



***PS LA 2006/4 - Ability of the Internal Revenue Service of the United States of America to gather taxpayer specific information from the United States Virgin Islands and several other Territories (formerly known as Possessions) of the United States of America.***

 This cover sheet is provided for information only. It does not form part of *PS LA 2006/4 - Ability of the Internal Revenue Service of the United States of America to gather taxpayer specific information from the United States Virgin Islands and several other Territories (formerly known as Possessions) of the United States of America.*

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# Practice Statement Law Administration

**PS LA 2006/4**

*This law administration practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement [PS LA 1998/1](#). ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.*

<b>SUBJECT:</b>	<b>Ability of the Internal Revenue Service of the United States of America to gather taxpayer specific information from the United States Virgin Islands and several other Territories (formerly known as Possessions) of the United States of America</b>
<b>PURPOSE:</b>	<b>To alert ATO personnel to the ability of the Internal Revenue Service of the United States of America to obtain taxpayer specific information from the United States Virgin Islands and several other Territories of the United States of America under United States domestic tax law and provide such information to Australia under the existing Exchange of Information Article of the Australia-United States of America Double Tax Convention.</b>

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## **STATEMENT**

1. The Internal Revenue Service (IRS) of the United States of America (United States) is able to obtain taxpayer specific information from the United States Virgin Islands (USVI) and several other United States Territories under United States domestic tax law and provide such information to Australia under the existing Exchange of Information Article of the Australia-United States Double Tax Convention.

## **EXPLANATION**

### **Tax Implementation Agreement between the United States and the USVI**

2. The United States and the USVI have a Tax Implementation Agreement that provides for the exchange of tax information between the two governments. Under that agreement, the USVI is required routinely to provide the United States with information which may be relevant to third countries, such as 'information about the ownership interests of all corporations subject to USVI tax with non-USVI source income that receive a rebate, subsidy or reduction of USVI taxes'. This information may be redisclosed by the United States in accordance with the provisions 'of an applicable treaty' with a third country. Thus, if a third country treaty partner were to make a request to the United States for USVI information that has been provided to the United States under the implementation agreement, the United States could provide the information to the third country.

### ***Use of Compulsory Process***

3. The USVI is within the jurisdiction of the United States' federal courts. Thus the United States can use its compulsory powers to secure the information in the USVI without regard to the local laws in the USVI. The implementation agreement between the United States and the USVI explicitly acknowledges that the administrative summons authority of the IRS extends to the USVI. If a third country treaty partner were to make an authorised request to the United States for USVI information that was not in the possession of the United States, the United States would secure that information.

### ***Tax Determination TD 93/221***

4. According to Tax Determination TD 93/221 the definition of 'United States' in the Australia-United States Double Tax Convention, when used in a geographical sense, does not include the USVI (or other United States' possessions – now known as territories). However in relation to exchange of information, most of Australia's tax treaties have specific provisions authorising the exchange of information relating to residents of third jurisdictions. While Article 25 of the Australia-United States Double Tax Convention does not contain such a specific authorisation, advice received from the Attorney-General's Department has confirmed that it is permissible for such exchanges to occur between the competent authorities of Australia and the United States, provided such exchanges are in relation to the taxes covered by the Convention. Therefore the operation of United States domestic law and the Tax Implementation Agreement between the United States and the USVI allows for an effective Australian request for information regarding the USVI from the United States.

### **Other United States Territories**

5. The IRS recently advised that in addition to the USVI, the United States also has similar formal working agreements with American Samoa, Guam, Northern Mariana Islands and Puerto Rico. Thus the IRS is able to obtain tax information from these United States Territories and provide such information to Australia under the tax treaty.

### **Process of exchange of information requests**

6. For more information on how to frame an exchange of information request to the United States or another tax treaty partner, please contact the Exchange of Information Unit in via email [australiancompetentauthority@ato.gov.au](mailto:australiancompetentauthority@ato.gov.au).

**Amendment history**

<b>Date of amendment</b>	<b>Part</b>	<b>Comment</b>
7 April 2014	Contact details	Updated.
21 November 2011	Contact details	Updated.

Subject references	American Samoa competent authority double tax convention exchange of information requests Guam Northern Mariana Islands Puerto Rico taxpayer specific information United States of America United States Virgin Islands (USVI)
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