



***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**

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*This Practice Statement is an internal ATO document and an instruction to ATO staff.*

*Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Practice Statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.*

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<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 staff to the ability of the Internal Revenue Service to obtain taxpayer-specific information from the United States Virgin Islands and several other Territories of the United States of America under their domestic tax law and provide such information to Australia under Article 25 of the Australia-United States of America Double Tax Convention.</b>

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<b>TABLE OF CONTENTS</b>	<b>Paragraph</b>
<b>STATEMENT</b>	<b>1</b>
<b>EXPLANATION</b>	<b>2</b>
Tax implementation agreement between the United States and the USVI	2
<i>Use of compulsory process</i>	3
<i>TD 93/221 Income tax: does the definition of "United States" in the Australia-United States Double Tax Convention include United States possessions?</i>	4
Other United States Territories	5
Process of exchange of information requests	6

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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 Article 25 of the Australia-United States Double Tax Convention<sup>1</sup> (the Convention).

## EXPLANATION

### Tax implementation agreement between the United States and the USVI

2. The United States and the USVI have a tax implementation agreement<sup>2</sup> (Agreement) that provides for the exchange of tax information between the 2 governments. Under the 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 Virgin Islands tax with non-Virgin Islands source income that receive a rebate, subsidy or reduction of Virgin Islands taxes ...'<sup>3</sup>. 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 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 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.

### ***TD 93/221 Income tax: does the definition of "United States" in the Australia-United States Double Tax Convention include United States possessions?***

4. According to Taxation Determination TD 93/221 *Income tax: does the definition of "United States" in the Australia-United States Double Tax Convention include United States possessions?*, the definition of 'United States' in the 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 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 Agreement between the United States and the USVI allows for an effective Australian request for information regarding the USVI from the United States.

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<sup>1</sup> *Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* [1983] ATS 16.

<sup>2</sup> United States Internal Revenue Service (1987), *Tax Implementation Agreement Between The United States of America and The Virgin Islands*, [https://www.irs.gov/pub/irs-lbi/tax\\_implementation\\_agreement\\_between\\_the\\_us\\_and\\_virgin\\_islands.pdf](https://www.irs.gov/pub/irs-lbi/tax_implementation_agreement_between_the_us_and_virgin_islands.pdf).

<sup>3</sup> See paragraph 2.b)(iii) of Article 4 of the Agreement.

### **Other United States Territories**

5. The IRS has previously 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 Convention.

### **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, contact [australiancompetentauthority@ato.gov.au](mailto:australiancompetentauthority@ato.gov.au).

## Amendment history

11 April 2024

Part	Comment
Throughout	Updated to align with current ATO style and accessibility guidance.

7 April 2014

Part	Comment
Contact details	Updated.

21 November 2011

Part	Comment
Contact details	Updated.

## References

<b>Other references</b>	<a href="#">Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1983] ATS 16</a> <a href="#">Tax Implementation Agreement Between the United States of America and the Virgin Islands</a>
<b>Related public rulings</b>	TD 93/221
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## ATO references

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