawings are presented. They visualise the IT components and their interfaces needed by TAs and AIs to support the information exchange under a standardised relief at source system.



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227. **The Identified High-Level Use Cases.** Both operating models are described with the help of a process flow and process description (Appendices 3, 6 and 7). Both operating models group process steps into phases. The IT architecture feasibility study interprets these phases as high-level use cases. The table below lists these high-level use cases (UCs) per Model and actor. These use cases provide a high-level overview of the tasks TAs and AIs need to perform under the AIC or SC Model. The UC sequence corresponds to the step ID used in the two process flows.

MODEL	UC SEQUENCE	ACTOR	UC NAME
AIC	1	AI	Report generation by AI
AIC	2	AIC	Treatment of reports by AIC
AIC	3	AIC	Analysis of the information by AIC acting as SC or RC
AIC	4	SC	Analysis of the information by SC
AIC	5	RC	Analysis of the information by RC
AIC	6	AIC	Treatment of a RFI by AIC
AIC	7	AI	Treatment of a RFI by AI
AIC	8	AIC	Treatment of a reply message from AI by AIC
SC	1	AI	Report generation by AI
SC	2	SC	Treatment of reports by SC
SC	3	SC	Analysis of the information by SC
SC	4	RC	Analysis of the information by RC
SC	5	SC	Treatment of a RFI by SC
SC	6	AI	Treatment of a RFI by AI
SC	7	SC	Treatment of a reply message from AI by SC

Table 15: List of high-level use cases per Model

228. **The Logical Application Components Used per Identified High-Level Use Case.** Based on the insights into both operating models, the study identifies the different information objects (e.g. relief at source reports exchanged, RFIs or contact details) which are used as

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input or output within the different process steps. The study then identifies the IT functionalities needed per process step and information object (e.g. ‘generate report’, ‘send validation error notification’ or ‘validate report’). The identified information objects and IT functionalities are then grouped into logical application components (e.g. reporting component, validation component). Appendix 16 contains more information on the used architecture development method.

229. **Relationships.** The following three rules reflect these relationships between high-level use cases, process steps, information objects, IT functionalities and logical application components:

- A high-level use case groups process steps;
- A process step uses information objects and IT functionalities;
- A logical application component provides information objects and IT functionalities.

230. **Logical Application Components Needed.** The table below illustrates the resulting cross-reference between high-level use cases and the logical application components needed (LAC). The LAC glossary in Appendix 17 contains a detailed description of each logical application component.

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Process	UC seq.	Actor	UC name	AI Account administration component	AI Client administration component	AI Reconciliation component	AI Reporting component	AI Transaction administration component	AI Validation component	Contact administration component	AI Orchestration component	Encryption component	RaaS Communication component	TA Reconciliation component	TA Reporting component	TA Tax controlling component	Transfer component	TA Orchestration component
AIC	1	AI	Report generation by AI	X	X	X	X	X	X	X	X						X	
AIC	2	AIC	Treatment of reports by AIC						X	X	X		X	X		X	X	
AIC	3	AIC	Analysis of the information by AIC acting as SC or RC							X	X	X		X	X	X	X	X
AIC	4	SC	Analysis of the information by SC						X	X	X	X		X	X	X	X	X
AIC	5	RC	Analysis of the information by RC						X	X	X	X		X	X	X	X	X
AIC	6	AIC	Treatment of a RFI by AIC						X	X	X	X		X			X	X
AIC	7	AI	Treatment of a RFI by AI						X	X	X	X					X	X
AIC	8	AIC	Treatment of a reply message from AI by AIC						X	X	X	X					X	X
SC	1	AI	Report generation by AI	X	X	X	X	X	X	X	X						X	X
SC	2	SC	Treatment of reports by SC						X	X	X		X	X		X	X	X
SC	3	SC	Analysis of the information by SC							X	X	X		X	X	X	X	X
SC	4	RC	Analysis of the information by RC						X	X	X	X		X	X	X	X	X
SC	5	SC	Treatment of a RFI by SC						X	X	X	X		X			X	X
SC	6	AI	Treatment of a RFI by AI						X	X	X	X					X	X
SC	7	SC	Treatment of a reply message from AI by SC						X	X	X	X					X	X

Table 16: Logical application components needed per actor and high-level use case

**231. Logical Technology Components Needed per Logical Application Component Used.**

In order to provide the logical application components mentioned above, a certain IT infrastructure needs to be implemented. The study uses logical technology components like ‘backup server’ or ‘common desktop environment’ and their platform services to describe the logical IT infrastructure needed.

**232. Relationships.** The study defines the following four rules which describe the relationships between logical application components and logical technology components:

- **A** = a logical application component is accessed by a logical technology component;
- **H** = a logical application component is hosted on a logical technology component;
- **M** = a logical application component is monitored by a logical technology component;
- **U** = a logical application component uses services from a logical technology component.

**233. Cross-reference between logical application components and the logical technology components needed.**

An analysis of these components and their interdependencies leads to the following cross-reference between logical application components and the logical technology components needed (LTCs). Appendix 16 contains more information on the used architecture development method. Analogous to the LAC glossary, a LTC glossary (Appendix 17) contains a description of each logical technology component.

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Logical Application Component ID	Logical Application Component Name	Back-office server	Back-up server	Common desktop environment	Front office server	Internet access	Internet security	Mail server	Management server	Office network	Orchestration server	Printer	Security	Storage server
1	AI Client administration component	H	U	A				M	U	A	U	U	U	
2	AI Account administration component	H	U	A				M	U	A	U	U	U	
3	AI Transaction administration component	H	U	A				M	U	A	U	U	U	
4	RaS Communication component	H	U	A			U	M	U	A	U	U	U	
5	TA Tax controlling component	H		A				M	U	A	U	U	U	
6	AI Reporting component	H	U	A				M	U	A	U	U	U	
7	TA Reporting component	H		A				M	U	A	U	U	U	
8	AI Validation component	H	U	A				M	U	A	U	U	U	
9	TA Validation component	H		A				M	U	A	U	U	U	
10	AI Reconciliation component	H	U	A				M	U	A	U	U	U	
11	TA Reconciliation component	H		A				M	U	A	U	U	U	
12	Encryption and signature component	H		A				M	U	A		U		
13	Transfer component			A	H	U	U	M	U	A		U		
14	Contact administration component	H	U	A				M	U	A	U	U	U	
15	AI Orchestration component			A				M	U	H		U		
16	TA Orchestration component			A				M	U	H		U		

Table 17: Relationships between logical application components and the logical technology components required

234. **High-Level Architecture Drawings.** The following architecture drawings help provide more insight into the required IT components and their interfaces. The following figure depicts the high-level communication paths between TAs and AIs of MSs participating in a standardised relief at source system. TAs receive relief at source reports from AIs via the internet or dedicated (leased) lines. TAs then use the Common Custom Network (CCN) to exchange relief at source reports with their peer TAs.

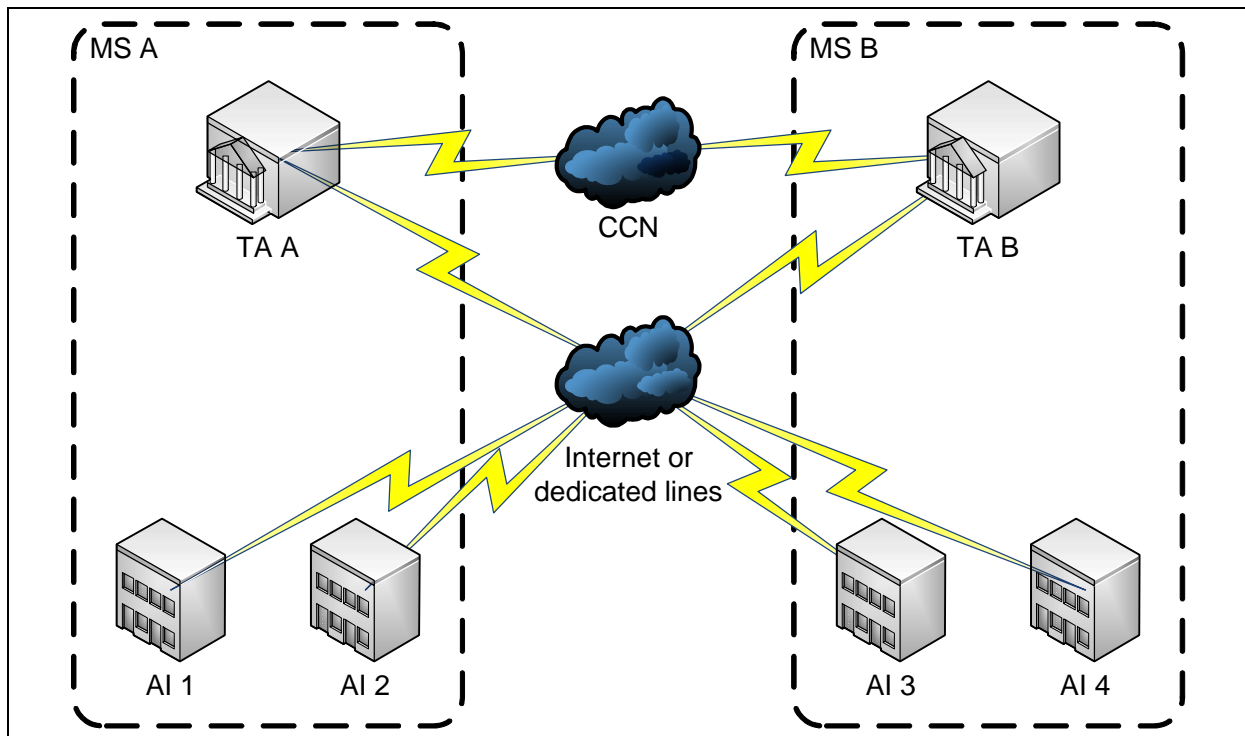


Figure 15: High-level overview of the connections between actors in a standardised relief at source system

235. **TA architecture.** The following figure illustrates the different identified logical application components used by a TA to facilitate its participation in a standardised relief at source system.

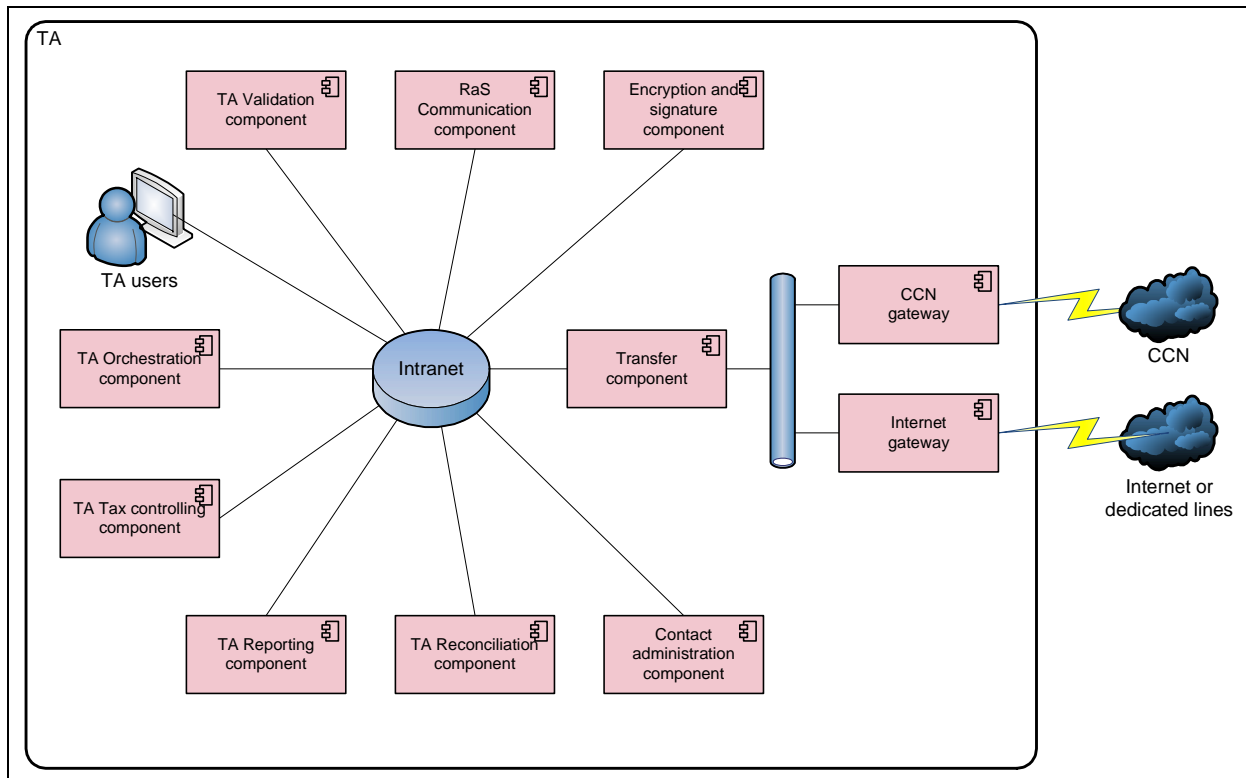


Figure 16: Logical application component overview of a TA

236. **AI architecture.** Analogous to the previous figure, the following figure depicts the different identified logical application components used by an AI to facilitate the participation in a standardised relief at source system.

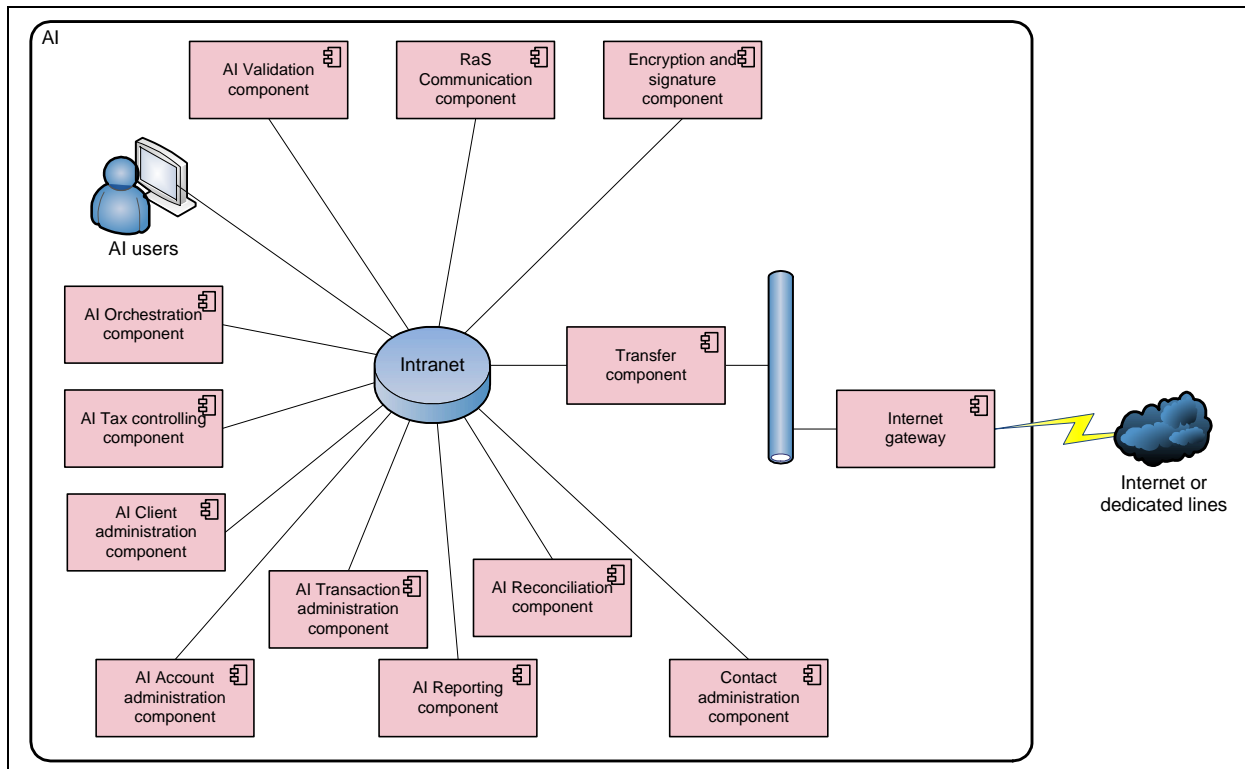


Figure 17: Logical application component overview of an AI

237. **Detailed architecture posters.** More detailed architecture posters containing the logical application components, including their IT functionality provided, interfaces and information objects provided/exchanged, can be found in Appendix 17.

## 28.5 EVALUATION OF THE STANDARDISED RELIEF AT SOURCE ARCHITECTURE

238. **Evaluation of the Standardised Relief at Source Architecture.** This subsection provides an evaluation of the standardised relief at source architecture. It focuses on (1) the coexistence of Models, (2) the integration with an AI’s or TA’s back-office systems and (3) the integration of third countries.

239. **The Architecture Can Support the Coexistence of Models.** MSs today participate in the current Savings Directive. In addition, some MSs and third countries are considering the possibility of introducing standardised relief at source systems which could lead to the consequence that MSs will support the AIC Model and/or the SC Model. Furthermore, financial institutions are being confronted with the upcoming implementation of FATCA. Hence a standardised relief at source architecture should be able to not only support the AIC or SC Model but also be able to facilitate – with some amendments – other reporting systems like FATCA.

240. **Derived from both Models.** The standardised relief at source architecture is directly derived from the AIC and SC Model. Hence, from a logical architecture point of view, the architecture developed provides a participating MS with the required IT capabilities to



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support the information exchange under the AIC and SC Model. In addition, the architecture is structured in such a way that it can be adapted and/or extended to serve other reporting requirements.

241. **Implication on physical architecture.** However, special care has to be taken when the logical architecture is translated into a physical architecture in order to ensure that the IT solution properly supports the coexistence of different Models and reporting systems. This study highlights several key aspects to be taken into account when implementing the IT solution and focuses on the coexistence of the AIC and SC Models.

- **Two Models, Semantic Interoperable Information Objects.** An efficient way of leveraging the IT solution for the AIC and SC Models is to ensure that both Models use one common set of information objects. The reports exchanged should use the same XML Schemas. This means that, if the IT solution is implemented properly, the same IT components for report generation, validation and reconciliation and for the management of RFIs and requests for clarification can be used for both Models.

However, if one common set cannot be achieved, the semantic interoperability has to be achieved by other means as reports must –regardless of their structure and/or format – be understood and processed in a semantically correct manner. The IT solution then requires a set of transformation capabilities to “translate” the reports of one Model into the corresponding ones of the other Model.

Hence a MS participating in the AIC Model can reuse the above listed IT components for the SC Model (and vice versa) without major amendments if one common set of information objects and their XML Schemas can be established.

If the common set of information objects and their XML Schemas cannot be established but the semantic interoperability can be achieved through a set of transformation capabilities, a MS has to implement the transformation capabilities in order to reuse the existing IT solution.

If no common set of information objects (incl. their XML Schemas) and no set of transformation capabilities can be established, a MS will face a cumbersome amendment of its IT solution to support the coexistence of both Models.

Hence the study identifies the need to ensure semantic interoperability between both Models by agreeing upon one common set of information objects (incl. their XML Schemas).

- **Two Models, One Standard for Exchanging Data.** Regardless of the Model, a TA needs to exchange data with AIs and other peer TAs. It therefore would be beneficial if one common standard – for both Models – for encrypting, digitally signing and exchanging data can be established. This would ensure, if the IT solution is implemented properly, that the encryption, e-signature and data transfer IT components can be used for both Models without major amendments.

However, if one common standard for encrypting, digitally signing and exchanging data cannot be achieved, the MSs and AIs will face a cumbersome amendment of their IT solution to support the different standards for exchanging data used under the AIC or SC Model.

**Two Models, One Intelligent IT Solution.** An IT solution supporting both Models must be “intelligent” enough to “know” when it needs to act under the AIC or SC Model. Embedding this “intelligence” into the IT solution and the related process and procedures leads to additional efforts to implement, operate and maintain the IT solution.

242. **More implications on physical architecture.** In addition, subsection 10.3.2 of the final report elaborates on differentiating factors between both Models when translating the logical architecture, developed by this study, into a physical architecture. These implications will also influence the coexistence of both Models.

243. **Harmonisation and standardisation.** Therefore, in the case where the IT solution needs to support the coexistence of Models, an even stronger emphasis on harmonisation and standardisation has to be made. A low level of standardisation will lead to a higher implementation and maintenance effort: higher costs and more time elapsed.

244. **Support of the Architecture for the Integration with the Existing Back-Office IT Systems of the TAs and AIs.** The architecture takes the integration with existing or future back-office systems of AIs and TAs into account. It ensures the proper exchange of information objects with these back-office systems through the following three conceptual integration patterns:

- **Manual Integration via the “Export”-IT Functionality of an Information Object.** The architecture includes an export functionality for each information object. This export functionality extracts the information object and provides it in the form of a file. The file can then be used to transfer and import the information object into other systems. The file extracted adheres to the agreed syntax, semantic and formatting standards of the standardised relief at source system to ensure interoperability.

This integration pattern helps in the case where back-office systems can only import files and do not offer more sophisticated integration possibilities. Usage scenarios, in which the sporadic export of information objects for further examination or manual tax controls is needed, also leverage this pattern.

In the case where back-office systems work with different syntax, semantic and formatting standards, transformation capabilities need to be put in place to ensure semantic interoperability.

However, this integration pattern should only be used in a controlled environment (tracking of changes and access control) to ensure the data confidentiality and integrity.

- **Machine-to-Machine Integration Via the “Get”-IT Functionality of an Information Object.** The architecture provides machine-to-machine interfaces. Back-office systems or

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other IT systems can retrieve each information object through its get functionality. This get functionality provides the information object according to the agreed syntax, semantic and formatting standards to ensure interoperability.

This pattern enables the information exchange with back-office systems which offer more sophisticated integration possibilities. Its main advantages are removing or minimising manual intervention, reducing costs and improving the integrity and quality of data.

Analogous to the first integration pattern, the integration with other systems might require transformation capabilities as the back-office system might use different data structures or formats.

The control and monitoring of the access rights and usage of the get functionality are important. Hence the implementation of this integration pattern also needs to include the related control and monitoring mechanisms to ensure the data confidentiality and integrity.

- **Machine-to-Machine Integration Via the “Provide Data Cube of”-IT Functionality of an Information Object.** The architecture does not include statistical reporting functionality. However, it caters for a “provide data cube of”-functionality which provides data cubes (68) to external reporting systems for statistical reporting purposes.

External reporting systems use this integration pattern to retrieve data cubes for information objects.

The big difference compared to the “get functionality” is that the “provide data cube of-functionality” offers a complete data cube, while the “get functionality” only provides the information object itself.

This integration pattern offers TAs and AIs the possibility of using their existing reporting systems to perform statistical analyses on the data exchanged under a standardised relief at source system.

Like for the previous integration pattern, the implementation of this functionality needs to comprise the related control and monitoring mechanisms to ensure the data confidentiality and integrity.

**245. Importance of semantic and technical interoperability aspects.** In each of these integration patterns, semantic and technical interoperability aspects need to be taken into account. It is not only important to enable technically the exchange of data but also that both sides agree upon the semantics and syntax used in order to ensure the exchanged data is understood and processed in a semantically correct manner. If both sides use different semantics and syntax, transformation functions need to be established to ensure the semantic and technical interoperability.

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68 Data cubes are large structured data sets used for data analysis and reporting purposes (business intelligence).

246. **Support of the Architecture for the Integration of Third Countries.** From an IT perspective, the architecture supports the integration of a third country. A third country needs to implement the logical application components provided by the architecture to properly participate in a standardised relief at source system. However, it has to take the implications of both Models towards the physical architecture into account (see subsection 10.3.2 of the final report).

247. **Common Communication Network.** The IT systems used to exchange tax information under the current Savings Directive leverage the Common Communication Network (CCN) to exchange data between TAs. This study identifies CCN also as the possible backbone for exchanging data between TAs under a standardised relief at source system. This implies that a third country needs access to CCN in order to participate properly in the standardised relief at source system. From a technical point of view, the access of third countries to CCN is provided via CCN gateways or VPN access points. Currently several third countries are already using these two possibilities:

- **Third Countries with their own CCN gateway:** Turkey, Switzerland, Norway, Croatia
- **Third Countries with VPN access (“SPEED”):** Russia

248. **No pan-European encryption and e-signature standards.** However, no pan-European encryption and e-signature standards are currently available for the exchange of data between AIs and TAs. Hence, under the SC Model, a third country has to ensure the proper IT support for the different national encryption and e-signature standards used by other participating MSs as the SC Model provides the data exchange between TAs and non-resident AIs. This leads to an additional burden.

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## APPENDIX 29: REFERENCE, APPLICABLE DOCUMENTS AND SPECIFIC STANDARDS

Reference and applicable documents can be found in section 29.1 Reference Documents and section 29.2 Applicable Documents.

This appendix presents two lists of relevant project-related documents. They are divided into applicable and reference documents.

### 29.1 REFERENCE DOCUMENTS

A reference document is a document of which the content is not binding for PwC. When PwC has used a document to write another document, this document will be mentioned as a reference.

ID	REFERENCE	TITLE	ISSUED	USUAL DENOMINATION
<b>European Legislative framework reference documents</b>				
D1	Ares(2012)746461 - 21/06/2012	Letter of the Article 29 Data Protection Working Party	21/06/2012	
D2	COM(2012)11 final 2012/0011 (COD)	Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)	25/01/2012	
D3		Commission Regulation (EU) 1189/2011.	18/11/2011	
D4	2011/16/EU	Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.	15/02/2011	The Directive on Administrative Cooperation
D5	2010/C83/01	Official Journal of the European Union, Consolidated version of the Treaty of the European Union and the Treaty on the Functioning of the European Union (TFEU).	30/03/2010	

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<b>ID</b>	<b>REFERENCE</b>	<b>TITLE</b>	<b>ISSUED</b>	<b>USUAL DENOMINATION</b>
D6	2010/24/EU	Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.	16/03/2010	The Recovery Directive
D7		Document 16473/1/09 of 25.11.2009 – FISC 170, a compromise text currently under discussion at the Council which includes the result of the negotiations at technical level.	25/11/2009	
D8	C(2009)7924	Recommendation of 19.10.2009 on withholding tax relief procedures, COM 2009 7924 final.	19/10/2009	The FISCO Recommendation
D9	2009/0004 (CNS), 6035/09, FISC 16	Proposal for a Council Directive on administrative cooperation in the field of taxation	4/02/2009	
D10	2008/1179/EC	Commission Regulation (EC) 1179/2008.	28/11/2008	
D11	2008/55/EC	Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures.	26/05/2008	
D12	C(2006) 3602 - R	Implementing Rules for Commission Decision C (2006) 3602.	16/08/2006	
D13	C(2006)3602	Commission Decision on Security of Information Systems.	16/08/2006	
D14	COM(2006)16 final	Proposal for a Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems	31/01/2006	

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D15	2005/60/EC	Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing as amended (Formerly Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering).	26/10/2005	The anti-money laundering Directive
D16	2004/911/EC	Council decision of 2/6/2004 on the signing and conclusion of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the accompanying Memorandum of Understanding.	2/06/2004	
D17	2003/48/EC	Directive 2003/48/EC of 3 June 2003 on the Taxation of Savings Income in the Form of Interest Payments.	3/06/2003	The Savings Directive
D18	2001/844/EC	Commission Decision 2001/844/EC, ECSC, Euratom on Information Security (particularly for EU classified information).	29/11/2001	
D19	2001/44/EC	Council Directive 2001/44/EC of 15 June 2001 amending Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties.	15/06/2001	

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D20		Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000, on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.	18/12/2000	The data protection regulation
D21	1999/93/EC	Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.	13/12/1999	
D22	95/46/EC	Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.	24/10/ 1995	The data protection Directive
D23	92/108/EEC	Council Directive 92/108/EEC of 14 December 1992 amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products and amending Directive 92/81/EEC	14/12/1992	
D24	85/611/EEC	Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).	20/12/1985	
D25	79/1071/EEC	Council Directive 79/1071/EEC amending Directive 76/308/EEC on mutual assistance for the recovery of claims	6/12/1979	



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D26	77/799/EEC	Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums.	19/12/1977	
D27	76/308/EEC	Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties.	15/03/1976	
D28		The European Convention on Human Rights	4/10/1950	
D29		European Union Law website ( <a href="http://eur-lex.europa.eu/">http://eur-lex.europa.eu/</a> ).	n.a.	
D30		European Commission website – Application of EU law ( <a href="http://ec.europa.eu/eu_law">http://ec.europa.eu/eu_law</a> ).	n.a.	
D31		European Union website – Summaries of EU legislation ( <a href="http://europa.eu/legislation">http://europa.eu/legislation</a> ) .	n.a.	
D32		European Commission – DG Taxud website: <a href="http://ec.europa.eu/economy_finance">http://ec.europa.eu/economy_finance</a> ; <a href="http://ec.europa.eu/internal_market">http://ec.europa.eu/internal_market</a> ; <a href="http://ec.europa.eu/taxation_customs">http://ec.europa.eu/taxation_customs</a> ).	n.a.	

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<b>European non legislative framework and Studies reference documents</b>				
D33	COM (2012) 351 Final	Communication from the Commission to the European Parliament and the Council on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries	27/06/2012	
D34	SWD(2012) 16 final	Commission Staff Working Document presenting an evaluation for the second review of the effects of the Council Directive 2003/48/EC accompanying the document Report from the Commission to the Council in accordance with Article 18 of Council Directive 2003/48/EC on taxation of savings income in the form of interest payments.	2/03/2012	
D35	COM(2012) 65 final	Report from the Commission to the Council in accordance with Article 18 of Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, 2 March 2012.	2/03/2012	Report on data quality issues
D36	MEMO/12/88	Press Release ref. MEMO/12/88 of 08/02/2012 - Commission welcomes US move to ensure enhanced international tax cooperation in a more business-friendly way.	8/02/2012	
D37	01197/11/EN WP187	Opinion 15/2011 on the definition of consent, as adopted by the Article 29 Data Protection Working Party	13/07/2011	
D38	2010/C 101/01	Opinion of the European Data Protection Supervisor on the proposal for a Council Directive on administrative cooperation in the field of taxation.	20/04/2010	

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D39		Report on the proposal for a Council directive on administrative cooperation in the field of taxation  PE 430.610v02-00, A7-0006/2010, (COM(2009)0029 – C6-0062/2009 – 2009/0004(CNS)), Committee on Economic and Monetary Affairs, Rapporteur: Alvarez ( <a href="http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&amp;reference=A7-2010-0006&amp;language=EN# title1">http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&amp;reference=A7-2010-0006&amp;language=EN# title1</a> )	1/02/2010	
D40	00264/10/EN WP 169	Opinion 1/2010 on the concepts of "controller" and "processor", as adopted by Article 29 Data Protection Working Party	16/02/2010	
D41	SEC(2009) 1371	The Economic Impact of the Commission Recommendation on Withholding Tax Relief Procedures and the FISCO Proposals, European Commission (DG MARKT), 2009.	24/06/2009	
D42		Report of the informal consultative group on the taxation of CIVs and procedures for tax relief for cross-border Investors on possible improvements to procedures for tax relief for cross-border Investors” (OECD)	2009	
D43	COM(2008) 727 final / SEC (2008) 2767 /  SEC(2008) 2768 final	Commission Staff Working Document Accompanying the Proposal for a Council Directive amending Council Directive 2003/48/EC on taxation of savings income in the form of interest payments – IMPACT ASSESSMENT.	13/11/2008	
D44		FISCO report: “Solutions to fiscal compliance barriers related to post-trading within the EU”.	23/10/2007	

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D45	COM (2006) 254 final	Communication from the Commission concerning the need to develop a coordinated strategy to improve the fight against fiscal fraud.	31/05/2006	
D46		FISCO report: “Fact-finding Study on fiscal compliance procedures related to clearing and settlement within the EU”.	19/04/2006	
D47		Press release by the European Commission on the Savings taxation: Commission welcomes signature of agreements with Liechtenstein, San Marino and Monaco.	7/12/2004	
<b>OECD reference documents</b>				
D48		Trace implementation Package for the Adoption of the Authorised Intermediary System, a Standardised System for Effective Withholding Tax Relief Procedures for Cross-border Portfolio Income ( <a href="http://www.oecd.org/ctp/exchangeofinformation/TRACE_Implementation_Package_Website.pdf">http://www.oecd.org/ctp/exchangeofinformation/TRACE_Implementation_Package_Website.pdf</a> )	23/01/2013	Implementation Package
D49		Press Release of 18 July 2012, Tax: OECD updates OECD Model Tax Convention to extend information requests to groups.	18/07/2012	
D50		Update to Article 26 of the OECD Model Tax Convention and Its Commentary, Approved by the OECD Council on 17 July 2012, 18 July 2012, OECD ( <a href="http://www.oecd.org/ctp/exchangeofinformation/120718_Article%2026-ENG_no%20cover%20(2).pdf">http://www.oecd.org/ctp/exchangeofinformation/120718_Article%2026-ENG_no%20cover%20(2).pdf</a> .)	17/07/2012 & 18/07/2012	

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<b>ID</b>	<b>REFERENCE</b>	<b>TITLE</b>	<b>ISSUED</b>	<b>USUAL DENOMINATION</b>
D51		The global forum on transparency and exchange of information for tax purposes, frequently asked questions, question n°27, <a href="http://www.oecd.org/dataoecd/35/16/46615395.pdf">www.oecd.org/dataoecd/35/16/46615395.pdf</a> .	2/12/2010	
D52		OECD Model Tax Convention on Income and on Capital (especially its Article 26).	22/07/2010	OECD Model Tax Convention
D53		Report of the OECD on The Granting of Treaty Benefits with Respect to the Income of Collective Investment Vehicles adopted by the OECD committee on fiscal affairs on 23 April 2010.	23/04/2010	
D54		OECD Implementation Package.	8/02/2010	Implementation Package
D55		The ICG Report issued by the OECD on “Possible Improvements to procedures for Tax Relief for cross-border investors”.	12/01/2009	The ICG Report
D56		International Standard Cost Model Manual, SCM Network, <a href="http://www.oecd.org/dataoecd/32/54/34227698.pdf">http://www.oecd.org/dataoecd/32/54/34227698.pdf</a> .	October 2005	
D57		The OECD Model Memorandum of Understanding on Automatic Exchange of Information for Tax Purposes.	22/03/2001	
D58		OECD website ( <a href="http://www.oecd.org">http://www.oecd.org</a> ).	n.a.	

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ID	REFERENCE	TITLE	ISSUED	USUAL DENOMINATION
<b>FATCA reference documents</b>				
D59		<p>Announcement of the Jersey Chief Minister that the Government of Jersey was finalising agreements on exchange of information modelled on the IGAs being advanced in response to the U.S. FATCA regime</p> <p>The statement of the Chief Minister is available here:  <a href="http://www.gov.je/SiteCollectionDocuments/Tax%20and%20your%20money/ID%20UKTaxPackageChiefMinStatement%2020130327.pdf">http://www.gov.je/SiteCollectionDocuments/Tax%20and%20your%20money/ID%20UKTaxPackageChiefMinStatement%2020130327.pdf</a>.</p> <p>The text of the agreement is available here:  <a href="http://www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/UKIGA.aspx">http://www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/UKIGA.aspx</a>.</p>	20/03/2013	
D60		<p>Announcement of the Guernsey Chief Minister that the Government of Guernsey was finalising agreements on exchange of information modelled on the IGAs being advanced in response to the U.S. FATCA regime</p> <p>The statement of the Chief Minister is available here:  <a href="http://www.guernseyfinance.com/press-room/news/2013/03/guernsey-to-agree-package-of-tax-measures-with-the-uk/">http://www.guernseyfinance.com/press-room/news/2013/03/guernsey-to-agree-package-of-tax-measures-with-the-uk/</a>.</p>	15/03/2013	

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ID	REFERENCE	TITLE	ISSUED	USUAL DENOMINATION
D61		<p>Agreement between the United Kingdom and the Isle of Man on a IGA including an automatic tax information exchange agreement and the setting-up of a disclosure facility</p> <ul style="list-style-type: none"> <li>• <a href="http://www.hm-treasury.gov.uk/press_12_13.htm#primaryContentFull">http://www.hm-treasury.gov.uk/press_12_13.htm#primaryContentFull</a></li> <li>• <a href="http://www.hmrc.gov.uk/offshoredisclosure/isleofman.htm">http://www.hmrc.gov.uk/offshoredisclosure/isleofman.htm</a>.</li> </ul>	19/02/2013	
D62		<a href="http://www.reuters.com/article/2013/02/04/us-usa-tax-fatca-idUSBRE91312W20130204">http://www.reuters.com/article/2013/02/04/us-usa-tax-fatca-idUSBRE91312W20130204</a>	4/02/2013	
D63		Final regulations relating to Information Reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities	17/01/2013	Final Regulations
D64		Publication of the Second Model Intergovernmental Agreement to Improve Tax Compliance and Implement FATCA ( <a href="http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Model-2-Agreement-to-Implement-11-14-2012.pdf">http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Model-2-Agreement-to-Implement-11-14-2012.pdf</a> )	14/11/2012	The Model 2 IGA
D65		First reciprocal FATCA Agreement signed between the US and the UK on 12 September 2012 ( <a href="http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-UK-9-12-2012.pdf">http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-UK-9-12-2012.pdf</a> .)	12/09/2012	

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ID	REFERENCE	TITLE	ISSUED	USUAL DENOMINATION
D66		Joint communiqué by France, Germany, Italy, Spain, the United Kingdom and the United States on the occasion of the publication of the “Model intergovernmental agreement to improve tax compliance and implement FATCA”	26/07/2012	
D67		<p>First “Model Intergovernmental Agreement” to Improve Tax Compliance and Implement FATCA</p> <p>Two versions of the Model 1 IGA were issued, a reciprocal version and a non-reciprocal version.</p> <ul style="list-style-type: none"> <li>• <a href="http://www.treasury.gov/press-center/press-releases/Pages/tg1653.aspx">http://www.treasury.gov/press-center/press-releases/Pages/tg1653.aspx</a></li> <li>• <a href="http://www.treasury.gov/press-center/press-releases/Documents/reciprocal.pdf">http://www.treasury.gov/press-center/press-releases/Documents/reciprocal.pdf</a></li> <li>• <a href="http://www.treasury.gov/press-center/press-releases/Documents/nonreciprocal.pdf">http://www.treasury.gov/press-center/press-releases/Documents/nonreciprocal.pdf</a>.</li> </ul>	26/07/2012	The Model 1 IGA
D68		<p>Joint statement from the United States and Japan regarding a framework for intergovernmental cooperation to facilitate the implementation of FATCA and improve international tax compliance</p> <p>(<a href="http://www.treasury.gov/press-center/press-releases/Documents/FATCA%20Joint%20Statement%20US-Japan.pdf">http://www.treasury.gov/press-center/press-releases/Documents/FATCA%20Joint%20Statement%20US-Japan.pdf</a>.)</p>	21/06/2012	



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ID	REFERENCE	TITLE	ISSUED	USUAL DENOMINATION
D69		Joint statement from the United States and Switzerland regarding a framework for cooperation to facilitate the implementation of FATCA ( <a href="http://www.treasury.gov/press-center/press-releases/Documents/FATCA%20Joint%20Statement%20US-Switzerland.pdf">http://www.treasury.gov/press-center/press-releases/Documents/FATCA%20Joint%20Statement%20US-Switzerland.pdf</a> .)	21/06/2012	
D70		Tax Analysts, <i>Irish Authorities in Discussions with US Treasury on FATCA</i> , 23 April, 2012.  <a href="http://www.taxanalysts.com/">http://www.taxanalysts.com/</a>	23/04/2012	
D71	Reg-121647-10	Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities.	08/02/2012	
D72		Joint Statement from the United States, France, Germany, Italy, Spain and UK regarding an intergovernmental approach to improving international tax compliance and implementing FATCA ( <a href="http://www.treasury.gov/press-center/press-releases/Documents/020712%20Treasury%20IRS%20FATCA%20Joint%20Statement.pdf">http://www.treasury.gov/press-center/press-releases/Documents/020712%20Treasury%20IRS%20FATCA%20Joint%20Statement.pdf</a> .)	8/02/2012	The joint statement
D73		Itai Grinberg, <i>Beyond FATCA: An Evolutionary Moment for the International Tax System</i> , Draft of January 27, 2012.	27/01/2012	

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ID	REFERENCE	TITLE	ISSUED	USUAL DENOMINATION
D74		J. Richard “Dick” Harvey, “Offshore accounts: Insider’s summary of FATCA and its potential future”, Villanova University School of Law, Public law and legal theory, Working paper n°2011-24, December 2011. Villanova Law Review, Volume 57, #3.	24/12/2011	
D75		Smiley, S., <i>Qualified Intermediaries, The EU Savings Directives, Trace—What Does FATCA Really Add?</i> , CORP. TAX’N, Sept–Oct. 2011, at 20.	September/ October 2011	
D76	Notice 2011-53, 2011-32 I.R.B. 124	FATCA- Implementation Notice.	15/07/2011	
D77	Notice 2011-34, 2011-19 I.R.B. 765	Supplemental Notice to Notice 2010-60, Providing Further Guidance and Requesting Comments on Certain Priority Issues Under Chapter 4 of Subtitle A of the Code.	08/04/2011	
D78		O. Hermand (PwC), P. Delacroix (PwC), B. Passagez (PwC), J-F. Bourmanne (PwC), <i>FATCA ou le nouvel impérialisme américain</i> , Revue Générale de Fiscalité, R.G.F. 2011/1.	10/01/2011	
D79	Notice 2010-60, 2010-37 I.R.B. 329	Notice and Request for Comments Regarding Implementation of Information Reporting and Withholding Under Chapter 4 of the Code.	13/09/2010	
D80		Various provisions of the Foreign Account Tax Compliance Act of 2009 (“FATCA”) as part of the Hiring Incentives to Restore Employment (“HIRE”) Act.	18/03/2010	

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ID	REFERENCE	TITLE	ISSUED	USUAL DENOMINATION
D81		Foreign Account Tax Compliance Act of 2009, as part of the Hiring Incentives to Restore Employment ("HIRE") Act.	27/10/2009	FATCA
<b>Others</b>				
D82		Oli Rehn (Vice-President of the European Commission and member of the Commission responsible for Economic and Monetary Affairs and the Euro) statement on behalf of the European Commission on 19 April 2013  (Speaking Points by Vice-President Rehn at the EC-ECB Press Conference, Reference: SPEECH/13/344, Event Date: 19/04/2013; <a href="http://europa.eu/rapid/press-release_SPEECH-13-344_en.htm">http://europa.eu/rapid/press-release_SPEECH-13-344_en.htm</a> .)	19/04/2013	
D83		G20 communiqué (Meeting of Finance Ministers and Central Bank Governors, Washington, 18-19 April 2013) of 19 April 2013 regarding the exchange of information in tax matters.  The full communiqué is accessible at the following address: <a href="http://en.g20russia.ru/load/781302507">http://en.g20russia.ru/load/781302507</a>	19/04/2013	
D84		Statement by Commissioner Šemeta as regards to the negotiations with Switzerland ( <a href="http://www.europolitics.info/economy-monetary-affairs/ecofin-revision-of-savings-taxation-directive-hoped-for-in-may-art350260-30.html">http://www.europolitics.info/economy-monetary-affairs/ecofin-revision-of-savings-taxation-directive-hoped-for-in-may-art350260-30.html</a> )	12/04/2013	

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D85		Letter welcoming the pilot programme and calling for automatic exchange of information to become a global standard (Tax Analysts, <i>5 EU Members Announce Multilateral Automatic Information Exchange Pilot</i> ), by David D. Stewart. The letter can be found here:  <a href="http://www.bundesfinanzministerium.de/Content/DE/Pressemitteilungen/Finanzpolitik/2013/04/2013-04-09-PM25-an11.pdf?__blob=publicationFile&amp;v=2">http://www.bundesfinanzministerium.de/Content/DE/Pressemitteilungen/Finanzpolitik/2013/04/2013-04-09-PM25-an11.pdf?__blob=publicationFile&amp;v=2</a> .	10/04/2013	
D86		Statement by Commissioner Šemeta on fighting tax evasion ( <a href="http://europa.eu/rapid/press-release_MEMO-13-314_en.htm">http://europa.eu/rapid/press-release_MEMO-13-314_en.htm</a> .)	8/04/2013	
D87		Secrecy for sale: Inside the Global Offshore Money Maze ( <a href="http://www.icij.org/offshore">http://www.icij.org/offshore</a> .), published by the International Consortium of Investigative Journalists (ICIJ)	4/04/2013	

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ID	REFERENCE	TITLE	ISSUED	USUAL DENOMINATION
D88		Speech “Developing a Tax Environment for Growth and Competitiveness” by Algirdas Šemeta, Commissioner responsible for Taxation and Customs Union, Audit and Anti-fraud, given at the conference “Developing a Tax Environment for Growth and Competitiveness,” Vienna, 18 January 2013  ( <a href="http://europa.eu/rapid/press-release_SPEECH-13-27_en.pdf">http://europa.eu/rapid/press-release_SPEECH-13-27_en.pdf</a> and related newspaper coverage ( <i>inter alia</i> L’Echo, 18 January 2013, “L’UE donne 6 mois à la Suisse pour améliorer ses pratiques fiscales”).	18/01/2013	
D89		Tax Notes International, EU Accepts Swiss Tax Agreements With Germany, U.K., 23 April 2012.	23/04/2012	
D90		Taxation, Interview with Algirdas Semeta, Taxation commissioner EU States “running out of patience” with Berne, By Tanguy Verhoosel, EUROPOLITICS, Thursday 19 April 2012, <a href="http://www.europolitics.info/economy-monetary-affairs/eu-states-running-out-of-patience-with-berne-art332069-30.html">http://www.europolitics.info/economy-monetary-affairs/eu-states-running-out-of-patience-with-berne-art332069-30.html</a> .	19/04/2012	
D91		Protocol amending the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on cooperation in the area of taxation, signed at London on 6/10/2011.	20/03/2012	
D92		Lee A. Sheppard, <i>Tax Analysts, News Analysis: OECD Global Forum on the Defensive About Information Exchange</i> , October 27, 2011.	27/10/2011	

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D93		Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on Cooperation in the area of taxation.	6/10/2011	
D94		Abkommen Zwischen der Schweizerischen Eidgenossenschaft und der Bundesrepublik Deutschland über Zusammenarbeit in der Bereichen Steuern und Finanzmarkt.	21/09/2011	
D95		Revised Explanatory Report to the Convention on Mutual Administrative Assistance in Tax Matters, automatic exchange of information.	1/06/2011	
D96		Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters.	1/06/2011	The Joint Convention
D97		The ISO/IEC 27000 Series joint publication made by the International Organisation for standardisation (ISO) and the international electrotechnical commission (IEC).	n.a.	
D98		US department of the treasury web site: Treasury Releases Model Intergovernmental Agreement for Implementing the Foreign Account Tax Compliance Act to Improve Offshore Tax Compliance and Reduce Burden ( <a href="http://www.treasury.gov/press-center/press-releases/Pages/tg1653.aspx">http://www.treasury.gov/press-center/press-releases/Pages/tg1653.aspx</a> )	n.a.	
D99		IRS web site from the US ( <a href="http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA))">http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA))</a> )	n.a.	
D100		HM Treasury website from UK ( <a href="http://www.hm-treasury.gov.uk">http://www.hm-treasury.gov.uk</a> ).	n.a.	

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D101		TOGAF Architecture -Open Group website: <a href="http://www.opengroup.org/togaf/">http://www.opengroup.org/togaf/</a>	n.a.	
D102		IMF website ( <a href="http://cpis.imf.org/">http://cpis.imf.org/</a> - Debt Securities)	n.a.	
D103		IMF website ( <a href="http://cpis.imf.org/">http://cpis.imf.org/</a> - Equity Securities)	n.a.	
D104		IBFD website <a href="http://online.ibfd.org/kbase/#topic=doc&amp;url=/collections/wht/html/wht_at.html&amp;WT.z_nav=search">http://online.ibfd.org/kbase/#topic=doc&amp;url=/collections/wht/html/wht_at.html&amp;WT.z_nav=search</a>	n.a.	
D105		Eurostat website <a href="http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/">http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/</a>	n.a.	
D106		<a href="http://www.irs.gov/Businesses/Small-Businesses-&amp;Self-Employed/Report-of-Foreign-Bank-and-Financial-Accounts-(FBAR)">http://www.irs.gov/Businesses/Small-Businesses-&amp;Self-Employed/Report-of-Foreign-Bank-and-Financial-Accounts-(FBAR)</a>	n.a.	

Table 18: Reference documents

## 29.2 APPLICABLE DOCUMENTS

An applicable document is a document in which the main content is binding for PwC.

The contract n°4 – TAXUD/2011/DE/129, under framework contract DI/06692-00, signed by PwC and DG TAXUD is applicable.

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## APPENDIX 30: MACROECONOMIC ANALYSIS

249. This appendix presents the macroeconomic analysis.

250. **Variables.** The following table includes variables used in the macro model.

$\alpha$	relative share of labour
$(1-\alpha)$	relative share of capital
$\tau_1$	standard withholding tax rate for dividend
$\tau_2$	standard withholding tax rate for interest
$A$	parameter for technology or total factor productivity
$cc$	cost of capital including the tax
$cc^*$	cost of capital net of taxes
$d$	number of days of the delay
$Deb:$	bonds portfolio investment of non-resident Investors having their tax residence in another MS
$cf_d$	cash flow disadvantage
$DivR$	dividend rate
$DomWHTrDiv$	domestic WHT rate on dividends individuals and corporations
$DomWHTrInt$	WHT domestic rate on interest
$Equ$	equity portfolio investment of non-resident Investors having their tax residence in another MS
$IntR$	interest rate
$K$	capital
$K^*$	optimal stock of capital
$L$	labour
$Ltr$	loss of tax relief of small-scale Investors
$MPK$	marginal product of capital
$RedWHTrDiv$	the reduced WHT rate on dividends according to a DTT



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<i>RedWHTrInt</i>	WHT reduced rate on interest according to a DTT
$r_f$	yield of a risk-free asset
<i>Totdiv</i>	total dividends
<i>Toti</i>	total interest
<i>tottr</i>	total amount of tax relief
<i>w</i>	total amount received by the Investors (dividend/interest payment)
<i>WHT</i>	EU withholding
<i>Y</i>	GDP

Table 19: Variables to the Macro Model

### 30.1 IMPACT ON THE EUROPEAN GDP

251. **Assessment of Impact of Fiscal Barriers.** Fiscal barriers hamper the competitiveness of the EU, and then adversely affect EU GDP. The lack of fiscal harmonisation related to the clearing and settlement of securities within the MSs means different fiscal regimes exist within the EU for individuals and firms. The result of these different systems is that Investors and FIs have to cope with and adapt to different fiscal regimes across MSs.

The two contemplated Models have been designed in order to facilitate the clearing and settlement of securities within the MSs by simplifying and harmonising the tax relief procedures. They should allow for the appropriate tax relief to be applied at source without excessive documentation requirements and without exposing issuers, intermediaries and Investors to unnecessary risks and costs.

This chapter aims to assess the economic impact, with respect to EU GDP, of a reduction and removal of fiscal barriers that corresponds to the implementation of a simplified ‘relief at source’ system, as presented in the FISCO Recommendation. The study transforms scenarios of reduced fiscal barriers on changes in the cost of capital and ultimately on changes in the growth rates of the European economy.

252. **Macroeconomic Model.** In that respect, a (macroeconomic) model developed in a study from the Commission (DG MARKT <sup>(69)</sup>) is used. This model includes several types of data (cross-border holdings of equity and debt securities in the EU, dividend and interest payments before and after tax) and shows how a change in the effective tax rate <sup>(70)</sup> (through a reduction

69 “The Economic Impact of the Commission Recommendation on Withholding Tax Relief Procedures and the FISCO Proposals”, DG MARKT, Commission Staff Working Document, 24 June 2009.

70 The effective tax rate is the rate actually paid on the taxable income. It corresponds to the tax paid divided by the taxable income.

in the inefficiencies associated with the tax procedures) affects the cost of equity capital and the cost of debt capital. The model is aimed at providing with a general potential impact on the EU GDP and stakeholders. Then the specificities of each Member States in respect with their national law have not been investigated from a general point of view. The core hypothesis on which the model is based, has not been modified. While the architecture and assumptions of the model have been kept, data inputs have been updated and a specific section on the weaknesses of the model has been developed in order to provide some constructive challenge and suggest improvement for future analysis.

**253. GDP Increase of EUR 0,984 bn.** Overall, our analysis suggests that the GDP gain at the EU level will be in the region of EURO 0,984 bn. This outcome, given the size of the policy change, is broadly consistent with other studies in the area of tax policy changes that directly affect capital and investment.

### 30.1.1 METHODOLOGY

**254. Methodological Framework.** As discussed above, our methodological framework is based on the framework outlined by the Commission in their study published in 2009.

**255. Calculation of EU WHT Revenues.** Firstly, EU withholding tax (wht) revenues are calculated using an approach consistent with the EC methodology. The tax rate for dividends and interest are multiplied by the total dividend and interest payments (per year), respectively:

$$WHT = \tau_{1} \text{ totdiv} + \tau_{2} \text{ toti}$$

Equation 19: Calculation of EU WHT Revenues

Total dividends (totdiv) are calculated by multiplying the value of cross-border holdings of equity by the average dividend yields for each MS. Total interest (toti) payments are calculated by multiplying the value of debt securities by the individual interest rate (i) for each MS.  $\tau_{1}$  and  $\tau_{2}$  denote the standard withholding tax rate for dividends and interest, respectively, in each MS.

**256. Impact of a Regulatory Change.** As pointed out by the Commission, WHT revenues are impacted directly by tax procedures, or indirectly through changes in factors that influence these procedures. Particular attention must be paid to the inefficiencies associated with the current tax regime in terms of the potential effects of a more integrated WHT regime on the cost of capital. Following the Commission’s approach, this potential effect is transformed into a different effective tax rate, which flows through to the cost of capital. The cost of capital can then be estimated, and its relative change computed. The relation between the cost of capital and the tax rate is based on a theoretical relationship and can be assessed empirically.

The final step in the Commission’s approach is to include the estimated change in the cost of capital as an explanatory variable in a macroeconomic model. This allows an estimate for the change in gross domestic product (GDP) to be calculated.

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This overarching framework developed by the Commission therefore helps to measure the impact of a regulatory change (as reflected in a more efficient withholding tax procedure) on European GDP that could be expected when moving from a tax structure without any tax relief at source to one where the recommendations proposed by FISCO are implemented. The below table indicates the tax regimes applied for each Member State (71).

MEMBER STATES	RELIEF AT SOURCE	RELIEF BY REFUND
Austria	Depends on the type of investor	Yes
Belgium	No	Yes
Bulgaria	Yes	Yes
Cyprus	-	-
Czech Republic	Yes	Yes
Denmark	Yes	Yes
Estonia	Yes	Yes
Finland	Yes	Yes
France	Yes	Yes
Germany	No	Yes
Greece	Yes	Yes
Hungary	No	Yes
Ireland	-	-
Italy	Yes	Yes
Latvia	No	Yes
Lithuania	No	Yes
Luxembourg	Yes	Yes
Malta	-	-
Netherlands	Yes	Yes
Poland	Yes	Yes
Portugal	No	Yes
Romania	No	Yes
Slovak Republic	-	-
Slovenia	No	Yes
Spain	Yes	Yes
Sweden	Yes	Yes
United Kingdom	-	-

Table 20 - Tax regimes of the Member States

### 30.1.1.1 INEFFICIENT PROCEDURES AND COST OF CAPITAL

**257. Link between WHT and Cost of Capital.** As outlined by the Commission, a direct link exists between the WHT and the cost of capital as the latter is increased by the amount of the tax:

71 Data extracted from a study undertaken by Copenhagen Economics, “Taxation of cross-border dividend payments within the EU” (p. 21-22-23)

$$cc = cc^*(1 + \tau)$$

Equation 20: Link between WHT and Cost of Capital

where  $cc^*$  represents the cost of capital net of taxes, and  $cc$  represents the cost of capital including the tax. The income received from equity and debt holdings is often taxed at separate rates. The tax rate included in our equation,  $\tau$ , reflects separate values for dividends,  $\tau_1$ , and interest payments,  $\tau_2$ .

From a general economic theory perspective, taxes lead to a deadweight loss, which is defined as a loss of economic efficiency as a result of a tax increase. This results in a decrease in consumer and producer surplus in economic theory.

**258. Three Additional Losses of Efficiency.** The Commission notes three additional losses of administrative efficiency specific to withholding taxes:

- **Cash flow disadvantage** – It results from the delay between the payment date of the WHT and the rebate date when the Investor receives all or part of the payment back due to the application of tax relief (i.e. through a DTT). Between these two dates, the Investor loses the potential use of this income (i.e. the ability to invest the proceeds in a risk-free instrument). Following the Commission’s approach, we model this cash flow disadvantage as the relative number of days of the delay multiplied by the yield on a risk-free asset:

$$cfd = \left(\frac{d}{360}\right)r_f$$

Equation 21: Cash flow disadvantage

where  $cfd$  represents the cash flow disadvantage,  $d$  represents the number of days of the delay, and  $r_f$  is the yield of a risk-free asset. In finance theory, the risk-free rate is a rate of return of an investment with zero risk of financial loss. One of the proxies that can be used for the risk-free rate is the European inter-bank lending rate (EURIBOR).

- **Small-scale investors** – The second loss of efficiency comes about when the Investor is relatively small in scale. In this case, the costs of administering and submitting a claim to the tax authorities for tax relief can be too high (i.e. due to the complexity of tax procedures) to make such a claim worthwhile. If the small-scale Investor is rational, a claim will not be made if the expected cost of doing so is higher than the expected return from the claim. This loss of foregone relief is formulated using the Commission’s approach as:

$$ltr = w.tottr$$

Equation 22: Small-scale investors

where  $ltr$  represents the loss of tax relief of small-scale Investors, which is the product of the fraction of these Investors relative to the total amount received by all Investors ( $w$ ) and the total amount of tax relief ( $tottr$ ).

- **Administrative costs** – The third loss is due to the administrative costs borne by all Investors at the different stages of the tax relief reclaim procedure. The Commission’s approach models this cost as a percentage of the total refundable amount.

Overall, the effective tax rate consists of the actual tax rate plus deadweight loss plus the three sources of tax-specific costs (i.e. delayed refunds, foregone relief and administrative costs). An increase in the effective tax rate increases the actual cost of capital.

**259. Positive Impact of a More Efficient Relief System.** Whilst the analysis above has focussed on the impact of these costs and benefits on the cost of capital of Investors, intermediaries and tax authorities are also affected by the removal of fiscal barriers and a more efficient tax relief system. Based on the cost-benefit analysis of qualitative data collected from MSs and financial intermediaries, it appears that intermediaries and tax authorities are positively affected in the medium and long run by a more efficient relief system. The following sections of this chapter will highlight this positive impact. Consequently, the expected impact on the European GDP would be higher by considering this additional positive impact.

#### 30.1.1.2 EFFECT ON GDP

**260. Application of the Commission’s Approach.** This section presents the application of the Commission’s approach for defining the relationship between the cost of capital and GDP. This is used to measure the impact of a change in the cost of capital on GDP. The chosen approach is based on a static macroeconomic model based on a Cobb-Douglas function:

$$Y(L, K) = AL^\alpha K^{1-\alpha}$$

Equation 23: Commission’s approach: cost of capital and GDP

where  $Y$  represents GDP, and  $A$  is a parameter for technology or total factor productivity. The relative shares of Labour ( $L$ ) and Capital ( $K$ ) are denoted by  $\alpha$  and  $(1-\alpha)$ , respectively.

Following the Commission’s approach, the relationship between the cost of capital and a change in the capital stock  $K$  is derived, by computing the derivative of GDP ( $Y$ ) with respect to  $K$ . This allows the marginal product of capital (MPK) to be derived. In equilibrium, MPK is equal to the cost of capital. This equation is expressed as:

$$cc = MPK = \frac{\Delta Y}{\Delta K} = AL^\alpha (1 - \alpha) K^{-\alpha} = (1 - \alpha) Y K^{-1}$$

Equation 24: Commission’s approach: cost of capital and a change in the capital stock  $K$

The optimal stock of capital,  $K^*$ , can then be found through the derivative computed above:

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$$K^* = (1 - \alpha)Y/cc$$

Equation 25: Commission’s approach: optimal stock of capital, K\*

Continuing with the Commission’s approach, the natural logarithms of the above equation is used to calculate the change in the capital stock:

$$\ln K^* = \ln(1 - \alpha) + \ln Y - \ln cc$$

Equation 26: Commission’s approach: change in the capital stock

As pointed out by the Commission, the equation implies that the elasticity in the model,  $e(K, cc)$ , is equal to -1.

The impact on the GDP is calculated from the logarithm of the Cobb-Douglas function:

$$\ln Y = \ln A + \alpha \ln L + (1 - \alpha) \ln K$$

Equation 27: Commission’s approach: impact on the GDP

The model assumes that technology or the total factor productivity (TFP<sub>72</sub>) is constant. This is a strong hypothesis because of the potential for a lower cost of capital in Europe to increase GDP as productivity (and therefore TFP) is enhanced. As the Commission points out, if the notion of TFP as a positive function of a more efficient tax system is believed, the final impact on GDP calculated by this model can be viewed as a conservative estimate. However, given that the policy measure considered in this analysis is relatively small, we would not expect any TFP gain to have a substantive impact on GDP.

### 30.1.2 DATA

**261. Cross-Border Holdings.** The cross-border holdings are obtained from the IMF’s “Coordinated Portfolio Investment Survey” (CPIS). In 2010, the amount of equity securities for all 27 EU MSs held by European non-domestic Investors in the EU was US\$3,520 bn (or EUR 2,656 bn<sup>(73)</sup>). The respective figure for debt securities was US\$ 8.367 bn (or EUR 6.314 bn).

**262. Withholding Taxes.** The WHT rates (domestic rates) vary across the 27 MSs. The results within the EU are presented in Appendix 26 to this report. Benefiting from a DTT between MSs, cross-border Investors might be able to take advantage of lower rates. A weighted average statutory rate can be calculated for dividends and interest payments in Europe. According to the domestic and reduced tax rates applied in each MS in 2012, the

<sup>72</sup> TFP is the portion of output not explained by the amount of inputs used in production.

<sup>73</sup> The exchange rate used is EUR 1 = US\$ 1,3252, which is the average exchange rate for the year 2010 (source: European Central Bank).

weighted average statutory rate for dividend payments is estimated at 7,6% (74) and at 2,1% (75) for interest payments. These effective tax rates have been weighted by relevant capital flow data. Data on equity security and debt security investment flows were used, this data has been obtained from the IMF CIPS database. The formula used for weighting takes the tax rate for the member state, weighted by the share of cross border investment or dividend flow. The average tax relief for the dividends is 3,7% (i.e. weighted average domestic rate, 11,3%, minus the statutory rate, 7,6%) and 1,96% for the interests (i.e. weighted average domestic rate, 4,06%, minus the statutory rate, 2,1%).

**263. Cost of Capital.** As described in the methodology, there are two main components: the cost of equity capital and the cost of debt capital.

If several measures exist for the cost of equity capital (e.g. earnings-to-price ratio, realised return), the dividend yield is used for running the present model. According to the data obtained from Bloomberg, the average dividend yield in the EU is estimated at 3,78 % for the period 2006-2011. The table below represent the figures for the dividend yields as from 2006 until 2011 and for each MS (76).

74 The formula to obtain that number is:

$$\sum_{S=1}^{26} \sum_{R=1}^{26} \frac{div_{S \rightarrow R} * Eff\_rate_{S,R}}{\sum_{R=1}^{26} div_{S \rightarrow R}} * \frac{\sum_{R=1}^{26} div_{S \rightarrow R}}{\sum_{S=1}^{26} \sum_{R=1}^{26} div_{S \rightarrow R}}$$

$$div_{S \rightarrow R} = equity_{R \rightarrow S} * div\_yield_S$$

$$Eff\_rate_{S,R} = \min(Stat\_rate_S, DTT\_rate_{S,R})$$

Note that S represents the source country and R represents the residence country. For example, in order to obtain the dividends paid by Austria to Belgian residents, the Austrian dividend yield is applied to the amount of equities owned by Belgian residents in Austria (i.e.  $equity_{BE \rightarrow AT}$ ).

The same formula is applied for the interests.

Moreover, the statutory rate for dividend considers two special situations:

- **Ireland:** no withholding tax is levied if the recipient is a company which is resident in another EU Member State or in a tax treaty country and which is not controlled by Irish resident persons. The same rules are in place for non-resident individuals.
- **Luxembourg:** The IMF CPIS database includes investments into CIVs as portfolio equity investments. The CIV industry in Luxembourg is is very well developed. According to IMF CPIS data, portfolio equity investments in Luxembourg amount to 20 times their GDP. A recent study made for the Commission on the Taxation of cross-border dividend payments within the EU ([http://ec.europa.eu/taxation\\_customs/common/publications/studies/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm)) estimated a share of 85% of all dividends in Luxembourg attributable to CIVs. This assumption has a very pronounced downward effect on the estimations for the weighted average tax rate on dividends in the EU. Indeed, according to the IMF CPIS database, more than one third of the inbound portfolio equity investments in the EU is attributable to Luxembourg.

75 It is estimated that around 40% of the debt securities in UK are related to Eurobonds (IMF CIPS database comparison with London Stock Exchange statistics) and those securities are subject to a specific exemption, the specific figure for UK (obtained via the formula) has been reduced by 40%.

76 Source: Bloomberg database and own calculations

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	2006	2007	2008	2009	2010	2011	
AUSTRIA	1,48	1,85	5,84	3,27	2,50	3,74	<b>3,11</b>
BELGIUM	2,55	3,30	8,14	2,80	3,31	4,76	<b>4,14</b>
BULGARIA	0,91	0,36	1,36	0,21	0,62	1,65	<b>0,85</b>
CYPRUS	2,73	3,12	16,49	4,87	5,12	3,41	<b>5,96</b>
CZECH REPUBLIC	3,53	2,86	6,78	5,27	4,48	6,41	<b>4,89</b>
DENMARK	1,85	1,56	3,23	1,10	0,89	1,59	<b>1,70</b>
ESTONIA	2,41	3,43	12,70	2,62	2,90	3,12	<b>4,53</b>
FINLAND	3,11	3,23	6,14	3,96	3,42	5,93	<b>4,30</b>
FRANCE	2,35	3,01	5,78	3,65	3,70	4,91	<b>3,90</b>
GERMANY	2,09	2,19	5,27	3,51	2,74	4,11	<b>3,32</b>
GREECE	2,25	2,31	6,17	2,78	3,48	3,61	<b>3,43</b>
HUNGARY	1,54	3,38	5,23	1,85	2,03	2,50	<b>2,75</b>
IRELAND	1,80	2,77	7,45	1,75	2,90	1,82	<b>3,08</b>
ITALY	3,62	4,30	9,48	3,20	3,79	5,33	<b>4,95</b>
LATVIA	1,32	2,26	4,27	11,29	3,15	3,25	<b>4,26</b>
LITHUANIA	10,56	2,89	8,25	4,23	3,22	5,76	<b>5,82</b>
LUXEMBOURG	2,43	3,46	8,04	2,48	2,35	3,78	<b>3,76</b>
MALTA	3,21	5,38	6,42	4,31	3,24	3,72	<b>4,38</b>
NETHERLANDS	3,02	3,14	6,85	3,02	3,15	3,70	<b>3,81</b>
POLAND	2,98	3,72	5,85	3,13	2,57	5,39	<b>3,94</b>
PORTUGAL	2,71	2,83	5,57	3,45	6,39	7,06	<b>4,67</b>
ROMANIA	0,98	1,35	4,50	2,44	1,38	4,21	<b>2,48</b>
SLOVAKIA	5,54	4,34	3,73	1,22	1,50	4,75	<b>3,52</b>
SLOVENIA	1,08	0,84	2,93	2,03	2,32	4,03	<b>2,20</b>
SPAIN	2,67	2,98	6,18	5,08	4,90	5,55	<b>4,56</b>
SWEDEN	3,46	5,01	6,57	2,91	2,47	4,26	<b>4,11</b>
UNITED KINGDOM	3,47	3,34	5,41	3,44	3,05	3,89	<b>3,77</b>
<b>EU 27</b>	<b>2,80</b>	<b>2,93</b>	<b>6,47</b>	<b>3,33</b>	<b>3,02</b>	<b>4,16</b>	<b>3,78</b>

Table 21: Dividend yields per MS (2006-2011)

264. **Market Yields of Government and Corporate Bonds.** According to the data collected from the European Bank of Investment (77), secondary market yields of government bonds with a remaining maturity close to ten years in the EU is estimated at 4,89% for the period 2006-2011, as represented in the below table. The corporate bond yield (German firms) from December 1978 until December 2008 is 6,719%. In order to obtain the overall yield of the debt capital at the European level, a weighted average of government (2/3) and corporate (1/3) (78) is used, which equals 5,5%.

77 <http://www.ecb.int/stats/money/long/html/index.en.html>

78 “The Economic Impact of the Commission Recommendation on Withholding Tax Relief Procedures and the FISCO Proposals”, DG MARKT, Commission Staff Working Document, 24 June 2009.



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MEMBER STATES	Interest						Average on 5 Years period
	2006	2007	2008	2009	2010	2011	
AUSTRIA	3,80	4,30	4,36	4,36	3,23	3,32	3,89
BELGIUM	3,82	4,33	4,42	3,90	3,46	4,23	4,03
BULGARIA	4,18	4,54	5,38	7,22	6,01	5,36	5,45
CYPRUS	4,13	4,48	4,60	4,60	4,60	5,79	4,70
CZECH REPUBLIC	3,80	4,30	4,63	4,84	3,88	3,71	4,19
DENMARK	3,81	4,29	4,29	4,84	2,93	2,73	3,81
ESTONIA	As Estonia has a very limited government debt, there are currently no suitable long-term government bonds available on the financial market.						
FINLAND	3,78	4,29	4,29	3,74	3,01	3,01	3,69
FRANCE	3,80	4,30	4,23	3,65	3,12	3,32	3,74
GERMANY	3,76	4,22	3,98	3,22	2,74	2,61	3,42
GREECE	4,07	4,50	4,80	5,17	9,09	15,75	7,23
HUNGARY	7,12	6,74	8,24	9,12	7,28	7,64	7,69
IRELAND	3,77	4,31	4,53	5,23	5,74	9,60	5,53
ITALY	4,05	4,49	4,68	4,31	4,04	5,42	4,50
LATVIA	4,13	5,28	6,43	12,36	10,34	5,91	7,41
LITHUANIA	4,08	4,55	5,61	14,00	5,57	5,16	6,49
LUXEMBOURG	3,30	4,46	4,61	4,23	3,17	2,92	3,78
MALTA	4,32	4,72	4,81	4,54	4,19	4,49	4,51
NETHERLANDS	3,78	4,29	4,23	3,69	2,99	2,99	3,66
POLAND	5,23	5,48	6,07	6,12	5,78	5,96	5,77
PORTUGAL	3,92	4,43	4,52	4,21	5,40	10,24	5,45
ROMANIA	7,23	7,13	7,70	9,69	7,34	7,29	7,73
SLOVAKIA	4,41	4,49	4,72	4,71	3,87	4,45	4,44
SLOVENIA	3,85	4,53	4,61	4,38	3,83	4,97	4,36
SPAIN	3,79	4,31	4,37	3,98	4,25	5,44	4,36
SWEDEN	3,71	4,17	3,89	3,25	2,89	2,61	3,42
UNITED KINGDOM	4,37	5,06	4,50	3,36	3,36	2,87	3,92
<b>EU 27</b>	<b>4,23</b>	<b>4,69</b>	<b>4,94</b>	<b>5,49</b>	<b>4,70</b>	<b>5,30</b>	<b>4,89</b>

Table 22: Market yields of government per MS (2006-2011)

**265. Macroeconomic Data.** Based on the Cobb-Douglas function described in the methodology, the capital formation equation based on a change in the cost of capital is  $K^* = (1 - \alpha) + Y - cc$ . This equation implies that the elasticity of capital K with respect to the cost of capital is minus one:  $e(K, cc) = -1$ . This is supported by empirical estimates in several historic studies (79). Recently, Gilchrist and Zakrajsek (2007) (80) confirm this relationship. Their econometric analysis implies a robust and quantitatively important effect of the user cost of capital on the firm-level investment decisions. According to their estimates, a 1 percentage point increase in the user cost of capital implies a reduction in the rate of investment of 50 to 75 basis points and, in the long run, a 1 percent reduction in the stock of

79 For example, Britton and Whitley (1997) find an elasticity value of -0.9 for the UK, -1.4 for France and -1.2 for Germany.

80 Gilchrist, S. and Zakrajsek, E.(2007). “Investment and the Cost of Capital: New Evidence from the Corporate Bond Market,” NBER Working Papers 13174, National Bureau of Economic Research, Inc.

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capital. More recently, Bond and Xing (2010) (81) apply an Error-Correction Model to this issue. The results suggest that there is “a significantly negative link between the tax-related component of the user cost of capital and the level of the capital stock in the long run”. The estimated elasticity is close to -1.0 and supports the view that tax policy can affect the level of capital accumulation at least in the long run.

Next to that, the equation which links the change in the capital stock to the change in GDP ( $Y = A + \alpha L + (1 - \alpha) K$ ). The relevant estimate for the share of labour ( $\alpha$ ) is derived from Ratto *et al.* (2004) (82), who find that it is 0,594 for the EU. For consistency with previous Commission studies, this study adopts this assumption. However, it is worth noting that, based on a study by Arpaia *et al.* (2009) (83) led by DG ECON, this estimate perhaps tends towards a lower bound. The Arpaia *et al.* study suggests perhaps historically higher estimates, but also points towards a downward bias in the labour share.

### 30.1.3 IMPACT ON EU GDP

**266. Introduction.** This section describes the estimation of the costs of the existing fiscal barriers, the reduction potential and its impact on the cost of capital and eventually on the economic performance of the economy.

**267. Cost of the Fiscal Barriers.** The costs relating to the fiscal barriers are a function of the total dividends and interest payments received by cross-border European Investors. The total amount of dividends received can be estimated as the average dividend yield for each MS over a 5-year period (see table above) multiplied by the amount of equity securities held by European non-domestic Investors in each MS. The total amount of dividends at a global EU level is estimated at US\$ 132,15bn or EUR 99,72bn (84).

MEMBER STATES	TOTAL AMOUNT OF DIVIDEND PAYMENTS RECEIVED (85) IN MILLION US\$ IN 2010
AUSTRIA	628,29
BELGIUM	1.667,97
BULGARIA	5,39
CYPRUS	113,83
CZECH REPUBLIC	145,89
DENMARK	392,77

81 Bond, S. And Xing, J. (2010)“Corporate taxation and capital accumulation”, Oxford University Centre for Business Taxation, Said Business School, Oxford, WP 10/15

82 Ratto, M., Röger, W., in’t Veld, J. and R. Girardi, (2004), “An estimated new Keynesian dynamic stochastic general equilibrium model of the Euro area”, *European Commission, Economic Papers No. 220*

83 Arpaia, A. & Perez, E. & Pichelmann, K., (2009). “Understanding Labour Income Share Dynamics in Europe”, *European Economy - Economic Papers 379*, Directorate General Economic and Monetary Affairs, European Commission

84 The exchange rate used is EUR 1 = US\$ 1,3252, which is the average exchange rate for the year 2010 (source: European Central Bank).

85 The amount of dividends received is obtained by the multiplication of the cross-border holdings of equity in 2010 by the average dividends yields in 2006-2011.

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MEMBER STATES	TOTAL AMOUNT OF DIVIDEND PAYMENTS RECEIVED (85) IN MILLION US\$ IN 2010
ESTONIA	23,91
FINLAND	1.975,46
FRANCE	10.833,52
GERMANY	9.925,22
GREECE	160,72
HUNGARY	137,04
IRELAND	6.376,70
ITALY	4.401,46
LATVIA	8,29
LITHUANIA	28,40
LUXEMBOURG	36.256,18
MALTA	36,28
NETHERLANDS	5.012,85
POLAND	546,64
PORTUGAL	2.006,86
ROMANIA	47,94
SLOVAKIA	8,37
SLOVENIA	4,39
SPAIN	3.687,86
SWEDEN	2.595,97
UNITED KINGDOM	12.694,28
<b>EU 27</b>	<b>99.722,49</b>

Table 23: Total amount of dividend payments received (in million EUR) in 2010

In order to obtain the total amount of interest payments received at an EU level, the total amount of debt securities held by European non-domestic Investors in each MS is multiplied by the average interest rate over a five-year period (2/3) and the corporate bond yield (1/3). The total amount of interest payments at a global EU level is estimated at US\$ 460,19 bn or EUR 347,26 bn<sup>(86)</sup>.

The sum of the total dividends and interest payments received by cross-border European Investors is EUR 446,98 bn.

**268. Three Additional Sources of Costs.** As described in the methodology, there are three additional sources of costs relating to the existing fiscal barriers:

- The first element is the cash flow disadvantage due to delayed claims and payments of tax refunds. It is estimated as the average delay period times the according risk-free rate times

<sup>86</sup> As the corporate bond yield is calculated based on the German firms' corporate bond yield, the interest payment at MS level is less relevant. This figure is obtained by multiplying the total interest flow at EU 27 level by the average interest return (i.e. 5,5%).

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the total amount of tax relief. An average delay of a half year (180 days out of 360) is assumed considering the answers provided by the MSs and the financial intermediaries in the cost-benefit questionnaires, a risk-free rate (87) of 2,95 % and an average tax relief of 11,3% for the dividends and 4,06% for the interest. These figures give a cash flow disadvantage of  $0,5 \cdot 0,0295 \cdot 0,037 \cdot \text{EUR } 99,72 \text{ bn} = \text{EUR } 0,054 \text{ bn}$  per year for dividends and  $0,5 \cdot 0,0295 \cdot 0,0196 \cdot \text{EUR } 347,26 \text{ bn} = \text{EUR } 0,1 \text{ bn}$  per year for equities. The total cash flow disadvantage is EUR 0,154 bn. This calculation does not assume relief at source which may occur in some Member States which may imply an over estimate in our assumption on payments delays. However, it is very unclear what the scale of this practice actually is, so it is not included in this estimate.

- The second component is estimated as the foregone tax relief due to (small) Investors who do not claim their tax refunds. According to the 4th Goal Group report from 2011, the amount of unclaimed WHT is estimated at 25% (88) globally. This percentage can be considered as a maximum value as it also includes Investors who do not deliberately claim a refund and it is a worldwide indicator. The DG MARKT study uses a percentage rate of 10%. These figures give an estimated cost of  $\text{EUR } 99,72 \text{ bn} \cdot 0,25 \cdot 0,037 = \text{EUR } 0,922 \text{ bn}$  and  $\text{EUR } 347,26 \text{ bn} \cdot 0,25 \cdot 0,0196 = \text{EUR } 1,7 \text{ bn}$ . The resulting estimated cost amounts to EUR 2,62bn.

Note the equivalence of this result to table 1 in subsection 30.1.2.1, which is reproduced below (89):

	CROSS-BORDER INVESTMENTS	CLAIMABLE WHT	UNCLAIMED WHT
<b>DIVIDENDS</b>	2.656,40	3,74	0,936
<b>INTEREST</b>	6.313,85	12,52	3,13
<b>TOTAL</b>	<b>8.970,25</b>	<b>16,28</b>	<b>4,07</b>

Table 24: Overview of the impact of the Models on the tax revenue at EU level (in billion EUR)

The numbers used in this section are equivalent to the numbers presented in the above table, but calculated using different methodologies. The first (described above) is obtained by calculating an weighted statutory rate at EU level and then applying this rate to the cross-border investments at EU level (i.e. general exercise). The alternative method is obtained by applying the specific WHT rates applied by two Member States to the cross-border investment between these Member States (i.e. specific exercise). This calculation is then applied to all the Member States.

87 The inter-bank lending rate is used as a proxy for the risk-free rate. It is estimated based on 12-month EURIBOR rates from 2006 to 2011 with a monthly frequency of 2,95%.

88 25% of reclaimable withholding tax.

89 The amounts presented in the table below and in the above paragraph only consider specific exemptions for UK (around 40% of the debt securities in UK are related to Eurobonds – see IMF CPIS database in connection with London Stock Exchange statistics) and Ireland (no withholding tax is levied if the recipient is a company which is resident in another EU Member State or in a tax treaty country and which is not controlled by Irish resident persons - the same rules are in place for non-resident individuals).

- The third factor is the actual amount of costs incurred in relation to the administration of claim procedures. As in the DG MARKT study, it is assumed that the sum of all elements accounts on average for 2% of the refundable amount. This figure yields a total estimate of EUR 0,082 bn per year (or EUR 0,019 bn for dividends and EUR 0,063 bn for equity interest).

The addition of the three components costs is thus EUR 2,86 bn. This direct loss is incurred each year by the Investors. Consequently, a net present value corresponds to 25,18 bn EUR over a 10-year period (with a discount rate given by the average 12-month EURIBOR, 2,95%).

**269. Potential Change of the Effective WHT Rate.** Moreover, the potential change of the effective tax rate is calculated as the ratio of the total cost (EUR 2,86 bn) to the total amount of dividends and interest payments (EUR 446,98 bn). It gives a figure of 0,64%. Given that the elasticity between the cost of capital and K is assumed to be 1, this value implies a reduction in the cross-border cost of financing of equal magnitude (if the costs were eliminated). However, this value assumes that all investments would be covered by reduced fiscal barriers. However, the fiscal barriers do not apply to all capital, so further steps must be taken in the modelling process as per the original study of the Commission.

**270. Cross-Border Investments not Impacted by WHT Changes.** The initial Commission’s study made a further adjustment to account for the fact that not all cross-border investments would be affected by changes in WHT (a missing DTT was a reason given). A similar adjustment could be made at this stage. However, it should only have a negligible impact on the results, so in this instance it is not implemented.

**271. Total Cross-Border Holdings not Covered.** A further adjustment adopted relates to the fact that all cross-border portfolio holdings only constitute a fraction of total holdings. In the Commission’s study, a share of 25% was assumed – this was based on the 2008 ECB Financial Integration in Europe Study. However, since the financial crises, the share of cross-border holdings has been in significant decline. For instance, in 2007, nearly 20% of all corporate debt securities were cross-border and the data was on an upward trend. By the end of 2011, the 2012 ECB Financial Integration study reports that this figure had fallen to around 12,5%. Given this substantive fall, we choose to reflect a reduced volume of international holdings and assume that only 15% of all holdings are held cross-border. The estimated effective reduction in the cost of capital then amounts to  $0,15 * 0,64\% = 0,1\%$ .

**272. Impact of Corporate Investment Decisions on Dividends.** As per Sinn (1991) (90), the Commission paper assumes that dividend taxes are neutral to corporate investment decisions under retained earnings financing. In effect, the neo-classical view propagates that dividend taxation has no impact on investment financed through retained earnings. Therefore any reduction in the cost of financing influences only that part of real investment that is financed via debt and new equity. However, this assumption has been challenged in the economics

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90 Sinn, H-W., (1991), “Taxation and the Cost of Capital: The ‘Old’ View, the ‘New’ View, and another View”, in: D. Bradford, ed., *Tax Policy and the Economy 5*, National Bureau of Economic Research, p. 25-54

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literature, particularly in terms of the link between dividend payments and investment responses. Chetty and Saez (2010) <sup>(91)</sup> set out a useful overview of how the economics literature has developed in this field. From the Chetty and Saez paper, the answer, however, appears not to be entirely clear-cut, and many of the challenges to this assumption come from the behavioural economics literature. On this basis it was chosen not to drop the assumption, due partly to lack of quantification, but also because, if retained earnings are fully factored into the GDP calculation, the results become implausibly large. The previous Commission’s study adopted the cross-country study of Corbett and Jenkinson (1997) <sup>(92)</sup>. Based on data from 1970-1994, it appears that around 80 percent of new real investments are financed by retained earnings of companies. Therefore the estimated impact on the cost of capital would amount only to 20% of the figure above:  $0,1\% * 0,2 = 0,02\%$ .

**273. Impact of Reduced Fiscal Barriers.** Finally, plugging the reduction in the cost of capital figure into the macroeconomic model, and assuming an elasticity of capital K with respect to the cost of capital of minus one, the impact of reduced fiscal barriers ultimately raises GDP by  $(1 - 0,594) * 0,02\% = 0,01\%$ .

**274. Impact on EU GDP.** With an EU GDP of around EUR12,629 trillion <sup>(93)</sup>, this value leads to an estimated increase of EUR 0,984 bn per year (or a figure close to EUR 8,6 bn over a 10-year period with an assumed 3,13% <sup>(94)</sup> growth rate of real GDP). This number is significant in economic terms and quantifies the potential benefits for Investors due to a removal of the fiscal barriers associated with cross-border holdings of securities. As explained above, an inclusion of the positive impact on intermediaries as well as national tax authorities would additionally raise the estimated impact on European GDP. Also, it should be noted that the conducted analysis is static. An additional consideration of dynamic effects (e.g. an increasing share of cross-border holdings due to the removal of the barriers) would provide a rising estimate of the impact on GDP over time.

However, it should be noted that, to a certain extent, this impact on GDP is over-estimated because some MSs already have in place systems that have features similar to the FISCO recommendations.

A further useful sense check on the analysis relates to the proportion through which GDP changes with respect to the additional WHT relief that is claimed. Based on the calculations in this section, this ratio is approximately 40 cents. So for each additional EURO 1 that is claimed in WHT relief, GDP rises by around 40 cents. This estimate is broadly consistent

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91 Chetty, R, and Emmanuel Saez. (2010) "Dividend and Corporate Taxation in an Agency Model of the Firm." *American Economic Journal: Economic Policy*, 2(3): 1–31

92 Corbett, J. and T. J. Jenkinson, (1997), “How is investment financed? A study of Germany, Japan, UK and US”, *Manchester School*, 15, 69-93

93 GDP in current prices, 2011. Basic figures on the EU Summer 2012 edition – Eurostat

94 Average annual growth rate (%) of GDP in the EU-27 (2001-2010) – Eurostat

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with other estimates of the effects of the changes of capital taxes on growth – notably OECD (2008) (95), Bleaney *et al.* (1999) (96) and Gemmell *et al.* (2007) (97).

Finally, it should be mentioned that the methodology used (like any empirical analysis) is of course a simplification of the real world and thus can only produce an imperfect estimation of all underlying relations and resulting consequences based on the (limited) information available.

#### 30.1.4 METHODOLOGICAL COMMENT AND POSSIBLE EXTENSIONS

**275. Useful Additions.** The approach outlined above for calculating the cost of capital and subsequent GDP impacts has the clear advantage of being transparent and clearly related to core economic principles. In turn, it provides a useful basis for estimating the consequences of the policy measure. However, despite this transparency and theoretical basis, there are useful additions that could be made in order to improve the accuracy of the estimate and also understand the impacts of the policy change on a more detailed range of indicators.

- **Who Receives this Gain?** When tax relief measures are harmonised, it has been shown that there will be a gain to GDP. However, a key question remains, who actually receives this gain? The understanding of this concept is borne out in an analysis of the economic incidence of the policy change. Simplifying fiscal rules effectively translates as a change in the effective tax rate as businesses can claim additional relief. Member states would potentially gain from any information exchange relating to relief claims when they are themselves the Member State of residence. This change in the rate of taxes paid will separately impact households, consumers and businesses (98).
- When considering the economic impact of a change in tax relief measures, it is important to take into account the issue of incidence:
  - **Statutory incidence** – From a legal perspective, the businesses implementing the initial clearing of the security transaction will bear the statutory obligation to claim tax relief.
  - **Economic incidence** – Once the relief has been claimed, the firm may choose either to pass it on to customers (whether businesses or households) in the form of lower prices, or to absorb the tax payment within its cost structure and increase profits.

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95 Johansson, A., Heady, C., Arnold, J. Brys, B. and Laura Vartia (2008), “Tax and Economic Growth”, Economics Department Working Paper No. 620, OECD, ECO/WKP(2008)28

96 Kneller, R., & Bleaney, M. F., and Norman Gemmell (1999), “Fiscal policy and growth: evidence from OECD countries,” *Journal of Public Economics*, Elsevier, vol. 74(2), pages 171-190, November

97 Gemmell, N., Kneller, R. and Ismael Sanz (2007), “Tax composition and economic growth in OECD countries”, University of Rioja working papers, <http://dialnet.unirioja.es/servlet/oaiart?codigo=3137728>

98 On the other side will also MSs – as RCs - benefit from the harmonised tax relief measures through the information exchange.

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Thus, if businesses choose to absorb the tax, this will affect their profitability and may in turn affect the firm’s employees or shareholders – we would then most likely expect the impacts to show up in terms of adjustments in the price of wages and capital. Conversely, if the business passes the cost savings on to consumers, adjustments in the capital stock may not accurately capture the full economic response.

The current framework could usefully be extended to incorporate this. If the reduction in cost of capital is passed on to the consumers of financial sector products, then we might expect the GDP gains to be greater. Financial sector taxes tend to cascade through the production chain pushing up capital prices and business costs. Diamond and Mirrlees (1971) (99) show that removing tax distortions on production inputs one produces larger relative economic gains than removing tax distortions on consumers. This may imply a higher elasticity in the relationship between cost of capital changes and capital in the economy.

Therefore, a more detailed understanding of the transmission mechanism, i.e. how the change in relief claims impacts businesses and consumers, allows the incidence of the tax to be better understood.

276. **Possible Bias.** While the model is transparent and hence tractable, it does carry the risk that its stylistic nature may not fully capture some of the key economic responses associated with a simplification of fiscal rules. Bias may exist on the upside and the downside:

- **Downside bias** – This may occur due to any adjustment in the model being made with regard to the cost of capital and hence the capital stock. However, if we expect GDP to increase, then the supply of labour would also need to increase utilisation of the large capital stock. This would increase the overall multiplier effect of the measure. So this points to a risk of underestimation.
- **Upside bias** – This may occur through feedbacks to the wide economy. Potentially there will be some feedback through rigidities in the labour market, household consumption, and investment that will be driven by stickiness in relative prices and which will reduce the overall economic benefit. This would decrease the overall multiplier effect of the measure. So this points to a risk of overestimation.

Such issues may be resolved by using a broader analytical approach that captures the economic response of the measure in more detail. The model is dependent on the extent to which these wider effects are embedded in the elasticity that links the change in the cost of capital to the capital stock. If these effects are limited, a broader approach may be needed.

277. **Assumptions dependence.** As described above, the result of the model depends on the assumptions considered when defining the parameters (e.g. average number of days claim delayed for, risk-free rate of return as proxied by LIBOR rate, foregone tax relief from smaller Investors who do not claim their refunds...). What is clear is that there is a potential for significant variation in the results. This means that the impact on GDP calculated under the

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99 Diamond, Peter A & Mirrlees, James A, 1971, “Optimal Taxation and Public Production: I--Production Efficiency”, American Economic Review, American Economic Association, vol. 61(1), pages 8-27, March



assumptions described in this appendix could be different in the reality (if the standardised relief at source system is put in place) considering that the value of the parameters may change. As the macro model is a simplified description of reality, designed to yield hypotheses about economic behaviour that can be tested, the objective is to approximate the GDP impact without expecting to measure the real impact.

## 30.2 IMPACT ON INVESTORS AND MEMBER STATES

### 30.2.1 INTRODUCTION

278. This section analyses the economic impact that the new system could have on the tax revenue at EU and MS level. This analysis considers the differences between dividends and interest as well as the differences that could arise from the local tax regulation. Finally, the economic impact on Investors at EU level will be estimated.

279. Based on the various macro statistics collected, the following figures have been calculated and will be further analysed.

	CROSS-BORDER INVESTMENTS	CLAIMABLE WHT	UNCLAIMED WHT
<b>DIVIDENDS</b>	2.656,40	3,74	0,936
<b>INTEREST</b>	6.313,85	12,52	3,13
<b>TOTAL</b>	<b>8.970,25</b>	<b>16,28</b>	<b>4,07</b>

Table 25: Overview of the impact of the Models on the tax revenue at EU level (in billion EUR)

### 30.2.2 OVERVIEW OF THE IMPACT AT EU LEVEL

280. **Cross-Border Portfolio Investments.** The data from the IMF demonstrate that the securities (debt and equities) held by European non-domestic Investors reached a total holding of EUR 8,97 trillion in 2010. This amount is split between EUR 2,66 trillion in equities and EUR 6,31 trillion in debt.

With this information, it is possible to estimate the income, the WHT that these cross-border investments should have generated, and the amount of WHT that could benefit from a reduced tax rate. To perform this calculation, the following variables must be defined:

- Equity portfolio investment of non-resident Investors having their tax residence in another MS (*Equi*) – Statistics of 2010 provided by the IMF and including the positions for each MS, split by RC;
- Bonds portfolio investment of non-resident Investors having their tax residence in another MS (*Debt*) – Statistics of 2010 provided by the IMF and including the positions for each MS, split by RC;

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- Dividend rate (*DivR*) – A theoretical dividend rate for each MS will be calculated, based on the average of the dividend rates from 2006 to 2011;
- Interest rate (*IntR*) – A theoretical interest rate for each MS will be calculated, based on the average of the interest rates from 2006 to 2011;
- The domestic WHT rate on dividends (*DomWHTrDiv*) – The WHT rates applied to dividends come from the IBFD database and are based on individuals (for countries applying a different WHT rate between individuals and corporations);
- The reduced WHT rate on dividends according to a DTT (*RedWHTrDiv*) – The WHT rates applied to dividends come from the IBFD database and are based on individuals (for countries applying a different WHT rate between individuals and corporations);
- WHT reduced rate on interest according to a DTT (*RedWHTrInt*) – The WHT rates applied to interest come from the IBFD database and are based on individuals (for countries applying a different WHT rate between individuals and corporations). Moreover, it is assumed that the government bonds represent 2/3 of the total amount, and the corporate bonds represent 1/3<sup>100</sup>;
- WHT domestic rate on interest (*DomWHTrInt*) – The WHT rates applied to interest come from the IBFD database and are based on individuals (for countries applying a different WHT rate between individuals and corporations). Moreover, it is assumed that the government bonds represent 2/3 of the total amount, and the corporate bonds represent 1/3.

With all the above data, it is possible to perform a calculation at MS level to estimate the amount of WHT that could be claimed by Investors.

**281. Amount of tax that could be claimed on dividends.** The sum of all the dividends (A) multiplied by the percentage of the WHT that could be claimed (B) provides the amount of tax that could be claimed on dividends (C).

- **A.** The sum of all the dividends paid in one MS to non-resident Investors is obtained by multiplying, by the dividend rate, the value of the equity portfolio investment of non-resident Investors having their tax residence in another MS;

$$Equ * DivR$$

- **B.** The difference between the domestic WHT rate and the reduced WHT rate according to a DTT provides the percentage of the dividend that could be claimed.

$$DomWHTrDiv - RedWHTrDiv$$

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<sup>100</sup> This statement was used in the analysis carried out by DG MARKT – “The Economic Impact of the Commission Recommendation on Withholding Tax Relief Procedures and the FISCO Proposals” – 24 June 2009.

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- **C.** The multiplication of both results is the part of the dividends that could be claimed in this MS in 2010 (101).

$$(Equ * DivR) * (DomWHTTrDiv - RedWHTTrDiv)$$

This calculation provides the claimable amount on the dividends paid in one MS to the resident of another MS. So this calculation should be repeated 26 times to have all the results for one MS and 702 times to have the results at EU level (27\*26).

Adding up all the results, the claimable WHT tax on dividends for 2010 is estimated as EUR 4,74 billion at EU level.

**282. Amount of tax that could be claimed on interest.** The same method can be applied to the interest paid (102):

$$(Debt * IntR) * (DomWHTTrInt - RedWHTTrInt)$$

Adding up the results of all the MSs, the claimable WHT tax on interest for 2010 is estimated at EUR 12,52 billion at EU level. However, this amount is most likely overestimated for several reasons:

- **Existing Relief at Source Procedures.** Many MSs have already implemented efficient relief procedures to increase the attractiveness of the government debt. The rate of unclaimed WHT is therefore lower than 25%;
- **Institutional Investors.** An important part of the debt is owned by institutional Investors. In many cases, these Investors benefit from specific favourable WHT regime. In other cases, when the institutional Investor can only benefit from a WHT regime applicable to regular Investors, they often use services of tax experts, allowing them to obtain a reduced tax rate each time they are entitled to. On the other side however CIVs do not always benefit from access to treaty rates, or only partially (103).

Nevertheless, it was very difficult for MSs to provide accurate statistics on the amount of WHT tax unclaimed by entitled Investors on debt securities. The rate of 25% has therefore been applied to interest (similarly to dividends) even it is an average which is not reflecting the actual situation on interest.

**283. Amount of unclaimed WHT tax.** Of course, an important part of this amount is effectively claimed by Investors in the current situation, despite the multiple administrative barriers existing in most of the MSs. The impact of the new system on the WHT will be limited to the unclaimed part of this amount. In 2010, the Goal Group report on the Securities

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101 This statement is only valid if the domestic WHT rate is bigger than the reduced WHT rate (DomWHTTrDiv > RedWHTTrDiv).

102 This statement is only valid if the domestic WHT rate is bigger than the reduced WHT rate (DomWHTTrInt > RedWHTTrInt).

103 In that respect, please refer to the section 3.2 Assumptions (paragraph 15 and to the OECD study “The granting of treaty benefits with respect to the income of collective investment vehicles” (2010).

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Withholding Tax Reclamation Market calculated that the portion of WHT not claimed was around 25%.

This means that the unclaimed WHT represents EUR 0,933 bn for dividends and EUR 3,13 bn for interest. The total amount of unclaimed WHT for all securities at EU level is therefore EUR 4,07 bn.

It is important to note that this amount is a maximum that would be reached only if all Investors claimed the reduced tax rate. It is likely that some Investors will not request to benefit from a reduced tax rate as they do not want that their RC’s tax administration to receive information concerning their cross-border investments. It is very difficult to estimate the percentage of Investors that would still try to remain ‘hidden’ from their tax administration and this will greatly vary with the potential implementation of some of the recommendations regarding the mandatory aspect of the reporting. Therefore, this section will only consider the above maximum amount.

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**European Commission**  
**Taxation and Customs Union DG**

**Feasibility Study on a Standardised “Relief at Source” System  
Implementing the Principles of the FISCO Recommendation**

**Appendices to the Addendum**

## **APPENDIX 31: FATCA**

This appendix comprises a summary of the FATCA regulations, including the Model 1 IGA and the Model 2 IGA.

\* \* \*

### 31.1 FATCA PROVISION AND REGULATIONS

284. **The Four Cornerstones.** The figure below presents the four cornerstones of FATCA, which are detailed in this chapter.

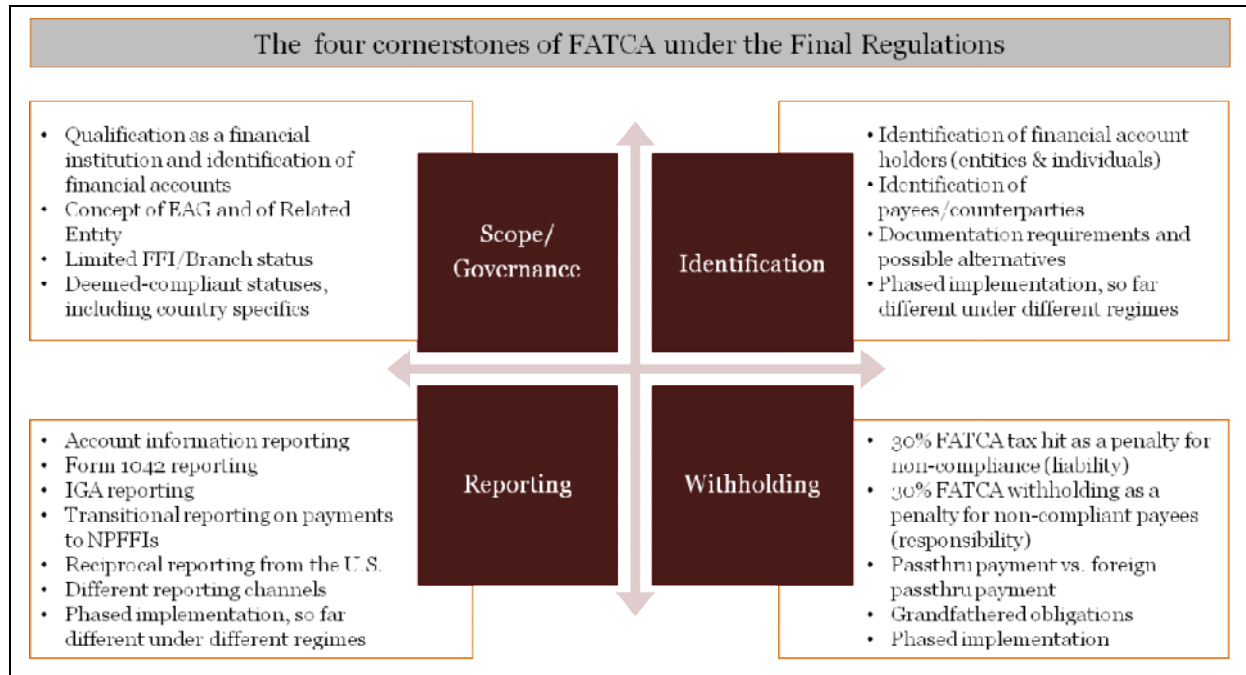


Figure 18: The Four Cornerstones of FATCA

#### 31.1.1 BACKGROUND

285. **FATCA’s Primary Goal.** FATCA’s rules are set forth in chapter 4 of the Internal Revenue Code (“Code”) and generally apply after 31 December 2013. FATCA’s primary goal is to increase the IRS’s ability to detect U.S. tax evaders concealing their assets in foreign accounts and investments by encouraging FFIs and NFFEs to comply with a new set of tax information-reporting and withholding rules or suffer the consequences of non-compliance, primarily being subject to WHT on the receipt of withholdable payments or passthru payments.

286. **Thirty Percent WHT.** Generally, FATCA provisions require withholding agents (including U.S. Financial Institutions (“USFIs”)) to withhold a 30% WHT on any “passthru payments” that are composed of withholdable payments and foreign passthru payments (currently reserved provision). Withholdable payments include certain U.S.-source fixed or determinable annual or periodic (“FDAP”) income (such as dividends and interest paid by U.S. persons) and gross proceeds from the sale of a security that could generate U.S.-source dividends or interest (occurring after 31 December 2016). Additionally, FFIs generally are required to withhold 30% WHT on passthru payments made to recalcitrant account holders or to other FFIs (not qualifying as exempt or “deemed-compliant” FFIs) that do not enter into an agreement with the IRS (referred to as non-participating FFIs).

287. **NRA Withholding Rules Remain Applicable.** FATCA’s provisions are in addition to, and do not replace, the existing non-resident alien (“NRA”) withholding rules in chapter 3 of the Code (“NRA withholding”). The statute directs Treasury and the IRS to promulgate regulations that coordinate the two withholding regimes while avoiding imposing double WHT and preserving most of the extensive procedural rules currently in place under the chapter 3 withholding. This coordinating guidance is also expected in the next few months.

288. **FATCA Regulations Attempt to Ease Excessive Burdens of Compliance.** The government recognises that FATCA will be most effective if no one suffers the chapter 4 WHT: that is, if most FFIs opt to comply with the documentation, due diligence and reporting procedures. The regulations, therefore, attempt to ease potentially excessive burdens of compliance. However, even when lessened, the burdens can be substantial.

### 31.1.2 ENTITIES IN SCOPE AS FINANCIAL INSTITUTIONS

#### 31.1.2.1 ENTITIES IN SCOPE

289. **Foreign Financial Institutions.** The regulations, consistent with the Act itself, continue to broadly define “financial institution.” The regulations expand the definition of a financial institution to include certain insurance companies, provide guidance on when an entity will be considered to be engaged in a banking business, and broaden the scope of investments subject to the “investing, reinvesting and trading” prong of the FFI definition to include notional principal contracts as well as insurance and annuity contracts.

The regulations also provide an updated definition of an FFI taking into account the possibility for an FFI to be located either in a Model 1 IGA country or in a Model 2 IGA country. Indeed, with respect to any entity that is resident in a country that has in effect a Model 1 IGA or Model 2 IGA, an FFI is any entity that is treated as a Financial Institution pursuant to such Model 1 IGA or Model 2 IGA independently of the definition of an FFI applicable under the U.S. Regulations (and explained hereafter).

For FFIs that are not located in a Model IGA country, the regulations set forth a broad definition of financial institution that includes any entity that:

- accepts deposits in the ordinary course of a banking or similar business;
- holds financial assets for the account of others as a substantial part of its business;
- is an investment entity;
- is an insurance company or a holding company that is a member of an Expanded Affiliated Group (EAG, cf. subsection 31.1.4.4 below for the definition) that includes an insurance company, and the insurance company or holding company issues, or is obligated to make payments with respect to, a cash value insurance or annuity contract; and



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- is an entity that is a holding company or treasury centre that:
  - a. is part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company or investment entity type B or C (see below); or
  - b. is formed in connection with or availed of by a CIV, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund or any similar investment vehicle established with an investment strategy of investing, reinvesting or trading in financial assets.

290. **Investment Entities.** Under the Regulations, the definition of an investment entity is composed of three different parts:

- a. **Investment Entity Type A.** This part of the definition of investment entity is inspired from the definition of investment entity contained in the IGAs by providing that an investment entity includes any entity that conducts as a business on behalf of customers:
  - i. trading in an enumerated list of financial instruments (money market instruments, foreign currency, foreign exchange, interest rate, index instruments, transferrable securities or commodity futures);
  - ii. individual or collective portfolio management; or
  - iii. otherwise investing, administering or managing funds, money or certain financial assets on behalf of other persons.
- b. **Investment Entity Type B.** Also included under this definition is any entity whose gross income is primarily attributable to investing, reinvesting or trading in financial assets. “Primarily” for this purpose means when the gross income of that entity, which derives from that investing business, equals or exceeds 50% of the entity’s total gross income. In addition to that revenue threshold condition, the definition sets forth that such entities must be managed by an entity qualifying as a depository institution, custodial institution, insurance company or investment entity type A.
- c. **Investment Entity Type C.** Finally, an investment entity also includes any entity that functions or holds itself out as one of the following entities:
  - i. a CIV;
  - ii. a mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund; or
  - iii. any similar investment vehicle established with an investment strategy of investing, reinvesting or trading in financial assets.

291. **Holding and Treasury Centre.** The fifth part of the FFI definition is a supplemental, addition to the four others categories that were already used under the Proposed Regulations to define the notion of FFI. This addition in the regulations demonstrates an interesting change in the point of view of the U.S. Treasury and IRS. Indeed, holdings and treasury centres were not included as a separate type of FFI in the previous definition while, now, under the new definition, those entities do constitute a new type of FFI unless an exception can be applied. This might trigger a non-negligible enlargement of FATCA’s scope in the event that most of the holding companies and treasury centres are not able to benefit from the exception and as a consequence must comply with FATCA obligations.

To benefit from that exception, an entity that qualifies as a holding company must verify whether the group it belongs to can qualify as a nonfinancial group. If the answer is positive, the holding company is considered as excluded from the FFI definition if it fulfils the additional conditions specific to the holding company.

292. **Nonfinancial Group.** A nonfinancial group is a group that meets the following four cumulative conditions:

6. For the three-year period preceding the year for which the determination is made, no more than 25% of the gross income of the EAG consists of passive income.
7. During that same three-year period, no more than 5% of the gross income of the EAG is derived from members of the EAG qualifying as FFIs.
8. No more than 25% of the fair market value of assets held by the EAG are assets that produce or are held for the production of passive income. And
9. Any member of the EAG that qualifies as an FFI must fall under the definition of a Participating FFI or a deemed-compliant FFI.

The same reasoning must be applied for treasury centres, meaning that the exception is applicable only when the two cumulative conditions are fulfilled:

10. there is a first check to verify whether that entity belongs to a nonfinancial group (as described above), followed by
11. a second check to ensure that the treasury centre does fall as an entity under the definition of a treasury centre.

#### 31.1.2.2 DEEMED-COMPLIANT STATUSES

293. **Deemed-Compliant Statuses.** Consistent with the approach in the Proposed Regulations, the regulations provide for deemed-compliant statuses. The division within the deemed-compliant FFIs is similar, by having registered deemed-compliant FFIs, certified deemed-compliant FFIs and owner-documented FFIs. Treasury and the IRS have attempted to limit the application of FATCA to entities that pose a greater risk of facilitating U.S. tax evasion by U.S. persons. In most cases, a deemed-compliant FFI must meet several requirements to qualify for deemed-compliant status.

294. **Registered Deemed Compliant FFIs.** A registered deemed-compliant FFI must register with the IRS and demonstrate adherence to procedural requirements. After registering on the IRS Web site, the FFI will receive an FFI ID or Global Intermediary Identification Number (“GIIN”). Registered deemed-compliant institutions include:

- local FFIs;
- non-reporting members of participating FFI groups;
- qualified investment vehicles;
- restricted funds;
- qualified credit card issuers;
- sponsored investment entities and controlled foreign corporations.

Registered deemed-compliant FFIs also include any FFI or branch of an FFI that is a reporting Model 1 FFI that complies with its registration requirements as set forth in the applicable Model 1 IGA.

Although these rules may make it easier for these types of entities to be deemed compliant, they will not eliminate the administrative burden associated with FATCA. For example, a restricted fund will still have to perform certain due diligence on direct investors and change how it does business with its distributors. If the distributor’s FATCA status should change, the fund would need to take remedial action. Finally, a registered deemed-compliant FFI will be required to comply with rules regarding information-gathering and monitoring procedures to certify its deemed-compliant status to the IRS every three years.

295. **Certified Deemed-Compliant FFIs** are not required to register with the IRS. Instead, eligible entities self-certify their deemed-compliant status directly to withholding agents (generally through the use of Forms W-8 or, in certain cases, other documentation). Certified deemed-compliant institutions include:

- non-registering local banks;
- FFIs with only low-value accounts;
- sponsored, closely held investment vehicles;
- limited-life debt investment entities (transitional deemed-compliant status available till 1 January 2017);
- any non-reporting IGA FFI.

Each certified deemed-compliant FFI classification must meet specific eligibility and documentation requirements to qualify for certified deemed-compliant FFI status.

296. **Owner-Documented FFI.** An FFI may qualify for another special status with respect to payments received from and accounts held with a designated withholding agent excluding payments and accounts for which it acts as an intermediary. Such a withholding agent must qualify as a U.S. FI, a Participating FFI or a reporting Model 1 FFI that agrees to undertake additional due diligence procedures and reporting in order for that first FFI to be treated as an owner-documented FFI. The scope of that exception is very limited due to the strict requirements to be fulfilled. For instance, an owner-documented FFI may only be an investment entity.

#### 31.1.2.3 EXEMPT BENEFICIAL OWNERS

297. Certain types of entities are exempt from FATCA withholding and related documentation requirements, regardless of whether they would otherwise qualify as an FFI. These entities, called “exempt beneficial owners” include:

- foreign governments and their political subdivisions, agencies and instrumentalities;
- international organisations and their wholly owned agencies or instrumentalities;
- foreign central banks of issue;
- governments of U.S. territories;
- certain retirement plans;
- certain entities wholly owned by one or more other exempt beneficial owners listed above; and
- any entity that is treated as an exempt beneficial owner pursuant to a Model 1 or Model 2 IGA.

#### 31.1.2.4 ENTITIES OUT OF SCOPE

298. **NFFEs.** In the FATCA world, any foreign entity that does not qualify under one part of the definition of an FFI (as described above) *de facto* falls under the category of NFFE or Non-Financial Foreign Entity. Nevertheless, within that NFFE category, some distinctions have to be made. These differences will have an impact on the identification and documentation obligations of an FFI maintaining an account for such NFFEs as well as for payees that are NFFEs.

299. **Excepted NFFEs.** Excepted NFFEs constitute entities that could fall under one of the below categories:

- publicly traded corporations on established securities markets;
- certain affiliated entities related to a publicly traded corporation;
- certain (U.S.) territory entities;

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- active NFFEs;
- excepted nonfinancial entities: this category refers back to the excepted FFIs that are described below (para. 303).

A withholding agent, in this case an FFI, is not required to withhold under this section of FATCA on a withholdable payment that is beneficially owned by an excepted NFFE. The notion of withholdable payment is described in the withholding-related section of the present chapter (cf. subsection 31.1.4.1 below).

**300. Active NFFEs.** Active NFFEs are part of the excepted NFFEs, of which they represent a large, if not the largest, part. An active NFFE is defined by reference to an income test. Indeed, such an entity must meet the criteria of “being active” by less than 50% of its gross income for the preceding year being passive income (e.g. dividends, interest, royalties, etc.) and less than 50% of its assets producing or being held for the production of passive income.

**301. Passive NFFEs.** A passive NFFE is any NFFE that does not fall under the excepted NFFE definition (which includes active NFFEs).

The main consequence of being a passive NFFE is an additional obligation with respect to the due diligence that an FFI must perform. In the case of an account held by a passive NFFE account holder or in the case of a payee relationship with an NFFE (i.e. no account), an FFI will have to determine whether the NFFE has any substantial U.S. owner and report to the IRS accordingly. If the NFFE does not cooperate with the FFI in that respect, the FFI acting as withholding agent will be obliged to apply a 30% WHT on any withholdable payment made after 31 December 2013 into the account held by that NFFE. The withholding is not required by the FFI if it can establish that there are no U.S. substantial owners or that the NFFE has identified the U.S. substantial owner and that this information will be actually reported.

**302. Substantial ownership.** Under the regulations, U.S. substantial owner means any specified U.S. person that directly or indirectly owns more than 10% of the stock of a relevant corporation. The regulations also provide specific rules applicable to interests held in foreign partnerships and trusts. The 10% threshold was one of the top points heavily discussed by the FFIs that sent letters of comment to the IRS. Despite these remarks, the IRS maintained a 10% threshold, whereas The Model 1 IGA defines substantial ownership by reference to the AML/KYC rules, which generally apply a 25% threshold. In the preamble to the regulations, the IRS explain that they did not align this percentage because “*jurisdictions have varying approaches to enforcing AML due diligence requirements and, thus, reliance on AML due diligence to determine substantial U.S. owners is more appropriate in the context of the IGAs.*”<sup>(104)</sup> In other words, this non-alignment can be interpreted as an intention by the IRS to keep potential IGA candidate countries under pressure to sign a Model agreement.

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104 Preamble to the Final Regulations, p. 99.

303. **Excepted FFIs.** The U.S. regulations provide exclusions to the definition of an FFI. In fact, these entities would have qualified as FFIs but are excluded from that definition based on specific, strict conditions that have to be met.

These exclusions include:

- excepted nonfinancial group entities (i.e. holding company, treasury centre or captive finance company in a group falling under the definition of a nonfinancial group, notion depending on revenue test);
- excepted nonfinancial start-up companies or companies entering a new line of business;
- excepted nonfinancial entities in liquidation or bankruptcy;
- excepted inter-affiliate FFIs (i.e. entities qualifying as an FFI but whose activities are strictly limited to intergroup activities);
- section 501(c) entities;
- non-profit organisations.

### 31.1.3 PERSONS COVERED

304. **Account Approach.** The approach outlined in the regulations is more an account approach than a person approach. This means that persons, individuals and entities will be in scope of FATCA because of their holding an account qualifying as a financial account and not especially because they are U.S.-specified persons. In other words, not all accounts held by U.S. persons are in scope of FATCA.

305. **Payee.** Persons could also be in scope of FATCA because of the payee concept. A payee is the person to whom a withholdable payment is made, regardless whether this person is the holder of a financial account.

In a nutshell, an FFI can have a payee that is a counterparty with which it does not maintain a financial account, a payee that is the holder of a financial account or a payee that is not the listed account holder due to the special look-through rules for determining who the account holder is.

The documentation requirements for an account holder are fairly similar to the requirements applicable to other payees due to reference to the payee documentation section (cf. §1.1471-3) in the account due diligence and documentation provisions (cf. §1471-4(c)).

306. **Financial Accounts.** The definition of *financial account* has been refined in the regulations in accordance with the developments made in the IGAs, especially under the definition of an FFI as an investment entity.

- Accordingly, *financial account* is defined as any depository or custodial account in a financial institution, certain equity or debt interests in a financial institution, and any cash

value insurance and annuity contracts issued or maintained by a financial institution. A *U.S. account* is a financial account maintained by an FFI that is held by one or more specified U.S. persons or a U.S.-owned foreign entity.

- *Depository accounts* are commercial, checking, savings, time or thrift accounts, or accounts that are evidenced by a certificate of deposit, thrift certificates, investment certificates, certificates of indebtedness or other, similar instruments, along with any amount held by an insurance company and any amount held by an insurance company under a guaranteed investment contract or under a similar agreement to pay or credit interest thereon or to return the amount held.
- *Custodial accounts* are accounts that are used to hold financial instruments or investment contracts for the benefit of another person and can include depository accounts, shares of stock in a corporation, notes, bonds, debentures, evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based on a nonfinancial index, a notional principal contract, an insurance or annuity contract, any option, or other derivative instrument.
- An *equity or debt interest* is any equity or debt interest held in a financial institution. However the Regulations make a distinction between equity or debt interests in (1) an investment entity type B or C, (2) a holding company or treasury centre and (3) other financial institutions.
- *Insurance contracts* that include an investment component (cash value and annuity) and have a cash value greater than USD 50,000 at any time during the calendar year are financial accounts. Cash value means the greater of either the amount the policyholder is entitled to receive upon contract termination (without reductions for surrender charges or policy loans) or the amount the policyholder can borrow under the contract.
- *Annuity contracts* are also considered as financial accounts but they are usually grouped with the cash value insurance contracts described above in a single, fourth type of financial account. An annuity contract is any contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an annuity contract in accordance with the law, regulations or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

#### 31.1.4 OBLIGATIONS AS AN FFI – THE FFI AGREEMENT

For an FFI to be a participating FFI, it must enter into an agreement (“FFI Agreement”) with the IRS to become a participating FFI. Under the FFI Agreement, a participating FFI will agree to determine the U.S. or non-U.S. status of its account holders and payees as well as to define whether the account or payee is a recalcitrant account holder or an NPPFI, obtain appropriate information and documentation from account holders to support this

classification, withhold on certain passthru payments made to recalcitrant account holders or non-participating FFIs, and report information on U.S. accounts to the IRS.

The obligations set forth in an FFI agreement will apply as described in the regulations to FFIs located in non-IGA countries but also to Model 2 IGA countries to the extent that the IGA does not modify these obligations. An FFI located in a Model 1 IGA must follow the provisions under that IGA and will not sign an FFI agreement.

The obligations under an FFI agreement are described in the below sections pursuant to the order of the regulations.

Each member of an FFI group must designate a lead FFI to initiate and manage the online registration process for the FFI group. The lead FFI that assumes this role will be required to electronically register and to identify each FFI that is a member of the FFI group (“FFI members”) that will register for participating, limited or registered deemed-compliant FFI status.

#### 31.1.4.1 WITHHOLDING

**307. General Withholding Rule.** In principle, a Participating FFI (PFFI) must withhold 30% WHT on any withholdable payment made to recalcitrant account holders, non-participating FFIs (NPFFIs) or non-compliant NFFEes after 31 December 2013. A PFFI is not required to withhold on foreign passthru payments made to such non-compliant payees before 1 January 2017 (expected). A PFFI has to determine:

- whether any exception might be applicable to the general withholding rule;
- if the payment being made is a withholdable payment; and
- if the payee of that payment is subject to withholding.

**308. Exceptions.** The U.S. Regulations lay down some exceptions to the general obligation to withhold 30% WHT in cases of:

- a payment made by a PFFI that is an unrelated withholding agent that lacks control or custody of the payment or knowledge of the facts that give rise to the payment;
- pre-existing obligations that are not yet identified within the time period granted to a PFFI to perform such identification and documentation for pre-existing accounts (i.e. 1 July 2014, 31 December 2014 or 31 December 2015, according to the type of account holder);
- payments made to certain recipients (PFFIs and **deemed-compliant** FFIs that are primary QIs, exempt beneficial owners, some territory FIs);
- payments made into accounts that are excepted from the definition of a financial account and/or listed in an Annex II to an IGA;
- payments made to accounts held with a clearing organisation with FATCA-compliant membership. Nevertheless, this provision is still reserved.



**309. Withholdable Payment.** Generally speaking, payments subject to FATCA withholding are U.S.-source FDAP Income and gross proceeds from a sale of property which can produce U.S.-source interest or dividends and occurs after 31 December 2016.

**310. Grandfathered Obligations.** Payments related to such obligations do not require 30% WHT. Indeed, a grandfathered obligation or gross proceeds from the disposal of such obligations are not considered as withholdable payments and, consequently, are not subject to 30% WHT.

A grandfathered obligation means:

- any obligation outstanding on 1 January 2014;
- any obligation that gives rise to a withholdable payment solely because that obligation is treated as giving rise to a dividend-equivalent payment and is executed within six months of that obligation being treated as such;
- any agreement requiring a secured party to make a payment with respect to, or in repayment of, collateral posted to secure a grandfathered obligation;
- any obligation that is executed on or before the date six months after the date on which final regulations defining the term “foreign passthru payments” are filed with the Federal Register.

The term “obligation” includes debt instruments, binding agreements with fixed material terms, life insurance contracts payable no later than the death of the individual(s) insured, immediate annuity contracts for a fixed period or the life of the annuitant and derivatives transactions entered between counterparties under an ISDA Master agreement.

#### 31.1.4.2 IDENTIFICATION AND DOCUMENTATION OF ACCOUNT HOLDERS AND PAYEES

##### 311. Introduction.

- *Extension of time to review pre-existing accounts.* Under the regulations, an account is generally treated as a pre-existing account if it is outstanding on 31 December 2013. Participating FFIs and withholding agents will need to complete the due diligence for *prima facie* FFIs within six months (1 July 2014) and participating FFIs must complete the due diligence for high value accounts by 1 January 2015. For all other accounts, participating FFIs and withholding agents will need to complete the due diligence by 1 January 2016.
- *The expanded use of existing documentation.* The regulations stipulate a number of instances not provided in the proposed regulations where existing documentation can be utilised to identify a payee. For example, the regulations permit a withholding agent to rely on a pre-FATCA Form W-8 in lieu of obtaining an updated version of the withholding certificate in certain circumstances.

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312. **General rule.** A PFFI must obtain documentation for each account holder and each entity payee to establish their FATCA status in order to determine which are subject to reporting and/or withholding obligations.

The regulations set forth different identification procedures and documentation requirements depending on whether the account is outstanding on 31 December 2013. If it is, the account is described as pre-existing. Accounts opened on or after 1 January 2014 will be considered as new accounts. This first distinction between pre-existing and new has to be combined with the account holder type, which can be either an individual or an entity. As a result, a PFFI can have four different types of accounts:

- pre-existing Individual Account or PIA;
- pre-existing Entity Account or PEA;
- new Individual Account or NIA;
- new Entity Account or NEA.

313. **Pre-existing Obligation.** The regulations permit a participating FFI to treat a new account of a existing customer that has a pre-existing account (i.e. an account outstanding on 31 December 2013) as a pre-existing account provided the participating FFI treats the new account and the pre-existing account as one account for the purposes of applying the AML due diligence, aggregating account balances, and applying the standards of knowledge for the purposes of chapter 4.

314. **Account Holder.** The account holder is generally the person listed or identified as the holder or the owner of the account regardless of whether that person might be a flow-through entity. Besides this, the PFFI has to apply special rules to determine who the account holder is. For example, the Regulations provide that, in the case of a joint account, each joint holder is treated as an entire account holder, meaning that each person will be treated as an account holder and will be attributed the entire balance of the jointly held account. Another example concerns any person acting as an agent that is not an FFI and that cannot therefore be considered as the account holder.

315. **Individual Accounts.** A PFFI is required to obtain certain documentation to establish the status of the account holder. This documentation can be (1) documentary evidence to establish the foreign status of an account holder (cf. §1.1471-3(c)(5)), (2) specified information from a third-party credit agency or information related to a group insurance/annuity, or (3) a withholding certificate. In addition, the PFFI must also review all information collected in connection with the account opening or the maintenance of the account.

In the case of PIAs, the PFFI can choose to rely on the aforementioned rules or to apply the specific procedures that are reserved for PIAs. These procedures refer to the so-called electronic search of U.S. indicia. When U.S. indicia are discovered, the PFFI will have to cure those indicia by receiving the relevant information and documents from the account holder, confirming its U.S. status or otherwise.

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U.S. indicia are the following:

- designation of the account holder as a U.S. citizen or resident;
- a U.S. place of birth;
- a current U.S. residence address or U.S. mailing address (including a U.S. post office box);
- a current U.S. telephone number (regardless of whether that number is the only telephone number associated with the account holder);
- standing instructions to pay amounts from the account to an account maintained in the United States;
- a current power of attorney or signatory authority granted to a person with a U.S. address; or
- a “care-of” address or a “hold mail” (*poste restante*) address that is the sole address the FFI has identified for the account holder.

For high value PIAs, i.e. accounts that have an aggregated balance or value that exceeds USD 1.000.000, a PFFI must apply an enhanced review procedure, which combines the electronic search with a paper record search and a relationship manager inquiry. The paper search may be avoided if sufficient information is electronically searchable. Another exception exists when the PFFI has retained a record of documentary evidence and withholding certificate to establish the account’s foreign status under its QI agreement. The relationship manager inquiry cannot be circumvented.

The regulations also impose threshold exceptions allowing exclusion from the identification process of accounts that have an aggregated balance or value at year end below these thresholds. There are three exceptions for PIAs:

- any financial account (other than cash value insurance/annuity contracts) below USD 50.000 not previously documented as U.S. accounts;
- any U.S. depository account below USD 50.000; and
- any cash value insurance/annuity contract below USD 250.000 not previously documented as a U.S. account.

A PFFI applying the aforementioned threshold exceptions will have to put in place monitoring procedures to ensure that it is able to monitor balance or value variations: once such an account crosses the one million dollar balance or value, the enhanced review must be applied.

**316. Presumption Rules.** Presumption rules allow a PFFI that cannot reliably associate documentation with an account to establish the account holder status. These rules are not applicable to individual accounts, either new or pre-existing.

317. **Entity Accounts.** A PFFI is not obliged to review any financial account held by an entity that falls under the general threshold exception for PEAs that have an aggregated balance or value below USD 250,000. For PEAs that cannot meet that exception, the PFFI is required to collect a valid withholding certificate and, in some instances, depending on the type of entity, additional documentation or specific certifications/verifications. The same type of documentation will be required upon opening an NEA.

318. **Alternative Documentation Standard.** For both PEAs and NEAs, the regulations permit a PFFI to rely on alternative documentation requirements, which will be dependent on the type of obligation, mainly for offshore and pre-existing obligations. For example, in the case of PEA held by another FFI that is an offshore obligation, the account is considered as documented if the PFFI collects a GIIN, verifies it and has an indication of whether that FFI account holder is a PFFI or a registered deemed-compliant FFI. For NEAs, similar rules are laid down, but are fairly limited as far as offshore obligations are concerned.

319. **Documentation Standards.** In their due diligence sections, the regulations provide for several types of documentation that has a different value as evidence:

- The withholding certificate remains the document that is usually requested to sufficiently document a financial account. This certificate is mainly an IRS form (e.g. W-8) but some substitute forms are allowed.
- The withholding statement, familiar in the QI world, forms an integral part of that withholding certificate.
- The written statement may replace the withholding certificate, albeit limited to offshore obligations. No specific form is required but the relevant FATCA certifications present on a withholding certificate should be contained in it.
- Documentary evidence is the lower level of documentation that is reliable if it contains sufficient information to support FATCA foreign status. A PFFI may only rely on such documentary evidence when this is explicitly allowed by the regulations.

320. **Substitute to Withholding Certificate.** The regulations have brought in more flexibility for PFFIs by allowing them to rely on substitute forms, which can be tailored at a country level or even at an FFI level. Furthermore, the substitute can be written in another language than English if a translation is at the IRS’s disposal on request. Some flexibility is also given by the fact that a PFFI may rely on pre-FATCA (official) forms under certain conditions, depending on the payee’s status.

#### 31.1.4.3 REPORTING

321. **Reporting Requirements.** The Regulations impose a number of reporting requirements on withholding agents and PFFIs, some of which are entirely new and some of which represent additions or modifications to existing reporting required under the NRA withholding regime.

	<b>Account reporting</b>	<b>1042/1042-S reporting</b>	<b>Transitional reporting</b>
	Form 8966	Form 1042/1042-S	Form 1042/1042-S
<b>Who to report on</b>	Account held by <ul style="list-style-type: none"> <li>Specified U.S. persons</li> <li>U.S. owned foreign entities</li> <li>Owner-documented FFIs</li> <li>Recalcitrant account holders</li> </ul>	<ul style="list-style-type: none"> <li>Recalcitrant account holders</li> <li>NPFFIs</li> </ul> <i>Chapter 3 obligations remain and additional obligation for withholding agents may apply</i>	NPFFIs including <ul style="list-style-type: none"> <li>limited FFIs* and</li> <li>limited branches*</li> </ul> * Limited status ceases after Dec. 31, 2015
<b>What to report</b>	<ul style="list-style-type: none"> <li>Basic account information</li> <li>Certain payments/gross proceeds</li> <li>Aggregated information per group for recalcitrant</li> </ul>	<ul style="list-style-type: none"> <li>Pooled or payee specific</li> <li>Aggregated chapter 4 reportable amounts per income type</li> </ul>	<ul style="list-style-type: none"> <li>Payee specific</li> <li>Aggregated foreign reportable amounts and U.S. source FDAP per NPFFI</li> </ul>
<b>When to report</b>	<ul style="list-style-type: none"> <li>Reporting date: Annually, beginning on March 31, 2015</li> <li>Reporting period: Beginning CY 2013</li> </ul>	<ul style="list-style-type: none"> <li>Reporting date: Annually, beginning on March 15, 2015</li> <li>Reporting period: Beginning CY 2014</li> </ul>	<ul style="list-style-type: none"> <li>Reporting date: Annually, beginning on March 15, 2016</li> <li>Reporting period: CYs 2015 and 2016</li> </ul>

Table 26: Overview of the Multiple Reporting Requirements under FATCA Classic

Generally, withholding agents must report information regarding substantial U.S. owners of U.S.-owned foreign entities. In addition, withholding agents will be required to provide Forms 1042-S to the IRS and the payee to report certain amounts subject to FATCA withholding.

PFFIs generally have to report information on Form 8966 with respect to U.S. account holders and substantial U.S. owners of U.S.-owned foreign entities. The Preamble notes that many FFIs have already implemented processes, procedures and systems to comply with Form 1042-S and 1042 reporting requirements, and that the IRS will modify the current 1042-S to meet the additional reporting requirements.

The Form 8966 will also be used to report accounts held by owner-documented FFIs and recalcitrant account holders. For that last category, they will be reported by groups in an aggregated manner.

The definition of “foreign passthru payment” will be provided in future guidance and withholding on these payments is delayed until 2017 (expected).

The reporting requirements of PFFIs can be divided into:

- account reporting on Form 8966;
- withholding reporting on Forms 1042/1042-S;
- transitional reporting on foreign reportable amounts and U.S.-source FDAP payments made to NPFFIs in 2015 and 2016.

**322. FATCA Reporting Schema.** Discussions are currently taking place at the OECD level (see para. 342 below) with the cooperation of the IRS to define a FATCA reporting schema that could be used for FATCA account reporting and Form 1042/1042-S reporting purposes. It still remains unclear whether that schema will also cover transitional NPFFIs reporting.

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323. **Account Reporting.** A PFFI will be required to report financial accounts whose account holders have been identified through the aforementioned due diligence as:

- specified U.S. persons;
- U.S.-owned foreign entities that qualify as Passive NFFEs with U.S. substantial owners;
- owner-documented FFIs;
- recalcitrant account holders.

The reporting for the three first types of account holders will be individualised or on an account basis, while recalcitrant account holders will be reported in an aggregate manner in the following groups: (1) recalcitrant passive NFFEs, (2) recalcitrant U.S. persons, (3) recalcitrant account holders having U.S. indicia, (4) recalcitrant account holders not having U.S. indicia and (5) dormant accounts held by recalcitrant account holders.

324. **Form 1042/1042-S Reporting.** PFFIs and registered deemed-compliant FFIs will file Form 1042 and 1042-S to report Chapter 4 reportable payments that they have made to recalcitrant account holders and NPFFIs. The reporting can be pooled or payee-specific.

The current Chapter 3 or QI reporting obligations will remain. The IRS intends to issue a guidance note on how the QI regime and FATCA should cohabit.

325. **Transitional Reporting.** This last reporting is transitional, aggregate and payee-specific. It concerns only the aggregate amount of certain payments made to NPFFIs in 2015 and 2016. These payments comprise the foreign FDAP income and U.S.-source FDAP paid to such NPFFIs for whom the PFFI receives payment. This transitional reporting will be done via Form 1042-S.

#### 31.1.4.4 EXPANDED AFFILIATED GROUP

326. **Concept.** Under the regulations, each FFI within an EAG must be compliant with FATCA as either a PFFI or a registered deemed-compliant FFI in order for any FFI in the EAG to be compliant. However some relief is provided with respect to limited branches and limited FFIs for a transitional period until 31 December 2015 before their limited non-compliant status switches to a status jeopardising the compliance status of the entire EAG.

A group must determine whether its entities qualifying as FFIs under the relevant definition are or are not part of the EAG. Even if this is not the case, the regulations set forth new rules regarding specific entities.

327. **EAG.** In the EAG, each FFI must be compliant with FATCA as otherwise jeopardising the status of the whole group as well as the status of other FFIs. An entity is generally part of an EAG if it is more than 50% owned. The regulations provide specific rules to determine this ownership.

328. **Minority Interest Entities.** Besides entities forming the EAG, other entities, called Minority Interest Entities or MIEs, are still of importance. Though the status of these entities should not affect the compliance of the EAG, their FATCA compliance could still have economic or reputational risks.

#### 31.1.4.5 VERIFICATION – COMPLIANCE

329. **Responsible Officer.** A PFFI must appoint a responsible officer, whose principal task is to supervise the compliance of that PFFI with the requirements set forth in the FFI agreement. This person will have to set up a compliance programme, as well as conducting periodic reviews.

330. **New Certification of Compliance.** Under the regulations, a responsible officer of a participating FFI is required to periodically certify to the IRS that the FFI is in compliance with the requirements of the FFI agreement. This certification is required once every three years. In addition, the responsible officer is required to certify to the IRS that the FFI maintains effective internal controls and that there were no material failures during the certification period, or any material failures that did occur were corrected.

331. **Time and Manner of Making Certifications.** In addition to the ongoing certification described above, the regulations provide that responsible officer due diligence certifications will be made electronically through the Portal (see para. 333 below) no later than 60 days following the date that is two years after the effective date of the FFI agreement.

332. **Qualified Certification.** The regulations clarify a responsible officer’s responsibility when he or she is unable to make the required certifications. The regulations provide that a responsible officer may make a qualified certification stating why the general certification cannot be made and that corrective action will be taken by the responsible officer.

333. **Registration Portal.** The FATCA registration portal will be the primary means for FFIs to interact with the IRS. They will be able to complete and maintain their chapter 4 registrations, agreements and certifications. The portal is expected to be accessible on-line to FFIs no later than 15 July 2013. Key points and milestones regarding the portal are as follows:

- FFIs will be able to agree to comply with their obligations as participating FFIs or sponsoring entities;
- FFIs will be able to register as registered deemed-compliant FFIs, including Model 1 FFIs (which are registered deemed-compliant FFIs under the regulations and even if there are still discussions with the IGA countries);
- the IRS will permit registration of FFIs that are described as “Reporting Financial Institutions” under a Model 2 IGA as long as the associated jurisdiction is identified on an IRS-published list of countries treated as having an IGA in effect even if ratification has not been completed;

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- the IRS intends to issue a GIIN to FFIs whose registration is approved. GIINs will be assigned beginning no later than 15 October 2013;
- an FFI will use its GIIN for satisfying its reporting obligations and to identify its status to withholding agents;
- the IRS will electronically post the first list of PFFIs and registered deemed-compliant FFIs (including Model 1 FFIs) on 2 December 2013 and intends to update this list monthly. An FFI must register with the IRS by 25 October 2013 in order to be included on the December 2013 list.

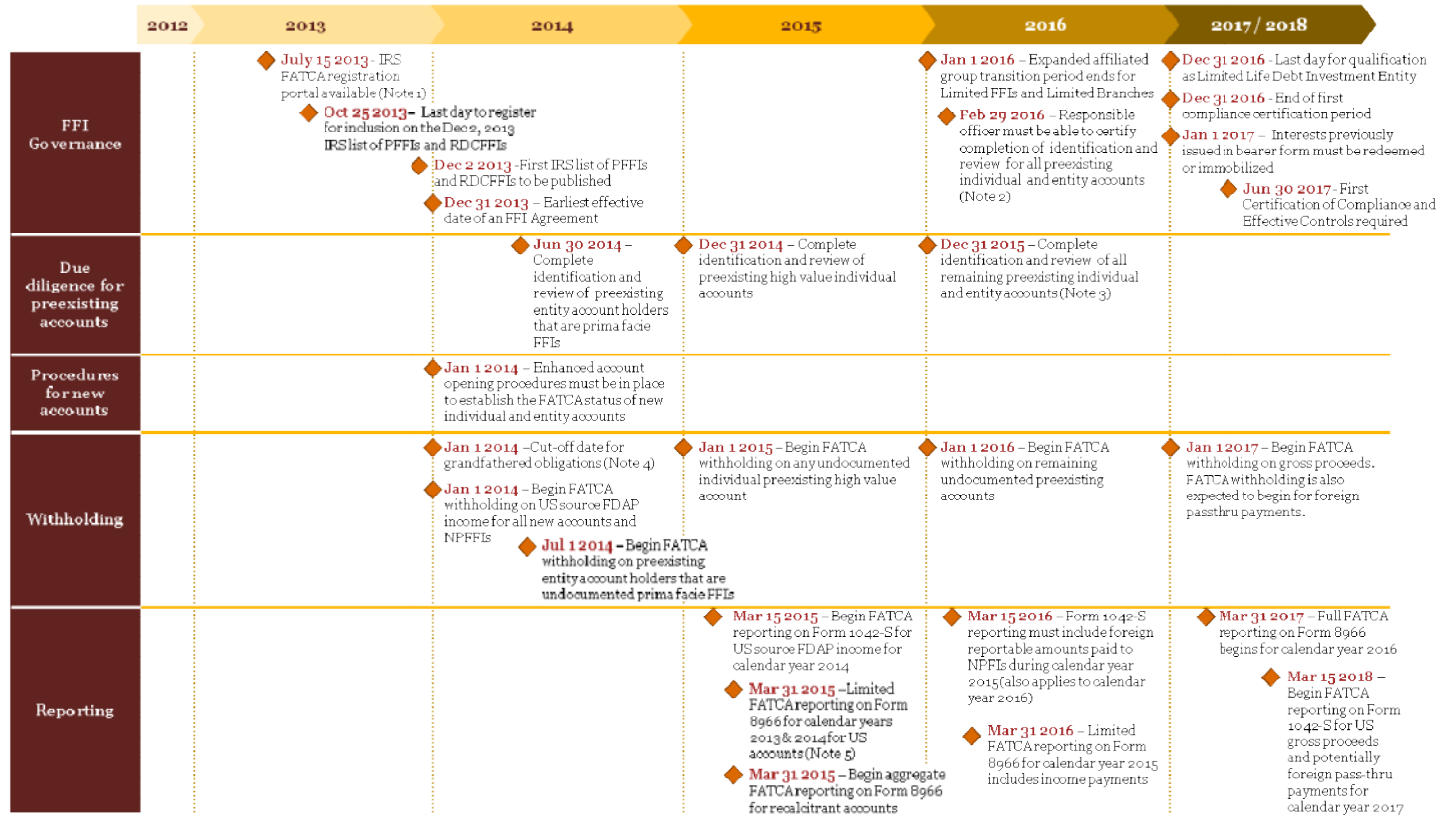
The current discussions are focused on FFIs located in IGA countries to determine how far they should register with the IRS and, if so, how they will do so in practice.

#### 31.1.4.6 EVENT OF DEFAULT

334. Event of Default. An event of default occurs if a PFFI encounters failure in performing material obligations required with respect to the due diligence, withholding or reporting requirements of the FFI agreement. An event of default can also occur if the IRS determines that the PFFI has failed to substantially comply with the requirements of the FFI agreement. A specific remediation plan will be agreed with the IRS. The plan can require specific information from the FFI on how the review processes are being carried out.



31.1.5 TIMELINE (FOR FFIs HAVING AN AFFECTIVE AGREEMENT ON 31 DECEMBER 2013)



(1) The IRS has committed to making the FATCA registration portal available no later than July 15, 2013. Thus, it could be available earlier.  
 (2) As part of the certification, FFI must also certify that it did not have any procedures in place from August 6, 2011 that would assist account holders in the avoidance of FATCA.  
 (3) Certain de minimis thresholds and retesting rules may apply.  
 (4) Generally applies to obligations that can produce withholdable payment. Grandfathered obligations also include: (1) any obligation that gives rise to a withholdable payment solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 67(f)(7) and the regulations thereunder, provided that the obligation is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalent; (2) with respect to foreign passthru payments, any obligation that is executed on or before the date that is six months after the date on which final regulations defining the term foreign passthru payment are filed with the federal register; and (3) any agreement requiring a secured party to make a payment with respect to, or to repay, collateral pledged to secure a grandfathered obligation.  
 (5) Limited reporting includes name, address, TIN, account number, and account balance of each specified US person who is an account holder. For account holders that are treated as US owned foreign entities and owner-documented FFIs for reporting purposes, report name, address and TIN (if any) of such entity and each substantial US owner of such entity or specified US person.

Figure 19: Timeline (for FFIs having an effective agreement on 31 December 2013)

## 31.2 MODEL 1 IGA

### 31.2.1 BACKGROUND

335. **Summary.** As indicated, Treasury and the IRS published the proposed FATCA regulations on 8 February 2012. Simultaneous with issuance of the proposed regulations, the governments of the United States, France, Germany, Italy, Spain and the United Kingdom released a joint statement explaining that they are exploring a common approach to FATCA implementation through domestic reporting and automatic information exchange systems (the “Joint Statement”). The Joint Statement also emphasises the willingness of the United States to reciprocate by automatically collecting and exchanging information on accounts held in U.S. financial institutions by residents of each of the respective countries.

336. **Overcoming Local Privacy Laws.** The goal of these potential bilateral agreements is to overcome legal restraints on FFIs providing account holder information directly to the IRS where local privacy laws restrict them from doing so. It is anticipated that the U.S. government will be negotiating these agreements with many of its trading partners so that local FFIs can comply with FATCA by reporting to their local tax authority. It is also anticipated that FFIs in these jurisdictions will not be required to impose WHT on passthru payments or to close the accounts of recalcitrant account holders.

337. **Reporting Generalisation of Bank Deposit Interest.** With the release of the Joint Statement, the move towards a worldwide FATCA regime takes another step forward. This has created a significant amount of speculation both in and outside the United States regarding the requirements that will ultimately be included in these reciprocal agreements, and how they will be enforced. To date, U.S. withholding agents have been reporting information to the U.S. government regarding most types of U.S.-source income paid to foreign parties, identifying the home country of beneficial owners through the use of a country code on Form 1042-S. However, with the exception of Canadian beneficial owners, U.S. bank deposit interest was not subject to reporting until recently. The fact that Treasury has now entered into this joint agreement, committing in principle to reciprocation would seem to significantly increase the likelihood that the proposed regulations requiring reporting on non-resident bank deposit interest will be finalised. Moreover, these agreements may require a U.S. withholding agent to perform additional due diligence in order to verify the tax residence of the non-U.S. beneficial owners at the behest of other countries.

### 31.2.2 MODEL I AGREEMENT – TWO VERSIONS

338. **Summary.** The Model 1 IGA released on 26 July 2012 was developed by Treasury in consultation with the five EU Member States party to the first Joint Statement to combat tax evasion. It relies on automatic exchange of information and is intended to be a long-term solution for local law restrictions that would have prevented compliance with an FFI agreement. It allows FFIs in each of the jurisdictions to report U.S.-owned account information directly to their local tax authority, rather than to the IRS. Under the Model Agreement, the local tax administration would then automatically share that information with the IRS.

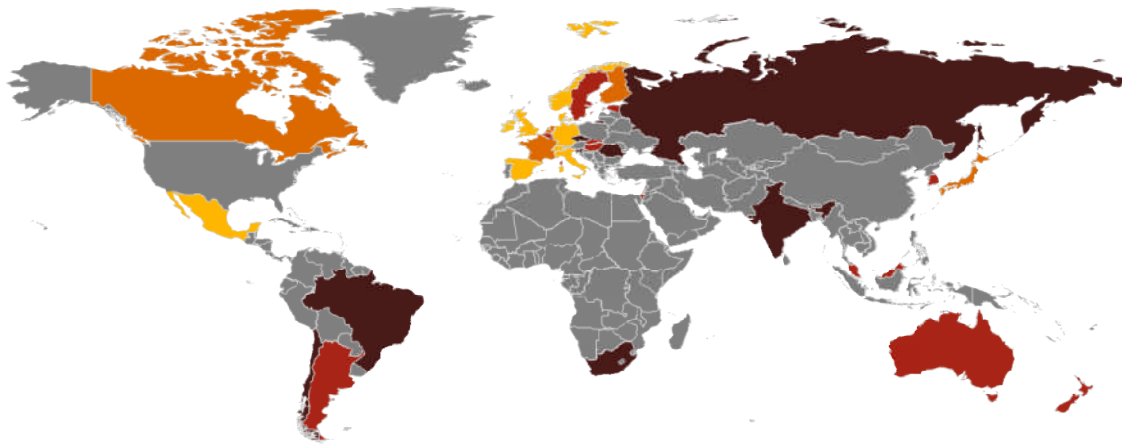
339. **Joint Communiqué.** The Model Agreement was accompanied by a joint communiqué issued by the five MSs and the U.S. endorsing the approach and calling for speedy conclusion of bilateral agreements based on the model. The communiqué adds that the Model Agreement provides a basis for close cooperation among these six countries, the Organization for Economic Cooperation and Development (OECD), the European Commission and other partner governments to work towards common tax information reporting and due diligence standards to more effectively combat tax evasion while minimising compliance burdens.

340. **Two Versions of the Model 1 IGA 1.** There are two versions of the Model 1 IGA:

- **Reciprocal Version.** The reciprocal version provides for the U.S. to share information currently collected on accounts held in the U.S. by residents of partner countries, and includes a policy commitment to pursue regulations and support legislation that would provide for equivalent levels of exchange by the U.S. Prior to the U.S. sharing account information held by residents of a partner country, a determination will be made to ensure that the recipient government has in place robust protections and practices to ensure that the information remains confidential and that it is used solely for tax purposes.
- **Non-Reciprocal Version.** The non-reciprocal version will be available only to jurisdictions with which the U.S. has an income tax treaty or tax information exchange agreement in effect, but in respect of which the United States is nevertheless not willing to exchange information due to a lack of adequate data protection rules in these other jurisdictions. Until now, this non-reciprocal version of the Model 1 IGA has not been used.

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*FATCA is a still evolving landscape\**

Concluded an IGA	Process of finalizing an IGA	Actively engaged in dialogue of concluding an IGA	Exploring options for an IGA
<ul style="list-style-type: none"> <li>• United Kingdom, Denmark, Norway, Mexico, Ireland and Switzerland → Signed IGAs</li> <li>• Spain, Germany and Italy → Initialed IGAs</li> </ul>	<ul style="list-style-type: none"> <li>• France, Japan, Canada, Finland, Guernsey, Isle of Man, Jersey, and the Netherlands</li> <li>• Treasury hopes to conclude soon negotiations with all countries</li> </ul>	<ul style="list-style-type: none"> <li>• Argentina, Australia, Belgium, the Cayman Islands, Cyprus, Estonia, Hungary, Israel, Republic of Korea, Liechtenstein, Malaysia, Malta, New Zealand, the Slovak Republic, Singapore, and Sweden</li> <li>• Treasury expects to be able to conclude negotiations with several of these in the coming months</li> </ul>	<ul style="list-style-type: none"> <li>• Bermuda, Brazil, the British Virgin Islands, Chile, the Czech Republic, Gibraltar, India, Lebanon, Luxembourg, Romania, Russia, Seychelles, Saint Martin, Slovenia, and South Africa</li> <li>• No expectations or timelines were provided for these discussions</li> </ul>

\* Information based on Treasury press release on 08.11.2012, updated for additional guidance. Additionally, according to most recent press releases, currently approximately 75 countries are in negotiations with IRS.

Figure 20: Evolving FATCA Landscape

Currently, four IGAs have been signed and released (i.e. United Kingdom, Denmark, Mexico and Ireland). These agreements are based on the reciprocal version of the Model 1 IGA.

341. **Spirit of the Model 1 IGA.** Overall, the Model 1 IGA reflects a significant effort by the parties to work together and includes a future commitment to work with the OECD as well as the European Union on adopting the terms of the Model Agreement to a common model for automatic exchange of information, including the development of reporting and due diligence standards for financial institutions.

342. **FATCA Schema.** This commitment to further collaborate on a global and common model to exchange information has already been partially addressed by the work currently performed at the OECD level. Indeed, the IRS has been collaborating with business and government representatives in the framework of the OECD on the development of a so-called “FATCA Schema” that will be used by FIs under regulations, Model 1 and Model 2. The schema summarises the information that will be required by FFIs to meet their obligations in the framework of FATCA and is expected to serve as a first common denominator to set out a worldwide exchange of information model taking into account the data previously collected and documented by the FFIs.

This section presents the most recently available schema, which is a revised version of prior schemas that were developed at prior OECD conferences in Paris (11-12 December 2012 and 19-21 September 2012). The schema below is the result of that exercise and tries to converge FATCA and TRACE from a data-element point of view. This exercise was mainly performed by the IRS and reviewed based on the comments and remarks made during the conferences.

- **Message Header**

LINE #	DATA ATTRIBUTES	DATA ELEMENT CHANGES FOR FATCA REPORTING	WORKING DEFINITION
1	Message type	FATCA (only option)	
2	Transmitting Country	Use ISO country codes	Defines the country from where the information is being transmitted
3	Receiving Country	Use ISO country codes	Defines the country that receives the information that is being transmitted
4	Reporting Period		Identifies the period that the information being transmitted relates to (for example, 31/12/2013)
5	New or Corrected Data		Identifies whether the information being transmitted is new or corrected data

Table 27: Message Header

- **Reporting FI – Identifying Information**

LINE #	DATA ATTRIBUTES	DATA ELEMENT CHANGES FOR FATCA REPORTING	WORKING DEFINITION
6	Name of Reporting FI	Name of Reporting FI	Name of Reporting FI
7	Address of Reporting FI	Address of Reporting FI	Address of Reporting FI
8	TIN	Use existing data elements in TRACE	Use existing data elements in TRACE
9	Name of Sponsoring Entity	Name of Sponsoring Entity	Name of Sponsoring Entity

LINE #	DATA ATTRIBUTES	DATA ELEMENT CHANGES FOR FATCA REPORTING	WORKING DEFINITION
10	Address of Sponsoring Entity	Address of Sponsoring Entity	Address of Sponsoring Entity
11	TIN of Sponsoring Entity	TIN of Sponsoring Entity	TIN of Sponsoring Entity

Table 28: Reporting FI – Identifying information

- **Individual Account Holder (Account Information)**

LINE #	DATA ATTRIBUTES	DATA ELEMENT CHANGES FOR FATCA REPORTING	WORKING DEFINITION
12	Name of Account holder (Individual)	Use existing data elements in TRACE	Identifies the legal name of the Individual Account Holder
13	Address of Account holder (Individual)	Use existing data elements in TRACE plus free format option	Identifies the address of the Individual Account Holder
14	TIN	Use existing data elements in TRACE	TIN of the Account Holder
15	Date of Birth	Use existing DOB data element in TRACE	Identifies DOB of the account holder (Applicable for Model 1 IGAs)

Table 29: Individual account holder (account information)

- Entity Account Holder (Identifying Information)

LINE #	DATA ATTRIBUTES	DATA ELEMENT CHANGES FOR FATCA REPORTING	WORKING DEFINITION
16	Name of Account holder (Entity)	Use existing data elements in TRACE	Legal name of Entity
17	Address of Account holder (Entity)	Use existing data elements in TRACE plus free format option	Identifies the address of the Entity Account Holder
18	TIN	Use existing data elements in TRACE	Identifies the EIN of the Account Holder
19	Entity Type/Status Code	Additional Codes for FATCA (see tab on Account Holder Type)	Identifies the type of entity account holder of the Reporting FI
20	Name of Owner of the Account Holder	Name fields as above - repeat N times as needed. May be blank	Identifies an Owner of the account holder that needs to be reported. For example, substantial U.S. owner of a passive nonfinancial institution
21	Address of Owner of the Account Holder	Address fields as above - repeat N times as needed. May be blank.	Identifies the address of the owner
22	TIN of Owner of the Account Holder	TIN field as above - repeat N times as needed. May be blank	TIN of the Owner of the Entity Account Holder
23	Date of Birth of the Owner of the Account Holder	Use existing data elements in TRACE	Identifies DOB of the Owner of the Entity Account Holder (Applicable for Model 1 IGAs)

Table 30: Entity account holder (identifying information)

- **IMY (Identifying Information) and Pooled Reporting**

LINE #	DATA ATTRIBUTES	DATA ELEMENT CHANGES FOR FATCA REPORTING	WORKING DEFINITION
24	Name of IMY, if applicable	Use name fields as above to report name of TOFI that has not elected to be treated as a U.S. Person	Enter the name of the U.S. territory-organised FI that is acting as an intermediary on behalf of one of its account holders
25	Address of IMY	Use address fields as above to report address of TOFI that has not elected to be treated as a U.S. Person	Identifies the address used by the FI in the U.S. Territory
26	TIN	Use existing TIN data element in TRACE	If TOFI has a U.S. EIN, then input the U.S. EIN. Otherwise, identifies EIN used by the U.S. Territory to identify the TOFI
27	Pooled Reporting Code	Numeric codes to identify the pool being reported	Identifies whether the information relates to: Recalcitrant accounts w/ U.S. indicia, Recalcitrant accounts w/ no U.S. indicia, or Dormant accounts
28	Number of Accounts	Numeric only	This field only used to identify number of recalcitrant or dormant accounts that are maintained by the Reporting FI (see tab for Codes)

Table 31: IMY (identifying information) and pooled reporting

- **Account/Financial Information**

LINE #	DATA ATTRIBUTES	DATA ELEMENT CHANGES FOR FATCA REPORTING	WORKING DEFINITION
29	Account Number	Alpha/Numeric/Special no count	Identifies the number used by the Reporting FI to identify the financial account and it may include: (i) the number of a Custodial Account or Depository Account; (ii) the code (ISIN or other) related to a Debt or Equity Interest (if not held in a custody account); or (iii) the identification code of a Cash Value Insurance Contract or Annuity Contract
30	Account Balance	Numeric/Currency Value (to be added)	Amount of the account balance or value



LINE #	DATA ATTRIBUTES	DATA ELEMENT CHANGES FOR FATCA REPORTING	WORKING DEFINITION
31	Type of Income or Proceeds (Code)	May repeat N times as needed - additional valid codes for FATCA	Identifies the type of payment made. (See tab on Payment Type)
32	Amount of the Income or Proceeds	May repeat N times as needed	Amount of the income or proceeds
33	Currency Code used to report the amount	May repeat N times as needed	Identifies that currency in which amounts are denominated

Table 32: Account/financial information

### 31.2.3 THE FOUR CORNERSTONES

#### 31.2.3.1 SCOPE/GOVERNANCE

343. **Registration Guidelines.** Financial institutions resident in FATCA Partners will not be required to enter into FFI agreements with the IRS. Instead, they will be required to follow the registration guidelines in the Competent Authority Agreements.

344. **FFI Definition Not Based on the Country of Organisation.** Under the Model 1 IGA, the FFI concept is based on the residence or location of the business, not the country of organisation. Thus, a FATCA Partner financial institution includes FFIs that are resident of the FATCA Partner, but excludes branches of these FFIs located outside the FATCA Partner. Additionally, branches located within a FATCA Partner are considered FFIs in the FATCA Partner regardless of where the financial institution is organised.

The definition of FFI under the Model Agreement is broad and appears to include investment managers because it includes an entity that acts as a business investing, administering or managing funds or money on behalf of other persons. The definition provided by the regulations is really similar to that existing in the Model 1 IGA.

In addition, the analysis to determine the FATCA classification of the legal entity in a multinational FFI will need to include consideration of the impact of branches located outside FATCA Partners.

345. **Non-Compliance Responsibility.** The Model 1 IGA does not explicitly require certifications from a responsible officer of a Financial Institution. However, discussions are undergoing between the United States and the (already signed) IGA countries to clear up this outstanding issue about the responsible officer and registration in Model 1 IGA countries. At the moment, there is no clear view on what should be requested additional to FFIs in that respect.

346. **Collaboration on Compliance and Enforcement.** The administrative provisions of the Model 1 IGA rely on the competent authority of the country receiving the reporting to identify and notify the other competent authority where the FFI is located of significant non-compliance.<sup>(105)</sup> It would then in first instance be the responsibility of the competent authority where the FFI is located to manage resolution of the non-compliance (by applying its domestic law, including applicable penalties). In the U.S., the competent authority would be the Secretary of the Treasury or his designee.

On the other hand, in the case of minor and administrative errors, the Model 1 IGA foresees the possibility for the competent authority to make an inquiry directly to a Reporting Financial Institution in the other jurisdiction where it has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting or

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<sup>105</sup> See Art. 5.2 Collaboration on Compliance and Enforcement, Significant Non-compliance, and the last part of Art. 4.1, Model 1 IGA.

resulted in other infringements of the IGA (possibly with notification to the other competent authority). (106)

### 31.2.3.2 IDENTIFICATION

**347. Some Relief Provided for the Identification Requirements.** Though included as an annex, a substantial portion of the Model 1 IGA provides a framework for identifying account holders by defining four separate due diligence processes for pre-existing and new, individual, and entity accounts (similar to the FATCA regulations). Although the identification requirements in the Model 1 IGA remain conceptually similar to those in the regulations, the Model 1 IGA provides some relief by allowing for more reliance on previously collected documentation, current processes and other identification procedures under local law to identify account holders.

**348. Due Diligence.** Under the Model 1 IGA, the due diligence is principally contained in Annex I. Compared to the due diligence described in the regulations, the due diligence under Annex I diverges in an important principle when a U.S. indicium is discovered for a financial account. In this case, the FI will be obliged to consider this account as a U.S. reportable account by default and may choose to apply the optional additional documentation requirements to confirm the U.S. character of the account.

This change implies that the U.S. account reporting by an FI located in a FATCA Partner will also include accounts with U.S. indicia, potentially without the consent of the account holder, for being reported to the IRS.

Therefore, and in contrast with the regulations, no specific reporting is foreseen for recalcitrant or non-cooperating account holders qualifying as U.S. persons as a result of the due diligence process. Furthermore, this reporting is done through local channels to the FATCA Partner tax administration, which then exchanges the information with the IRS.

However, the Model 1 IGA does not provide any rule related to recalcitrant accounts. It is true that Art. 4.2 suspends the obligation to withhold or close such accounts if the local administration is effectively reporting the information received on U.S. Reportable Accounts. Nevertheless, Annex 1 remains silent about the possibility of having recalcitrant accounts. Indeed, there are some cases where an FFI could have recalcitrant account holders (e.g. if the TIN is not provided in the self-certification for a new account) without having an answer on how to treat that account, which could have U.S. indicia. This could potentially lead to a major open issue if the IRS considers that it is not receiving the information set forth in subparagraph 2(a) of Article 2 regarding U.S. Reportable Accounts.

**349. Controlling Persons.** The definition of Substantial U.S. Owner in the regulations has been replaced by Controlling Persons, which is expected to be interpreted in a manner consistent with the recommendations of the Financial Action Task Force and better aligned to KYC procedures (for which a substantiality threshold of 25% is usually used).

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<sup>106</sup> See Art. 5.2 Collaboration on Compliance and Enforcement, Minor and Administrative Errors, Model 1 IGA.

350. **Acceptable Documentation and Documentation Expiry.** The Model 1 IGA also provides guidance regarding documents acceptable as evidence, but does not require expired documentation to be refreshed.

351. **Review Thresholds.** The Model 1 IGA provides thresholds for new depository and cash value insurance contract accounts before an FFI will need to review, identify or report a new individual account as a U.S. Reportable Account. Other thresholds are also provided for pre-existing accounts:

- any depository account below USD 50.000 held by an individual;
- pre-existing financial accounts below USD 50.000 held by an individual;
- pre-existing Cash value insurance or annuity contracts below USD 250.000 held by an individual;
- pre-existing Individual Accounts that are cash value insurance contracts or annuity contracts, provided the law or regulations of [the FATCA Partner] or the United States effectively prevent the sale of cash value insurance contracts or annuity contracts to U.S. residents, such as where the relevant Financial Institution does not have the required registration under U.S. law, and the law of [the FATCA Partner] requires reporting or withholding with respect to insurance products held by residents of [the FATCA Partner];
- pre-existing financial accounts below USD 250.000 held by an entity.

For new accounts, the Annex I of the Model 1 IGA indicates that new individual accounts that are depository accounts with a balance of less than USD 50.000 and cash value insurance contracts with a cash value of less than USD 50.000 do not require to be reviewed, identified or reported.

352. **Monitoring.** A Reporting FI applying the aforementioned threshold exceptions will have to put in place monitoring procedures to ensure that it is able to monitor balance or value variations (e.g. for a pre-existing individual account that crosses the one million dollar balance or value mark, the enhanced review must be applied).

353. **Self-Declaration.** Moreover, an FFI must generally obtain self-certification, which may be part of the account-opening documentation, to determine whether the account holder is resident in the U.S. for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the U.S. for tax purposes even if the account holder is also a tax resident of another country).

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### 31.2.3.3 REPORTING

354. **Reporting of U.S. Accounts.** Under the Model 1 IGA, financial institutions located in a FATCA Partner must obtain and report account holder information annually.

355. **General Information v. Account Type Specific Information.** The Model 1 IGA shifts the first account reporting date from September 2014 to 2015. However, the information to be reported in 2015 must include information from both 2013 and 2014. Additionally, the annual due date for reporting is shifted from 31 March to 30 September for all subsequent years. However this annual deadline for reporting is the date by which the local authorities of the FATCA Partner have to exchange the information with the United States. It is thus assumed that the FIs will have to provide the information to their local authorities before this date.

The Model 1 IGA also provides a phased timeframe for the reporting of specific information per account type.

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356. **Summary Table.** The account holder information (general v. specific) and timeframe for implementation can be summarised as follows:

INFORMATION TYPE	ACCOUNT HOLDER		TIMING
	SPECIFIED U.S. PERSON	NON-U.S. ENTITY WITH ONE OR MORE CONTROLLING PERSONS QUALIFYING AS SPECIFIED U.S. PERSONS	
General Information	<ul style="list-style-type: none"> <li>Name</li> <li>Address</li> <li>U.S. TIN (see Art. 6(4))</li> <li>Place of birth (conditional)</li> </ul>	<ul style="list-style-type: none"> <li>Name of the entity</li> <li>Address of the entity</li> <li>U.S. TIN (if any) of the entity</li> </ul> <p>For each controlling person qualifying as a U.S. Person:</p> <ul style="list-style-type: none"> <li>Name</li> <li>Address</li> <li>U.S. TIN (if any)</li> <li>Place of birth (conditional)</li> </ul>	<ul style="list-style-type: none"> <li>Due by FFIs prior to 30 September 2015 for years 2013 and 2014</li> <li>Due by tax administrations by 30 September 2015</li> </ul>
	<ul style="list-style-type: none"> <li>Account number</li> </ul>	<ul style="list-style-type: none"> <li>Account number</li> </ul>	
	<ul style="list-style-type: none"> <li>Name and FATCA ID of the Reporting FI</li> </ul>	<ul style="list-style-type: none"> <li>Name and FATCA ID of the Reporting FI</li> </ul>	
	<ul style="list-style-type: none"> <li>Account balance or value as of the end of the relevant calendar year</li> </ul>	<ul style="list-style-type: none"> <li>Account balance or value as of the end of the relevant calendar year</li> </ul>	
Account Type Specific Information	<ul style="list-style-type: none"> <li>Depository account: Total gross amount of interest paid or credited</li> </ul>		<ul style="list-style-type: none"> <li>Due by FFIs prior to September 30, 2016 for year 2015</li> <li>Due by tax administrations by 30 September 2016</li> <li>Gross proceeds need only be reported as from year 2016, meaning reported by the FFI prior to 30 September 2017</li> </ul>
	<ul style="list-style-type: none"> <li>Custodial account: <ul style="list-style-type: none"> <li>Total gross amount of interest, total gross amount of dividends and total gross amount of other income generated</li> <li>Total gross proceeds from the sale or redemption of property</li> </ul> </li> </ul>		
	<ul style="list-style-type: none"> <li>Other account: Total gross amount paid or credited including aggregate amount of any redemption payment</li> </ul>		

Table 33: Timeframe for the Reporting Obligations

**357. Reporting of Payments Made to NPFIs in 2015 and 2016.** Similarly to the regulations, the Model 1 IGA foresees a specific temporary reporting of payments made to NPFIs in 2015 and 2016.

**358. Scope of the Temporary Reporting.** However, there is a difference in the scope of the reporting. The regulations provide a definition of the payments that are to be reported. Under the Model 1 IGA, no such definition is provided in the agreement itself. The lack of definition is triggering some questions with respect to the potentially broad scope of this temporary reporting.

Fortunately, the Draft Guidance Note recently published by HMRC clears up part of the question by specifying that the “payments” subject to this reporting will not include the following types: non-financial services, goods, and use made of property in the “ordinary course of business.”

Ordinary course of business payments do not include dividends, any interest other than interest on outstanding accounts payable arising from the acquisition of nonfinancial services, goods, and other tangible property, dividend-equivalent payments with respect to which the UK FI acts as custodian, intermediary or agent, or bank or broking fees. Nevertheless, the definition of “payments” reportable in relation to NPFIs remains broad under UK Draft Guidance.

**359. Reciprocal Version of the Model 1 IGA.** The reciprocal version of the Model 1 IGA also requires certain reporting by U.S. Financial Institutions. Although a significant portion of this information is currently reported through existing U.S. internal information-reporting obligations, information such as the FATCA Partner TIN (or the date of birth of the account holder if the FATCA Partner does not issue TINs) will be a new requirement for U.S. Financial Institutions.

#### 31.2.3.4 WITHHOLDING

**360. 30% WHT or Reporting Obligations.** Under the Model 1 IGA, financial institutions resident in FATCA Partners will not generally be required to withhold 30% WHT under FATCA. However, financial institutions that are qualified intermediaries that assume primary withholding responsibility (or withholding foreign partnerships or withholding foreign trusts), will be required to withhold 30% WHT under FATCA on U.S.-source withholdable payments (as defined in the IGA, which excludes gross proceeds) paid to any NPFI.

For FFIs other than those identified above, when making withholdable payments to NPFIs, in lieu of withholding, they must provide information required for withholding and reporting purposes to any immediate payer of such payment.

The Model 1 IGA expresses governments’ commitment to continue efforts to develop a practical approach to achieving the objectives of imposing withholding tax on foreign passthru payments and gross proceeds.

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#### 31.2.4 TIMELINE

361. **“Go Live” Date of 1 January 2014.** With the release of the regulations, confirmation has been obtained that the timeframes under both the regulations and the Model 1 IGA are to a certain extent aligned starting with a common go-live of FATCA on 1 January 2014.

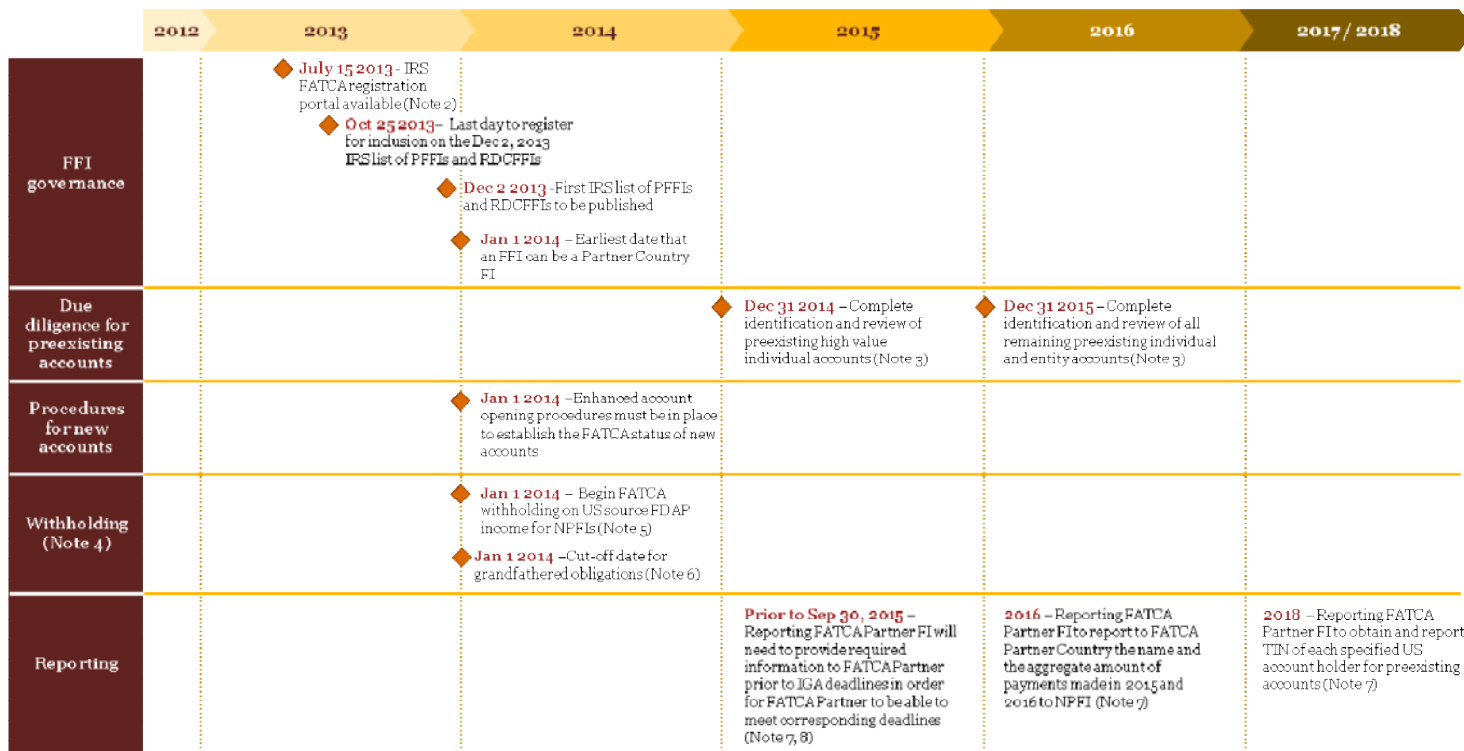
Furthermore, Article 4.6 of the Model 1 IGA provides for a certain interdependence between the timing set forth in the regulations and that in Model IGAs by stating that FATCA Partner Countries will not be obliged to start exchange information with the United States prior the date by which PFFIs are required to report similar information pursuant to the regulations.

In cases of reciprocity, the United States will also not be obliged to exchange information with a FATCA Partner Country prior to the first transmission of information by that country.



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(1) IGA: Intergovernmental Agreement.  
 (2) The IRS has committed to making the FATCA registration portal available no later than July 15, 2013. Thus, it could be available earlier.  
 (3) Due diligence for pre-existing Accounts is subject to the application of thresholds.  
 (4) Dates for withholding on gross proceeds and passthru payments are highly speculative and will be worked out between the US and FATCA partner countries in the next two years.  
 (5) Withholding applies to US source income paid to non-participating financial institutions by reporting FATCA Partner financial institutions acting as a withholding QI, withholding foreign partnership or withholding foreign trust. Other reporting FATCA Financial Institutions must provide information necessary to allow an immediate payor to withhold.  
 (6) Generally applies to obligations that can produce a withholdable payment. Grandfathered obligations also include: (1) any obligation that gives rise to a withholdable payment solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 87(m) and the regulations thereunder, provided that the obligation is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents; (2) with respect to foreign passthru payments, any obligation that is executed on or before the date that is six months after the date on which final regulations defining the term foreign passthru payment are filed with the federal register; and (3) any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation.  
 (7) Dates will be provided under legislation or regulations issued by FATCA Partner tax authorities.  
 (8) For 2013 and 2014 reporting is limited to: name, address, U.S. TIN (date of birth for preexisting accounts if no U.S. TIN), account number, name and identifying number of the reporting institution, and account balance or value. For 2015 reporting includes the information reported for 2013 and 2014, plus the income paid to the account. For 2016 and beyond, reporting includes the information reported for 2015 plus proceeds from the sale of property.

Figure 21: Timeline for Model IGA 1

## 31.3 MODEL 2 IGA

### 31.3.1 BACKGROUND

362. **Model 2 IGA.** To recall, the Treasury published the Model 2 IGA on 14 November 2012. This Model was developed by the U.S. in cooperation with Switzerland and Japan.

### 31.3.2 MODEL 1 IGA v. MODEL 2 IGA

363. **Main Differences.** Model 1 generally relies on government-to-government exchange of information to address concerns that foreign laws prohibit many FFIs from reporting account holder information directly to the IRS. Model 2 provides an alternative solution to these restrictions, by providing another framework allowing direct reporting to the U.S. under FATCA.

Some of the significant differences between the Model 1 IGA and the Model 2 IGA include the following:

- Model 2 requires partner countries to direct their FFIs to comply with the requirements in the FFI Agreement, including the due diligence, reporting and withholding requirements. FFIs in countries that adopt the Model 1 IGA are not required to comply with such agreements, but are required to comply with the laws to be adopted in their countries of establishment for implementing the relevant IGAs.
- Model 2 introduces a new concept and related reporting requirements around “*non-consenting U.S. accounts.*” Model 1 does not include any such concept. However, this new concept is quite similar to the recalcitrant account holder qualification under the regulations, though they are not identical.
- Model 2 requires FFIs to report certain information directly to the IRS. Model 1 requires FATCA partner countries to oblige FFIs to report U.S. account information as well as payments made to NPFIs in 2015 and 2016 to their tax administrations for automatic exchange with the U.S.
- Both Model 1 and Model 2 provide that FFIs are not generally required to withhold on payments to recalcitrant account holders. However, Model 2 does require withholding where account holder information requested by the IRS is not exchanged by the partner country tax administration within six months of receipt of the request. Model 1 does not include such a requirement: it specifies only that the suspension of rules relating to recalcitrant accounts is applied unless the U.S. Competent Authority receives the information about U.S. reportable accounts.
- Unlike Model 1, Model 2 does not have a reciprocal version providing for the U.S. government to share information currently collected on accounts held in the U.S. by residents of partner countries. However, the Model 2 agreement does have a provision which acknowledges that the U.S. is willing to negotiate for a reciprocal provision, subject

to the parties having determined that the standards of confidentiality and other prerequisites for such cooperation are fulfilled.

**364. Interplay among the Regulations, an FFI Agreement and Model 2 IGA.** The general obligations under the regulations of an FFI (as described earlier) entering into an FFI agreement will be applicable to FIs located in a Model 2 IGA country unless they are specifically carved out/excepted in the FFI agreement. With the introduction of Model 2, it is unclear whether there will be multiple versions of the FFI Agreement – for example, one for FFIs operating under Model 2 and another for those operating under the U.S. Regulations i.e. in countries which have not signed IGAs with the U.S. The situation should be clarified once the FFI Agreement is released by the IRS.

### 31.3.3 THE FOUR CORNERSTONES

#### 31.3.3.1 SCOPE/GOVERNANCE

**365. Registration Requirements.** FFIs resident in Model 2 partner countries will be required to both register with the IRS and comply with the requirements of the FFI Agreement. To recall, under Model 1, partner country FFIs will not have to comply with the requirements of an FFI Agreement. Instead, they will only be required to follow specified registration guidelines and are deemed to comply with, and not be subject to withholding under FATCA, if they abide by the requirements under Model 1.

These split registration requirements could cause difficulties for FFIs with multiple branches in several jurisdictions, each of which could be treated as a separate FFI for IGA purposes.

#### 31.3.3.2 IDENTIFICATION

**366. Interaction with regulations.** Under Model 2, the FIs may rely on the due diligence procedures as described in Annex I to the Model. These procedures are consistent with the procedures set forth in the Model 1 IGA. However, the FIs may rely on the regulations. Under Model 2, this choice must not be opened up by the FATCA Partner to its FIs. The option is *de facto* available but, once an FI chooses to apply the regulations, it must continue to apply these procedures in all subsequent years (unless there has been a material change to the relevant regulations).

**367. Self-Certification.** Model 2 partner-country FFIs must generally obtain a self-certification from new account holders regarding their U.S. or non-U.S. status, and must also confirm the reasonableness of that self-certification based on other information obtained by the partner-country FFI. If there is a change in circumstances with respect to a new account that causes the partner country FFI to know, or have reason to know, that the original self-certification is incorrect or unreliable, the partner country FFI cannot continue to rely on the original self-certification, and must obtain a new valid self-certification that establishes whether the account holder is a U.S. person. If no new self-certification is provided, the account will be treated as a non-consenting account, and will be subject to aggregate reporting.

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368. **Non-Consenting U.S. Account.** Model 2 introduces the concept of a “non-consenting U.S. account” which is an account that meets all of the following criteria:

- it is a pre-existing account (an account in existence as of 31 December 2013);
- the partner-country FFI classifies it as a U.S. account based on the due diligence procedures set down under FATCA;
- the laws of the partner country prohibit reporting of information to the IRS failing consent by the account holder;
- the reporting FFI has requested, but has not received, the account holder’s consent to report or its U.S. TIN;
- The partner-country FFI has reported, or was required to report, aggregate account information pursuant to the Model 2 agreement.

Model 2 requires partner-country FFIs to ask U.S. holders of pre-existing accounts to provide U.S. TINs and to consent to report certain information to the IRS. They are required to simultaneously inform such account holders in writing that, if U.S. TINs and consent are not provided, aggregate information about these accounts will be reported to the IRS, information about the account may be included in a group request by the IRS for specific information about the account, the account information will be transmitted to the FATCA partner, and the FATCA partner may exchange this information with the IRS.

An FFI must also obtain such consent for each new account that is identified as a U.S. account. Furthermore, the Model 2 IGA specifically requires that the consent must be obtained in the account-opening procedures (including middle and back-office work) and is an account opening condition. In other words, the Model 2 IGA clearly states that an FFI located in a Model 2 IGA partner country may no longer agree to open new accounts that are identified as U.S. accounts without getting consent to report them to the IRS. This consent also has to be obtained for new accounts opened by NPFIs.

In addition, the Model 2 IGA also requires an FFI to make a similar request for consent to report and provide similar notice with respect to each pre-existing NPFFI to which the FFI expects to make a payment of a foreign reportable amount in calendar years 2015 and/or 2016.

### 31.3.3.3 REPORTING

369. **Reporting Principle.** By contrast with the Model 1 IGA,<sup>(107)</sup> the Model 2 IGA requires direct reporting by partner country FFIs to the IRS. This includes aggregate reporting of recalcitrant, or non-consenting, accounts (accounts whose owners have not waived local-law restrictions on FATCA reporting). Where the IRS receives the aggregate information, Model 2 provides that it can request more-specific account holder information from the

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<sup>107</sup> The Model 1 IGA provides that partner-country FFIs will report information on U.S. accounts to partner-country tax authorities. Partner countries will then automatically share that information with the IRS.

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partner-country tax administration. The partner-country tax administration must obtain this information from the partner country FFI and respond to the IRS’s request. There is also aggregate reporting on payments made to NPFIs that may trigger the additional requests.

**370. No Reciprocal Version.** The Model 2 IGA does not have a reciprocal<sup>(108)</sup> provision. Notwithstanding, it provides for the continued exchange of information between the U.S. and the partner-country tax administration pursuant to existing DTTs or TIEAs. It also provides that the U.S. is willing to negotiate a reciprocal arrangement if a Model 2 partner country wishes to do so in the future.

**371. Type of Information to be Exchanged.** It is currently unclear what type of information will be exchanged under the Model 2 IGA. The uncertainty is caused by the reference in the Model 2 IGA to the FFI Agreement described in the regulations. This reference raises additional questions since the FFI Agreement has not been released yet.

At the very least, there will be a similar U.S. account reporting as under the Model 1 IGA as well as the temporary reporting of payments made to NPFIs in 2015 and 2016. The question remains open as to whether the reporting on Non-U.S. recipients (1042-S) could also be required under the Model 2 IGA due to the reference and/or signature of an FFI Agreement. Moreover, the regulations now reference the 1042 reporting in the FFI agreement section. Though the FFI Agreement has not yet been released and it may carve out the 1042 reporting for Model 2, it may be worth noting it as the Model 2 requirements are fairly dependent on the regulations.

#### 31.3.3.4 WITHHOLDING

**372. No requirements for WHT on Non-Consenting Account Holders.** An FFI located in a Model 2 partner country is not required to withhold tax on non-consenting account holders<sup>(109)</sup> provided (i) the FFI meets its general obligations under the Model 2 IGA (i.e. enters into an FFI agreement, identifies and documents account holders, seeks waivers of local bank secrecy laws, etc.), and (ii) the Model 2 partner-country tax administration complies with requests for information on non-consenting account holders within six months. If either of these conditions is not satisfied, non-consenting account holders will be treated as recalcitrant and will be subject to withholding.

This provision only mentions when no withholding is required but doesn’t state when it is. The Model 2 doesn’t specifically state when withholding is required, but, as it references the withholding obligations under the FFI agreement, withholding on payments to NPFIs could be required.

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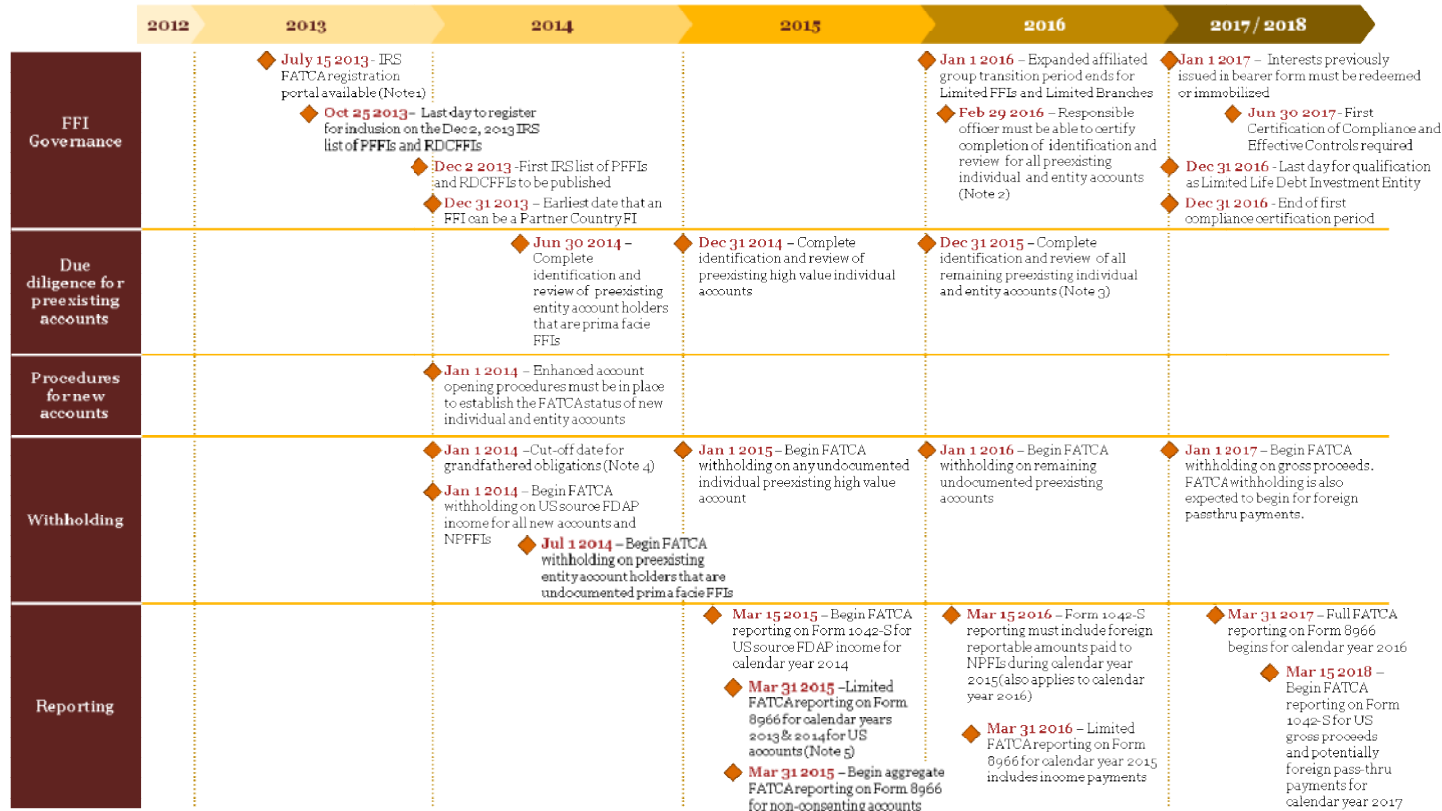
<sup>108</sup> The reciprocal version of Model 1 requires the IRS to share information with partner-country tax authorities on an automatic basis, about partner-country tax residents that maintain accounts at U.S. financial institutions (USFIs).

<sup>109</sup> Similar to under Model 1, FFIs resident in FATCA partner countries will not generally be required to withhold tax under FATCA on recalcitrant account holders.

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31.3.4 TIMELINE (FOR FFIs HAVING AN EFFECTIVE AGREEMENT ON 31 DECEMBER 2013)



(1) The IRS has committed to making the FATCA registration portal available no later than July 15, 2013. Thus, it could be available earlier.  
 (2) As part of the certification, FFI must also certify that it did not have any procedures in place from August 6, 2011 that would assist account holders in the avoidance of FATCA.  
 (3) Certain de minimis thresholds and retesting rules may apply.  
 (4) Generally applies to obligations that can produce a withholdable payment. Grandfathered obligations also include: (1) any obligation that gives rise to a withholdable payment solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 87(m) and the regulations thereunder, provided that the obligation is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents; (2) with respect to foreign passthru payments, any obligation that is executed on or before the date that is six months after the date on which final regulations defining the term foreign passthru payment are filed with the federal register; and (3) any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation.  
 (5) Limited reporting includes name, address, TIN, account number, and account balance of each specified US person who is an account holder. For account holders that are treated as US owned foreign entities and owner-documented FFIs for reporting purposes, report name, address and TIN (if any) of such entity and each substantial US owner of such entity or specified US person.

Figure 22: Timeline (for FFIs having an effective agreement on 31 December 2013)

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