

2015

Oregon Department of Revenue

Recommendations on Tax Haven Jurisdictions

HB 2460 (2013 Regular Session)

Executive Summary
January 1, 2015



Executive summary

Section (4) of HB 2460 from the 2013 regular legislative session provides:

“On or before January 1 of each odd-numbered year, the Department of Revenue shall submit a report to the Legislative Assembly in the manner provided by ORS 192.245. The report shall include recommendations for legislation related to jurisdictions listed in ORS 317.715 (2)(b), including recommendations for additions to or subtractions from the list of jurisdictions in ORS 317.715(2)(b).”

This Executive Summary provides the Department of Revenue’s recommendations for additions to and subtractions from the jurisdictions listed in ORS 317.715(2)(b). The full report is available online at www.oregon.gov/dor.

The purpose of the report is to explain the ORS 317.715(2)(b) recommendations. The report examines the history of the list and identifies the criteria that the department uses to determine recommendations. It also provides analysis of the foreign jurisdictions proposed for addition, retention, or subtraction using the established criteria.

The department used the tax haven criteria in the 2011 Multistate Tax Commission (MTC) model statute to make its recommendations. The model statute begins by making clear that only political jurisdictions can be tax havens. The MTC determines whether a jurisdiction is a tax haven by applying a two-step definition of tax haven.

The first step is determining whether the jurisdiction imposes “no or nominal tax on the relevant income.” The relevant income, for the purposes of this report, is corporate income.

The second step is determining whether the jurisdiction that imposes no or nominal tax on corporate income also meets at least one of the following five criteria:

- The jurisdiction does not disclose which corporate entities benefit from the jurisdiction’s tax system.
- The administrative and legal operation of the jurisdiction’s corporate tax system is not available to other parties.
- The jurisdiction allows the establishment of foreign-owned corporations with little or no economic presence in the jurisdiction.
- The benefits of the jurisdiction’s corporate tax system are unavailable to residents of the jurisdiction.
- The relevant facts indicate that the jurisdiction’s tax system favors tax avoidance.

For tax years beginning on or after January 1, 2015, the department recommends* adding the following countries to the list of jurisdictions in ORS 317.715(2)(b) based on the accompanying MTC criteria:

- The Netherlands
- Bonaire
- Curacao
- Saba

- Sint Eustatius
- Sint Maarten
- Switzerland
- Guatemala
- Hong Kong
- Trinidad and Tobago

For tax years beginning on or after January 1, 2015, the department recommends* subtracting the following countries from the list of jurisdictions in ORS 317.715(2)(b):

- The Netherlands Antilles**
- Monaco

**These recommendations are based on information available to staff through November 19, 2014.*

***The Netherlands Antilles was dissolved on October 10, 2010. Curacao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) became autonomous territories of the Kingdom of the Netherlands. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands.*

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Recommendations for tax haven jurisdictions

Introduction

The Oregon Legislature enacted HB 2460 during the 2013 Legislative Session. The law requires the Department of Revenue to submit a report during odd-numbered years to the Legislative Assembly and include recommendations for legislation related to jurisdictions listed in ORS 317.715 (2)(b). This includes recommendations for additions to or subtractions from the list of jurisdictions provided in ORS 317.715(2)(b).

ORS 317.715(2)(a) provides that corporations filing an Oregon corporate excise tax return shall compute their Oregon taxable income by including net income or loss from subsidiaries incorporated in the foreign jurisdictions listed in ORS 317.715(2)(b) to determine their starting point for computing Oregon taxable income.

Under Oregon law, a corporation's excise or income tax liability largely corresponds to federally reported taxable income. Therefore, when a corporate group shifts income offshore from the United States to a corporation in a foreign tax jurisdiction, that income will generally not be subject to tax in Oregon. A Congressional Research Service report in January 2013 estimated that federal corporate tax reductions resulting from shifting profits offshore range from about \$10 billion to \$90 billion annually.

The Oregon Legislative Revenue Office estimated the following revenue impact as a result of the implementation of HB 2460:

2013 – 2015: +\$18 million

2015 – 2017: +\$42 million

2017 – 2019: +\$49 million

There is no standard definition of a "tax haven." Initially, the Organization for Economic Cooperation and Development (OECD) provided guidelines for evaluating foreign tax jurisdictions. The OECD is an international organization composed of 34 countries that studies economic problems and attempts to coordinate the policy responses of its members to those economic problems.

In 1998, OECD defined both tax havens and harmful preferential tax regimes as "jurisdictions that tax relevant income at a zero or nominal effective tax rate." Criteria for evaluating whether specific foreign jurisdictions qualify as tax havens or preferential tax regimes have been further developed by the Multistate Tax Commission (MTC).

The MTC, created as part of the Multistate Tax Compact, promotes uniformity in state tax laws. Oregon is a member of the MTC. Accordingly, for purposes of this report, the department uses the 2011 MTC criteria to identify recommended additions to or subtractions from the list in ORS 317.715(2)(b).

Definitions

Captive insurance company: Some corporate groups will form a separate subsidiary that is responsible for insuring the rest of the corporate group. The subsidiary that is responsible for

insuring the rest of the corporate group is referred to as the captive insurance company. The other subsidiaries in the corporate group will pay insurance premiums to the captive insurance company.

Earnings stripping: At the most basic level, earnings stripping is the practice of using transactions between a corporate subsidiary in a high tax country and a corporate subsidiary in a low tax country to reduce the tax base in the high tax country and increase the tax base in the low tax country. Earnings stripping can be accomplished through hybrid financing instruments, licensing agreements, intra-corporate loans, and other methods.

Effective tax rate: Statutory tax rates are quoted in terms of marginal tax rates. For example, the U.S. corporate tax rate is 35 percent, which means that each additional dollar of taxable income is taxed at 35 percent. An effective tax rate, on the other hand, is the actual rate of tax paid by a company on all of its net income. Effective tax rates are usually lower than statutory tax rates because credits, deductions, and exemptions reduce taxable net income.

Gross domestic product (GDP): GDP is the monetary value of all goods and services produced within a particular jurisdiction.

Group financing: A corporate group will often set up a subsidiary that takes on the role of financing other subsidiaries within the corporate group. This usually involves the financing subsidiary loaning money to other subsidiaries in return for interest. Group financing is the term that describes this arrangement.

Group licensing: A corporate group will often set up a subsidiary that holds the intellectual property, such as copyrights or patents, for the entire corporate group. The subsidiary that holds the intellectual property will levy licensing fees on the other subsidiaries for the use of the intellectual property. Group licensing is the term that describes this arrangement.

Holding company: A holding company is a corporation that owns income-producing assets, but does not carry on any other business.

Hybrid financing instrument: Corporations raise money by issuing debt or issuing equity (stock). A hybrid financing instrument combines debt-like and equity-like characteristics into the same security. Hybrid financing instruments are sometimes created by conflicts between legal systems. For example, Country A may legally classify a financing instrument as debt, and Country B may legally classify the same financing instrument as equity. Accordingly, payments in Country A may be deductible, and payments received in Country B may be a non-taxable return of capital.

IP box: Some countries have adopted the practice of partially exempting income derived from intellectual property such as copyrights, patents or trademarks from taxation. For example, Andorra exempts 80 percent of the income derived from intellectual property from taxation. Accordingly, the IP box are the kinds of intellectual property activities that qualify for partial exemption from taxation.

Notional interest deduction: Typically, a corporate taxpayer is allowed to deduct interest paid on corporate indebtedness. It has been pointed out this creates an incentive for a corporate taxpayer to raise capital using debt rather than equity. A notional interest deduction attempts to remove the incentive favoring debt financing over equity financing by allowing a company to deduct a certain portion of their equity each year. Notional interest is sometimes referred to as “fictional interest” because the expense claimed does not represent a real financial cost.

Resident company: A corporation that is incorporated in or managed and controlled from a particular jurisdiction may be considered a resident of that jurisdiction. Rules for determining the residency of a corporation vary markedly between jurisdictions. Residency rules are typically used to determine what income of the corporation may be taxed by the jurisdiction of corporate residency.

Tax avoidance: Tax avoidance is the practice of minimizing tax bills through legal means. Tax evasion, on the other hand, refers to the practice of minimizing tax bills through illegal means.

Territorial tax: It has been noted that the purest system of territorial taxation is when a corporation's active business income is taxed only in the jurisdiction that is the source of the income in question. Not all territorial tax systems work the same way because the rules for sourcing income vary between jurisdictions. By way of contrast, U.S. corporations are taxed on their worldwide income although tax on foreign income is deferred until the income is repatriated to the U.S.

History of listed jurisdictions

There is no precise definition of "tax haven" that applies to the foreign jurisdictions included under the provisions of ORS 317.715(2). All of the listed foreign jurisdictions impose no or nominal taxation on relevant corporation income. In addition, all of the listed foreign jurisdictions share one or more of the following characteristics:

- Laws that prevent sharing of information with other governments.
- A lack of transparency, exclusion of resident taxpayers from the tax regime's benefits.
- Laws that allow foreign-owned entities to be established without a substantive presence in the jurisdiction.
- Laws that disallow resident taxpayers of the jurisdiction from taking advantage of tax benefits available to foreign-owned entities.
- The creation of a regime which is favorable to tax avoidance.

Oregon's list of foreign jurisdictions is modeled after Montana's foreign tax haven list under the Montana Code Annotated (MCA 15-31-322). Montana's foreign tax haven list was originally written in 2003 and revised in 2009. A 2012 Montana Department of Revenue legislative report indicates Montana's list of tax havens is primarily based on the list of tax havens and harmful preferential tax regimes produced by the OECD.

In 1998, the OECD published Harmful Tax Competition: An Emerging Global Issue which defined tax havens and harmful preferential tax regimes. According to the report, both tax havens and potentially harmful tax regimes are jurisdictions that tax relevant income at a zero or nominal effective tax rate.

Additionally, tax havens engage in one or more of the following omissions:

- Lacking an effective exchange of information mechanism with tax authorities in other jurisdictions.
- Failing to provide a transparent operation of legislative, legal or administrative machinery of the jurisdiction.

- Failing to require that a person engage in some kind of substantial economic activity within the jurisdiction to take advantage of the favorable income tax regime.

Harmful preferential tax regimes engage in at least one of the following acts or omissions:

- Lacking an effective exchange of information mechanism with tax authorities in other jurisdictions.
- Failing to provide a transparent operation of legislative, legal, or administrative machinery of the jurisdiction.
- Insulating the tax preferred sector from the domestic market in the tax preferential jurisdiction.
- Allowing or otherwise establishing the presence of secondary criteria indicative of a tax haven. These may include:
 - A negotiable tax rate, exemption of foreign source income from tax in the jurisdiction.
 - The use of the jurisdiction to engage in activities conducted solely for tax reasons.

Between 2000 and 2006, the OECD issued progress reports on the countries it had identified as tax havens or harmful preferential tax regimes. The 2000 OECD progress report stated six tax haven countries had made “high level political commitment(s) to eliminate harmful tax practices” and were not explicitly included on the list of tax havens. Those countries were: Bermuda, Cayman Islands, Cyprus, Malta, Mauritius and San Marino. Also, the 2000 OECD progress report identified Luxembourg, among other countries, as hosting a harmful preferential tax regime.

Between 2001 and 2002, the OECD removed Barbados, Maldives and Tonga from its tax haven list. In its 2001 progress report, the OECD said it would no longer use the substantial activities test to identify tax havens because of the difficulty involved in determining whether an activity in a jurisdiction is substantial. In its 2006 progress report, the OECD indicated Luxembourg was the only remaining OECD country with a harmful preferential tax regime but was in the process of repealing it.

The OECD appears to have stopped tracking these countries by 2006. After 2006, the Global Forum, an organization of OECD and non-OECD states, began evaluating the exchange of information and transparency provisions of jurisdictions. The Global Forum began issuing annual reports on their evaluations.

As noted above, the 2003 Montana legislation included all tax havens explicitly listed in the 2000 OECD list of tax havens along with Bermuda, the Cayman Islands and Luxembourg. Montana amended its list of tax havens in 2009 by subtracting the Maldives and Tonga, and adding Cyprus, Malta, Mauritius and San Marino. Therefore, the 2009 Montana list of tax havens includes the 2000 OECD list of tax havens, the six jurisdictions identified by the OECD in 2000 as committed to eliminating harmful tax practices, and Barbados and Luxembourg.

In its 2012 report to the Montana Legislature, the Montana Department of Revenue indicated that it now relies less on OECD sources to recommend modifications to the Montana list of tax havens. They attribute this to a shift in OECD’s focus toward other topics and the availability of information from other sources. The Montana Department of Revenue is currently preparing a legislative recommendation for proposed additions to and subtractions from the list of

foreign jurisdictions qualifying as tax havens.

Multistate Tax Commission tax haven criteria

In 2006, the MTC defined the term “tax haven” in a model statute to include the jurisdictions that the OECD listed as tax havens, and OECD’s criteria for identifying preferential tax regimes.

On July 27, 2011, the MTC voted to delete all explicit references to the OECD for two reasons. First, the MTC noted that the OECD no longer kept lists of tax havens or preferential tax regimes. Second, the MTC noted that the OECD had “adopted new classifications and standards” to evaluate tax policies of jurisdictions. Therefore, the MTC deleted the first two paragraphs of its 2006 definition of tax haven.

The revised MTC model statute defines “tax haven” as a jurisdiction that, during the tax year in question, has no or nominal effective tax on the relevant income; and

- Has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime;
- Has a tax regime which lacks transparency. A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer’s correct tax liability, such as accounting records and underlying documentation, is not adequately available;
- Facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;
- Explicitly or implicitly excludes the jurisdiction’s resident taxpayers from taking advantage of the tax regime’s benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction’s domestic market; or
- Has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy

The 2011 MTC criteria are similar to the criteria used to produce the ORS 317.715(2)(b) list of foreign jurisdictions. Using the 2011 MTC criteria is consistent with Oregon’s practice of using MTC drafted language. Accordingly, the department has used the 2011 MTC criteria in this report to identify recommended additions to or subtractions from the list in ORS 317.715(2)(b).

Recommendations

Detailed summaries on each jurisdiction below are available in Appendix 1, starting on page 13. Based on the criteria described above, the department makes the following recommendations:

Additions

Jurisdictions created by the dissolution of the Netherlands Antilles

The Netherlands Antilles was dissolved on October 10, 2010. Curacao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) became autonomous territories of the Kingdom of the Netherlands. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands.

Both Curacao and Sint Maarten exempt companies from taxation while preventing the exempt companies from competing in the domestic markets of Curacao and Sint Maarten. This implicated criterion 4 of the 2011 MTC tax haven criteria.

The remaining islands, Bonaire, Sint Eustatius and Saba (BES), now have their tax system determined by the Netherlands. But, the BES islands should be considered separately from the Netherlands because they have a separate tax system from the remainder of the Netherlands. A 5 percent tax rate is a nominal tax rate because it is substantially below the U.S. corporate tax rate. Also, a substantial presence in the BES islands is not required to take advantage of this tax rate. This implicates criterion 3 of the 2011 MTC tax haven criteria.

The department recommends that Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten be added to the list of jurisdictions in ORS 317.715(2)(b).

The Netherlands

The Netherlands allows companies to take advantage of a nominal (0 - 5 percent) corporate tax rate without a substantive connection to the Netherlands. This implicates criterion 3 of the 2011 MTC tax haven criteria. The Netherlands has also created a tax regime favorable to tax avoidance, implicating criterion 5.

The department recommends that the Netherlands be added to the list of jurisdictions in ORS 317.715(2)(b).

Switzerland

Various types of foreign source income are effectively exempt from tax in Switzerland. Switzerland has a tax system that enables tax avoidance through tax rules that enable earnings stripping and by allowing Swiss companies to exempt income from foreign branches. This implicates criterion 5 of the 2011 MTC tax haven criteria. Also, Switzerland's exchange of information and tax transparency practices are insufficient, implicating criteria 1 and 2.

The department recommends that Switzerland be added to the list of jurisdictions in ORS 317.715(2)(b).

Guatemala

Guatemala has a tax rate of zero on foreign source income and lacks effective exchange of information provisions. This implicates criterion 1 of the 2011 MTC tax haven criteria.

The department recommends Guatemala be added on the list of jurisdictions in ORS 317.715(2)(b).

Hong Kong

Foreign source income in Hong Kong is not taxed, and a foreign owned corporation can take advantage of Hong Kong tax law without a substantial connection to Hong Kong. This implicates criterion 3 of the 2011 MTC tax haven criteria.

The department recommends that Hong Kong be added to the list of jurisdictions in ORS 317.715(2)(b).

Trinidad and Tobago

Trinidad and Tobago has a tax rate of zero on foreign source income for non-resident companies and lacks effective exchange of information provisions. This implicates criterion 1 of the MTC criteria.

The department recommends that Trinidad and Tobago be added to the list of jurisdictions in ORS 317.715(2)(b).

Subtractions

Netherlands Antilles

The Netherlands Antilles was dissolved on October 10, 2010. Curacao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) became autonomous territories of the Kingdom of the Netherlands. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands.

The department recommends that the Netherlands Antilles be subtracted from the list of jurisdictions in ORS 317.715(2)(b).

Monaco

Under the provisions of ORS 317.715(2), corporations must include income from jurisdictions on the list if they are incorporated in the jurisdiction in question. In this case, no corporation can be incorporated in Monaco and be tax-exempt unless they conduct most of their activities in Monaco.

The department recommends that Monaco be subtracted from the list of jurisdictions in ORS 317.715(2)(b).

Conclusion

Based on the MTC tax haven determination criteria used by the department, the following countries should be added to the list of jurisdictions in ORS 317.715(2)(b)*:

- The Netherlands
- Bonaire*
- Curacao*
- Saba*
- Sint Eustatius*
- Sint Maarten*
- Switzerland
- Guatemala
- Hong Kong
- Trinidad and Tobago

Additionally, the following jurisdictions should be subtracted from the list of jurisdictions in ORS 317.715(2)(b)*:

- The Netherlands Antilles**

- Monaco

**These recommendations are based on information available to staff through November 19, 2014.*

***The Netherlands Antilles was dissolved on October 10, 2010. Curacao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) became autonomous territories of the Kingdom of the Netherlands. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands.*

Appendix 1

ORS 317.715(2)(b) jurisdictions (current and proposed)

The 2011 Multistate Tax Commission criteria define a tax haven as a jurisdiction that has no or nominal tax on the relevant income, and:

- Has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime;
- Has a tax regime which lacks transparency. A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation, is not adequately available;
- Facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;
- Explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or
- Has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy.

The table below reflects lists the current jurisdictions listed in ORS 317.715 and the recommended additions and subtractions, which are bolded. All of these jurisdictions impose no or nominal taxation on certain categories of income earned outside of the jurisdiction. This table shows which additional MTC criteria cause the jurisdiction to be classified as a tax haven.

Jurisdictions	MTC criteria met	Additional information on
Andorra	3	Page 16
Anguilla	3, 4	Page 16
Antigua and Barbuda	4	Page 17
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Bahrain	3	Page 18
Barbados	4, 5	Page 19
Belize	3, 4	Page 19
Bermuda	3, 5	Page 20
Bonaire	3	Page 43

British Virgin Islands	1, 2, 3, 5	Page 20
Cayman Islands	3, 4, 5	Page 21
Cook Islands	4	Page 22
Curacao	4	Page 43
Cyprus	2, 3	Page 22
Dominica	1, 2, 4	Page 23
Gibraltar	3	Page 24
Grenada	3	Page 25
Guatemala	1	Page 25
Guernsey-Sark-Alderney	3	Page 26
Hong Kong	3	Page 26
Isle of Man	3	Page 27
Jersey	3	Page 28
Liberia	2, 3	Page 28
Liechtenstein	3	Page 29
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Monaco	Proposed deletion	Page 32
Montserrat	3, 4	Page 33
Nauru	1, 2	Page 33
The Netherlands	3	Page 34
Netherlands Antilles	Proposed deletion	Page 35
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St. Kitts and Nevis	4	Page 36
St. Lucia	4	Page 36
St. Vincent and the Grenadines	4	Page 36
Saba	3	Page 43
Samoa	4	Page 37
San Marino	3	Page 37
Seychelles	2, 3, 4	Page 38

Sint Eustatius	3	Page 43
Sint Maarten	4	Page 43
Switzerland	1, 2, 5	Page 38
Trinidad and Tobago	1	Page 40
Turks and Caicos Islands	3, 4, 5	Page 41
U.S. Virgin Islands	4	Page 41
Vanuatu	1, 2, 3	Page 42

Andorra

Andorra is a principality located in the Pyrenees Mountains, with a population of approximately 85,000 people. Andorra's official languages are Catalan, Castilian, Portuguese and French. Andorra's economy is based on tourism, retail sales, and finance.¹

Bureau of Economic Analysis (BEA) statistics indicate that U.S. corporations reported \$1 million worth of profits in Andorra during 2012.²

Until recently, Andorra did not tax corporate income.³ As of 2013, Andorra imposes a 10 percent tax on corporate income.⁴

The corporate tax base for a firm in Andorra is reduced by 80 percent if the Andorran firm engages in group financing, intellectual property or international operations involving intangible assets or goods trading. To claim this exception, the Andorran firm must have business premises of 20 square meters and at least one part-time employee within Andorra.⁵

Andorra also possesses a holding company regime. Under this regime, an Andorran holding company can exclude foreign source dividends and capital gains from the taxable income of the Andorran holding company. However, the Andorran holding company must own at least 5 percent of the voting rights of the non-resident company distributing the dividends. Also, the dividend distributing company must be subject to paying taxes similar to Andorran tax rates.⁶

An *Invest with Andorra* brochure claims that Andorra is no longer a tax haven because Andorra signed exchange of information agreements with other jurisdictions.⁷ However, the brochure does not address whether Andorra is a tax haven because of the issues cited above.

In summary, Andorra taxes group financing and intellectual property licensing activities at an effective rate of 2 percent and dividends at an effective rate of 0 percent if certain conditions are met. In any case, 2 percent is a nominal rate of tax given that rate is substantially lower than the effective tax rate on similar activities in other jurisdictions. No substantive presence in Andorra is required to take advantage of the Andorra tax regime. This implicates criterion 3 of the 2011 MTC tax haven criteria.

Anguilla

Anguilla is a Caribbean overseas territory of the U.K., with a population of approximately 16,000 people. English is the official language of Anguilla. The main industries are financial services, fishing, remittances, and tourism.⁸

BEA statistics indicate that U.S. corporations reported \$1 million in profits in Anguilla during 2012.⁹ There are no corporate income taxes in Anguilla.¹⁰

Section 3 of the Anguilla International Business Companies Act provides that an Anguillan international business company may not carry on business with residents of

Anguilla. Section 117 of the same act provides that an Anguillan international business company that only does business outside Anguilla is not subject to Anguillan tax.¹¹

In summary, Anguillan international companies need not have a substantive presence in Anguilla to enjoy the Anguillan zero tax regime. Also, Anguillan international companies are excluded from the Anguillan domestic market. This implicates criteria 3 and 4 of the 2011 MTC tax haven criteria.

Antigua and Barbuda

Antigua and Barbuda is a Caribbean island nation located near Puerto Rico, with a population of approximately 91,000 people. English is the official language of Antigua and Barbuda. The main industry is tourism.¹²

BEA statistics indicate that U.S. corporations reported \$2 million in losses in Antigua and Barbuda during 2012.¹³

Antigua and Barbuda has a corporate income tax rate of 25 percent.¹⁴ Section 4 of the Antigua International Business Companies Act defines the term international trade or business companies and limits the activities of those companies within Antigua and Barbuda. Manufacturing companies registered under the act may manufacture goods for sale outside of Antigua and Barbuda. However, the act also allows international trading companies registered under the act to provide services to other corporations within Antigua and Barbuda, as long as those services are not performed to enable another company to conduct business within Antigua and Barbuda.¹⁵

Section 272 of the act provides that the international trade and business income of an Antigua international business corporation is exempt from tax in Antigua. Section 276 provides that this tax exemption lasts for 50 years after the incorporation of the exempt company.¹⁶

In summary, Antigua international business corporations are exempt from tax if they limit their interactions with the Antiguan economy. This implicates criterion 4 of the 2011 MTC tax haven criteria.

Aruba

Aruba is a Caribbean island constituent country of the Netherlands, with a population of approximately 110,000 people. Papiamentu is the most prevalent language of Aruba. The main industries include tourism and offshore banking.¹⁷

BEA statistics do not indicate the 2012 net income of U.S. corporations in Aruba, to avoid disclosing the identity of individual corporations.¹⁸ Aruba taxes corporate income at a rate of 28 percent.¹⁹

Aruban law provides for the establishment of an Aruba exempt company (AVV). Residents of Aruba may not incorporate an AVV. An AVV may not participate in the domestic economy of Aruba.²⁰ However, an AVV may engage in activities such as intellectual property licensing and corporate group financing.²¹ An AVV, as long as it does not engage in the domestic economy of Aruba, is exempt from Aruban tax.²²

In summary, Aruban law provides that AVVs that do not participate in the Aruban economy are tax-exempt. Also, Aruba does not allow Aruban residents to establish AVVs. In addition, there is no requirement that the AVV have a substantial connection to Aruba in order to take advantage of the Aruban tax system. This implicates criteria 3 and 4 of the 2011 MTC tax haven criteria.

The Bahamas

The Bahamas is a chain of islands located in the Caribbean Sea adjacent to Florida, with a population of 321,000 people. English is the official language. Tourism and offshore banking are the main economic activities in the Bahamas.²³

U.S. corporations reported \$2.08 billion in profit in the Bahamas during 2012.²⁴ The Bahamas has a corporate income tax rate of 0 percent.²⁵

Section 187 of the Bahamian International Business Companies Act makes clear that a Bahamian company incorporated under the act is not subject to any kind of tax on company net income. Section 187(2) of the same act prevents an international business company partially owned by persons resident in the Bahamas from taking advantage of the provisions of Section 187(1). Nowhere does the act require a substantial presence in the Bahamas to take advantage of the zero tax rate.²⁶

In addition, it has been noted that finance and offshore banking generates as much as 35 percent of the GDP in the Bahamas.²⁷ Therefore, the untaxed offshore finance industry is large relative to the Bahamian economy. Accordingly, the Bahamas has created a tax regime favorable for tax avoidance.

In summary, the Bahamas allows international business companies to enjoy the zero Bahamian tax rate without a substantial presence in the Bahamas. Also, residents of the Bahamas may not own part of an international business company. This implicates criteria 3 and 4 of the 2011 MTC criteria. Additionally, the untaxed offshore finance industry is a large part of the Bahamian economy, implicating criterion 5.

Bahrain

Bahrain is an island nation located between Saudi Arabia and Qatar in the Persian Gulf, with a population of approximately 1.3 million people. Arabic is the official language of Bahrain. The main industries are aluminum, construction, finance, and petroleum.²⁸

BEA statistics indicate that U.S. corporations reported \$13 million in profits in Bahrain during 2012.²⁹ Bahrain does not have a corporate income tax for most companies. However, oil companies are taxed at a 46 percent rate.³⁰

Bahraini law does allow for the establishment of holding companies that provide group financing to affiliated corporations. The Bahraini holding company may be completely owned by non-Bahraini nationals. There is no requirement that the holding company transact business with Bahraini companies. There is no requirement that corporations doing business with the holding company be subject to tax in other countries.³¹

In summary, a foreign company can be incorporated in Bahrain and take advantage of a 0 percent tax rate without the need for a local substantive presence within Bahrain. This implicates criterion 3 of the 2011 MTC tax haven criteria.

Barbados

Barbados is a Caribbean Island near South America, with a population of approximately 290,000 people. English is the official language of Barbados. Tourism and offshore banking are the main economic activities.³²

In 2012, U.S. corporations reported \$2.393 billion in profits in Barbados.³³ Barbados has a variety of corporate tax rates and international company structures, and taxes standard companies at a rate of 25 percent. Tax rates vary between .25 percent and 2.5 percent for Barbados international business companies.³⁴

Section 10 of the International Business Companies Act provides that profits are taxed at a rate of 2.5 percent for the first \$10 million of profits, 2 percent for the second \$10 million of profits, 1.5 percent for the third \$10 million of profits, and 1 percent for all profits in excess of \$30 million.³⁵

Section 8 of the same act requires that the international business company must be resident in Barbados and capable of carrying on business. Section 6(1)(d) provides that any business carried on from Barbados can qualify for the tax exemptions of the International Business Companies Act. However, Section 4 makes clear that items manufactured within Barbados must be exported. Section 6 makes clear that services must be provided to those outside Barbados or other similarly exempt companies within Barbados.³⁶

In addition, it has been noted that offshore finance is an important foreign exchange earner in Barbados. The profits reported by U.S. corporations in Barbados equal approximately one-third of Barbados' GDP.³⁷ This indicates that the Barbados untaxed offshore financial sector is a significant part of the economy. Accordingly, Barbados has created a tax regime favorable for tax avoidance.

In summary, Barbados taxes international business company income at a nominal rate of between 1 percent and 2.5 percent if the international business company doesn't participate in the Barbados economy. This implicates criterion 4 of the 2011 MTC tax haven criteria. Additionally, the Barbados untaxed offshore financial industry is a significant part of the Barbados economy, implicating criterion 5.

Belize

Belize is a country located between Guatemala and Mexico, with a population of approximately 340,000 people. English is the official language of Belize. The main industries include agriculture, petroleum, and tourism.³⁸

BEA statistics indicated that U.S. corporations reported \$3 million in profits in Belize during 2012.³⁹ Belize taxes corporate income at a 25 percent rate.⁴⁰

Belize has enacted an International Business Companies Act. Section 5 (1)(a) of the act provides that a Belizean international business company may not carry on activities within Belize. Section 130 of the same act provides that a Belizean international business company is exempt from Belizean corporate income tax.⁴¹

In summary, there is no tax on an international business company and the international business company may not enter the domestic market of Belize and, accordingly, does not need a substantial connection to Belize. This implicates criteria 3 and 4 of the 2011 MTC tax haven criteria.

Bermuda

Bermuda is an overseas territory of the U.K. consisting of a group of islands off the coast of South Carolina, with a population of approximately 70,000 people. English is the official language of Bermuda. The main industries are finance and tourism.⁴²

U.S. corporations reported a total of \$80.042 billion in profits from Bermuda during 2012.⁴³ News reports indicate that Google used Bermuda as part of a tax avoidance strategy involving Ireland and the Netherlands.⁴⁴ Bermuda does not levy a corporate income tax.⁴⁵

Section 127 of the 1981 Bermuda Companies Act provides for the existence of Bermudian exempted companies. Section 129(e) provides that an exempted company, as a general rule, may not carry on business within Bermuda unless the activities of the exempted company fit within a specific exemption. Section 128 states that Bermuda exempted companies are covered by the Exempted Undertakings Tax Protection Act of 1966.⁴⁶ Section 2 of that act authorizes the Bermuda Accountant-General to assure exempt companies that they will not be covered by any future Bermuda profits tax.⁴⁷

In addition, the profits reported by U.S. corporations in Bermuda are many times larger than the GDP of Bermuda. It is clear that Bermuda's untaxed, offshore finance industry is large relative to the rest of the economy in Bermuda.⁴⁸ Therefore, it is also clear that Bermuda has created a tax regime favorable for tax avoidance.

In summary, a tax-exempt company may be established in Bermuda without the need for a substantive presence in Bermuda. This implicates criterion 3 of the 2011 MTC tax haven criteria. Also, Bermuda has a large untaxed offshore financial services industry, implicating criterion 5.

British Virgin Islands

The British Virgin Islands (BVI) is a U.K. overseas territory located in the Caribbean Sea near Puerto Rico, with a population of approximately 33,000 people. The official language of the BVI is English. The BVI's most important industries are international business and tourism.⁴⁹

BEA statistics show that U.S. corporations reported \$39.639 billion in profits in the "United Kingdom Islands, Caribbean" during 2012.⁵⁰ U.N. statistics show that the BVI

received \$92 billion in foreign investments during 2013. The United States, by comparison, reported \$159 billion in foreign investments during 2013.⁵¹

In 1984, the BVI passed the International Business Companies Act. In essence, the international business company would not be taxed by the BVI if it did no business in the BVI. In 2004, the BVI replaced the International Business Companies Act and BVI international business companies were eventually phased out.⁵² However, the BVI has a corporate income tax rate of zero.⁵³

BVI company law indicates there is no requirement that a company have a substantial presence in the BVI to take advantage of the corporate income tax rate.⁵⁴ This is supported by the fact that the foreign investment received by the BVI is disproportionate to the level of economic activity supportable by 27,000 people.

A Global Forum report indicated that the BVI failed to enforce its exchange of information and tax transparency laws. Namely, BVI does not monitor the accounting regulations compliance of non-financial companies, use its legal authority to compel companies to release information, or properly answer exchange of information requests from other jurisdictions.⁵⁵

The circumstances described here indicate that the BVI has established a tax regime favorable for tax avoidance. Clearly, the BVI has a large untaxed offshore financial sector due to the large flow of foreign funds into the BVI combined with the BVI having no corporate income tax. Total foreign investment into the BVI is greater than the GDP of the BVI.⁵⁶ Accordingly, the untaxed offshore financial sector must be a large part of the BVI economy.

In summary, there is no requirement that a foreign owned entity establish a substantive presence in the BVI to take advantage of the corporate income zero tax rate. This implicates criterion 3 of the 2011 MTC tax haven criteria. Also, the BVI's exchange of information and tax transparency practices are insufficient, implicating criteria 1 and 2. Finally, the BVI has a large untaxed offshore financial services industry, implicating criterion 5.

Cayman Islands

The Cayman Islands is a U.K. overseas territory located in the Caribbean near Cuba, with a population of approximately 55,000 people English is the official language of the Cayman Islands. Financial services and tourism are the main industries.⁵⁷

There is no information indicating how much profit U.S. corporations earn specifically in the Cayman Islands. However, other statistics indicate that U.S. corporations reported \$39.639 billion in profits during 2012 in Caribbean islands belonging to the U.K.⁵⁸ The Cayman Islands does not have a corporate income tax.⁵⁹

The Cayman Islands allows a Cayman Islands company that does business primarily outside the Cayman Islands to enjoy the corporate tax advantages of the Cayman Islands. Section 165 of the Cayman Islands Companies Law provides that an exempted company must declare their business will be carried on mainly outside the Cayman

Islands. Section 174 of the law clearly prohibits trade by the exempted company within the Cayman Islands unless the trade within the Cayman Islands somehow furthers its trade outside the Cayman Islands.⁶⁰

Also, the Cayman Islands have created a tax regime favorable for tax avoidance. Statistics indicate that the Cayman Island received approximately \$10.5 billion in net foreign investment during 2013.⁶¹ It has been noted that the Cayman Islands is a thriving offshore financial center.⁶² Clearly, the offshore financial center in the Cayman Islands is untaxed and constitutes a large part of the Cayman Islands economy. Accordingly, the Cayman Islands has created a tax regime favorable for tax avoidance.

In summary, the Cayman Islands does not tax corporate income and facilitates the Cayman Islands establishment of foreign-owned corporations without the need for an economic presence in the Cayman Islands. Also, exempt companies in the Cayman Islands may not participate in the Cayman Islands domestic market. This implicates criteria 3 and 4 of the 2011 MTC tax haven criteria. Additionally, the Cayman Islands possess a large, untaxed offshore financial services industry, implicating criterion 5.

Cook Islands

The Cook Islands are a group of South Pacific Islands, with a population of approximately 10,000 inhabitants who are in a self-governing association with New Zealand. English and Cook Islands Maori are the official languages of the Cook Islands. The main industries are agriculture and tourism.⁶³

No statistics are available on how much profit U.S. corporations report in the Cook Islands.⁶⁴ According to *The Cook Islands Tax Review*, the Cook Islands levy a company tax of 20 percent on resident companies and 28 percent on non-resident companies.⁶⁵

Section 249(2) of the Cook Islands International Companies Act provides that no “fee, impost, tax, levy, dues, duty or excise” may be imposed on a Cook Islands international company incorporated in the Cook Islands. Section 6 of the same act expressly forbids residents or domestic corporations of the Cook Islands from holding an interest in a Cook Islands international company except through a trustee company.⁶⁶

The Cook Islands International Companies Act has been amended a number of times. However, a provision of the act that prevents domestic companies or residents of the Cook Islands from owning a beneficial interest in a Cook Islands international company has never been modified.⁶⁷

In summary, residents of the Cook Islands are expressly excluded from the favorable tax treatment granted to Cook Island international companies established by non-Cook Islanders. This implicates criterion 4 of the 2011 MTC tax haven criteria.

Cyprus

Cyprus is an island nation located in the eastern Mediterranean, with a population of approximately 1.2 million people Greek and Turkish are the official languages of

Cyprus. Cyprus has a diversified economy, and finance and tourism are important industries.⁶⁸

BEA statistics indicated that U.S. corporations reported \$425 million in profits in Cyprus during 2012.⁶⁹

Cyprus experienced a severe financial crisis in 2013. A large part of deposits in Cypriot banks were, in essence, seized by the European Union to fund a bank bailout in Cyprus.⁷⁰ News articles reported that Cyprus remained a favorite tax haven in spite of the bank bailout.⁷¹ Cyprus taxes resident corporate income at a 12.5 percent rate.⁷²

Cypriot companies are resident in Cyprus when the Cypriot company is managed and controlled from Cyprus. Resident Cypriot companies are taxed on their worldwide income. Non-resident Cypriot companies are taxed on Cypriot source income.⁷³ Accordingly, a company can be incorporated in Cyprus and pay zero tax if the company has no Cyprus source income.

Dividends received by a resident Cypriot corporation are tax-free unless the dividends are paid out of profits more than four years old. In that case, the dividends are taxed to provide for the defense of Cyprus. Dividends received by non-resident Cypriot corporations are also exempt from tax, including the tax for the defense of Cyprus, unless more than half of the non-resident corporation's income comes from investment activities or the tax on the non-resident payer of the dividends is less than 5 percent of the tax on the receiving Cypriot corporation.⁷⁴

Cyprus exempts 80 percent of the profits earned from patents, trademarks and other intellectual property rights from tax. A company taking advantage of this tax incentive must own the intellectual property in question although the company may acquire the intellectual property from a third party.⁷⁵

A Global Forum report indicated that Cyprus failed to enforce its exchange of information and tax transparency laws. Namely, Cyprus does not ensure that accounting records are available or use its legal authority to compel companies to release tax related information.⁷⁶

In summary, a strong potential exists for a Cypriot company to pay an effective rate of corporate tax significantly lower than the U.S. rate if the company holds intellectual property. Also, the potential for use of hybrid financing arrangements exists given the exclusion of dividends from Cyprus tax. These tax incentives can be used by a Cypriot non-resident company without a substantial connection to Cyprus. This implicates criterion 3 of the 2011 MTC tax haven criteria. Also, Cyprus' tax transparency practices are insufficient, implicating criterion 2.

Dominica

Dominica is an island republic located in the Caribbean, with a population of approximately 73,000 people. English is Dominica's official language. Agriculture is Dominica's main industry, along with developing finance and tourism sectors.⁷⁷

U.S. corporations reported \$9 million in profits in Dominica in 2012.⁷⁸ Dominica taxes corporate income at a 30 percent rate.⁷⁹

Dominica passed an International Business Companies Act in 1996. Section 5(1)(a) of the act provides that an international business company may not carry on business in Dominica with persons domiciled or resident in Dominica. In addition, Section 109 of the act provides that an international business company is exempt from tax for a period of 20 years after it's incorporation.⁸⁰

A Global Forum report indicated that Dominica lacked the following exchange of information and tax transparency provisions:

- Sufficient corporate accounting regulations.
- Sufficient ability of the government to obtain taxpayer information.
- Effective exchange of information provisions.⁸¹

In summary, there is no tax for international business for the first 20 years of their operation, and these businesses cannot compete in the domestic Dominican market. This implicates criterion 4 of the 2011 MTC tax haven criteria. Also, Dominica's exchange of information and tax transparency provisions are insufficient, implicating criteria 1 and 2.

Gibraltar

Gibraltar is a small peninsula on the Spanish coast and has been a U.K. overseas territory for the past 300 years. Gibraltar's population is approximately 30,000 people. English is the official language of Gibraltar. The main economic activities are financial services, internet gaming, shipping, and tourism.⁸²

U.S. corporations reported \$3.501 billion in profits in Gibraltar in 2012.⁸³ At present, the corporate income tax rate in Gibraltar is 10 percent.⁸⁴

Gibraltar distinguishes between resident and non-resident companies. A Gibraltar resident company is one that is managed and controlled in Gibraltar. A Gibraltar non-resident company is managed and controlled outside Gibraltar. Typically, Gibraltar non-resident companies are taxed only on their Gibraltar source income. However, a company registered in Gibraltar must pay the standard 10 percent corporate tax rate on interest and royalty income received.⁸⁵

Also, Gibraltar exempts dividends from tax and there is no evidence that dividends paid to a Gibraltar recipient from another country be subject to tax in that country.⁸⁶ Gibraltar's treatment of dividends could give a taxpayer a tax benefit, if the U.S. considered debt what Gibraltar considers to be equity. In short, a U.S. corporation could deduct the payment and a Gibraltar corporation would recognize no income on the payment.

In summary, Gibraltar excludes a large amount of foreign income from its taxable base by unconditionally excluding dividends from corporate taxable income. A Gibraltar company can take advantage of this tax regime without any substantive connection to Gibraltar. This implicates criterion 3 of the 2011 MTC tax haven criteria.

Grenada

Grenada is an island nation located in the Caribbean Sea near the coast of South America, with a population of approximately 110,000 people. English is the official language of Grenada and tourism is a major industry.⁸⁷

BEA statistics show that U.S. corporations reported \$2 million in profits in Grenada during 2012.⁸⁸ Grenada has a corporate income tax rate of 30 percent.⁸⁹

Grenada allows the establishment of international companies that are exempt from tax for a period of 20 years per Section 110 of the International Companies Act of 1989. Section 5 of the same act provides that an International Company may not carry on business with persons domiciled or resident in Grenada.⁹⁰

In summary, Grenada tax-exempt companies are prevented from competing in the local Grenada market. Also, the Grenada exempt company does not need to have a substantial connection to Grenada. This implicates criterion 3 of the 2011 MTC tax haven criteria.

Guatemala

Guatemala is a Central American nation, with a population of approximately 16,000,000 people. Spanish is the official language of Guatemala. Agriculture and remittances from abroad are major parts of the Guatemalan economy.⁹¹

BEA statistics indicate that U.S. corporations reported \$144 million in profits in Guatemala during 2012.⁹² Guatemala has a corporate income tax rate of 5 to 7 percent on gross revenue and 28 percent on net income. Gross revenue tax paid is treated as a credit toward net income tax.⁹³

However, Guatemala only taxes Guatemalan source income.⁹⁴ For example, dividends paid by foreign corporations to Guatemalan corporations are not taxable by Guatemala.⁹⁵ Also, Guatemalan law provides for a 10-year exemption from income taxes for companies that establish commercial or industrial operations in certain areas.⁹⁶ It is possible for a corporation established in Guatemala to enjoy zero taxation, at least for the first 10 years of its existence.

Also, Guatemala is not compliant with Global Forum exchange of information and transparency provisions. Notably, the Global Forum has noted deficiencies in the following areas:

- Availability of ownership information.
- The power of authorities to procure documents for exchange of information.
- Provisions for effective exchange of information.
- Exchange of information agreements that cover all relevant partners.⁹⁷

Specifically, the report notes that Guatemala does not require foreign corporations, partnerships, or trusts with nexus to Guatemala to provide ownership information to Guatemala. Guatemala's confidentiality provisions may not be waived for the purposes

of exchange of information with other governments.⁹⁸

Also, Guatemalan law may not authorize Guatemalan taxing authorities to obtain information unless the information relates to a Guatemalan tax liability. Guatemala's confidentiality laws would render ineffective any exchange of information agreement Guatemala is party to, although. Guatemala has not actually entered into any of these agreements.⁹⁹

In addition, Global Forum has noted that Guatemala should modify their law to prevent notification of taxpayers when a judicial order is required to obtain taxpayer information.¹⁰⁰

In summary, Guatemala has a tax rate of zero on foreign source income and lacks effective exchange of information provisions. This implicates criterion 1 of the 2011 MTC tax haven criteria.

The department recommends Guatemala be added on the list of jurisdictions in ORS 317.715(2)(b).

Guernsey- Sark- Alderney

Guernsey-Sark-Alderney (Guernsey) is a British crown dependency located in the English Channel, with a population of approximately 66,000 people. English is the predominant language. Financial activities are a very important part of the Guernsey economy.¹⁰¹

There are no statistics indicating the level of profits U.S. corporate entities report in Guernsey.¹⁰² In general, a company in Guernsey pays a corporate tax rate of 0 percent. However, banking, fiduciary, domestic insurance, insurance management, and insurance intermediary businesses are taxed at a rate of 10 percent. Guernsey real estate holdings are taxed at 20 percent.¹⁰³

A company is regarded as resident of Guernsey if the company is incorporated in Guernsey or is managed and controlled from Guernsey.¹⁰⁴ *Doing Business in Guernsey* indicates that a Guernsey resident company need only file a simple tax return if they have no beneficial owners present in Guernsey and refrain from engaging in activity taxed by Guernsey.¹⁰⁵

In summary, a foreign owned business may enjoy a Guernsey tax rate of 0 percent, without the need to engage in substantive activity within Guernsey. This implicates criterion 3 of the 2011 MTC tax haven criteria.

Hong Kong

Hong Kong is part of China, with a population of more than 7,000,000 people. Hong Kong was a colony of the U.K. until 1997. In 1984, China and the U.K. agreed that Hong Kong would be guaranteed its domestic autonomy until 2047. Chinese and English are spoken in Hong Kong and the economy is well developed.¹⁰⁶

U.S. corporations reported \$12.506 billion in profits in Hong Kong during 2012.¹⁰⁷

Hong Kong has a 16.5 percent corporate income tax rate and uses a territorial system of taxation.¹⁰⁸ Therefore, foreign sourced income is not taxed in Hong Kong. There are no substance requirements for a holding company in Hong Kong. These provisions may facilitate the tax-free movement of foreign money into Hong Kong, given there is no evidence of any Hong Kong requirement that foreign income be subject to tax.¹⁰⁹

Hong Kong is also advertised as being home to hybrid financing instruments.¹¹⁰ By way of example, a hybrid financing instrument exists when a financial instrument is classified as debt in country A and equity in country B. This raises the possibility that a corporation could deduct an interest expense in Country A and recognize no income in Country B, if Country B does not tax dividends.

Hybrid financing arrangements can facilitate profit shifting to low-tax jurisdictions when the hybrid financing arrangement results in a tax deduction in the high tax country. This conclusion holds true of Hong Kong in light of the fact that Hong Kong does not tax foreign source income.

In summary, foreign source income in Hong Kong is not taxed, and a foreign owned corporation can take advantage of Hong Kong tax law without a substantial connection to Hong Kong. This implicates criterion 3 of the 2011 MTC tax haven criteria.

The department recommends that Hong Kong be added to the list of jurisdictions in ORS 317.715(2)(b).

Isle of Man

The Isle of Man is a U.K. crown dependency located between Ireland and the U.K., with a population of approximately 87,000 people. Languages used in the Isle of Man include English and Manx. Manufacturing, offshore banking, and tourism are the basis of the Isle of Man economy.¹¹¹

There are no statistics indicating the level of profits U.S. corporate entities report in the Isle of Man.¹¹² The Isle of Man taxes most businesses at a 0 percent tax rate. However, banking income from deposit-taking businesses, real estate, and retail profits in excess of 500,000 pounds are taxed at 10 percent.¹¹³

The only requirement to take advantage of the 0 percent tax rate is to own an Isle of Man incorporated business entity or manage the business entity from the Isle of Man. All companies incorporated in the Isle of Man are tax residents in the Isle of Man.¹¹⁴ There is no requirement for an Isle of Man company to have a substantial presence in the Isle of Man to take advantage of the 0 percent tax rate.

In summary, Manx incorporated businesses are subject to a tax rate of zero, without the need for a substantive presence in the Isle of Man. This implicates criterion 3 of the 2011 MTC tax haven criteria.

Jersey

Jersey is a crown dependency of the U.K., located in the English Channel, with a population of approximately 97,000 people. English is the official language of Jersey. Finance is a major component of the Jersey economy.¹¹⁵

There are no statistics indicating the level of profits U.S. corporate entities report in Jersey.¹¹⁶ Jersey taxes most businesses at a 0 percent tax rate. However, Jersey taxes financial services companies and utility companies at a 10 percent rate.¹¹⁷

A company is considered tax resident in Jersey if the company is incorporated in, or managed and controlled from Jersey. There is no requirement that a company have any economic activities in Jersey to take advantage of a 0 percent tax rate.¹¹⁸

In summary, Jersey does not require a substantial connection to Jersey to set up a foreign owned company in Jersey. Indeed, a Jersey permanent establishment is only needed if corporation in question is not resident in Jersey. This implicates criterion 3 of the 2011 MTC tax haven criteria.

Liberia

Liberia is a West African nation, with a population of approximately 4,000,000 people. English is the official language of Liberia. Liberia's economy has traditionally depended on exports of raw materials, such as rubber and timber.¹¹⁹

BEA statistics indicate that U.S. corporations reported \$124 million in losses in Liberia during 2012.¹²⁰ In general, Liberia taxes corporate income at a 25 percent rate.¹²¹

The *Liberia Fiscal Guide* indicates that Liberia taxes the worldwide income of a Liberian resident corporation. However, Liberia taxes the Liberian source income of a non-resident corporation.¹²² *A Quick Guide to Taxation in Liberia* indicates that a Liberian resident corporation is one that is incorporated in Liberia, and either is managed from Liberia or performs the majority of its operations in Liberia. Also, a company can be considered resident in Liberia if the majority of shareholders reside in Liberia.¹²³ As a consequence, a company can be incorporated in Liberia without the need for operations in Liberia.

One thing to note is that Liberia exempts shipping income from taxation.¹²⁴ As a consequence, Liberia has a very large Merchant Marine for a nation of its size.¹²⁵

A Global Forum report indicated that Liberia lacked sufficient corporate accounting regulations and sufficient records of corporate ownership, to be considered compliant with transparency requirements.¹²⁶

In summary, foreign sourced income is not taxed in Liberia. A foreign corporation does not need a connection to Liberia to take advantage of this tax law. This implicates criterion 3 of the 2011 MTC tax haven criteria. Also, Liberia's tax transparency provisions are insufficient, implicating criterion 2.

Liechtenstein

Liechtenstein is a small country located between Switzerland and Austria, with a population of approximately 37,000 people. German is the official language of Liechtenstein. Finance is one of the major industries.¹²⁷

Bureau of Economic Analysis statistics do not indicate the 2012 net income of U.S. corporations in Liechtenstein, to avoid disclosing the identity of individual corporations.¹²⁸ Liechtenstein taxes corporate income at a 12.5 percent rate.¹²⁹

However, there are two key provisions of Liechtenstein tax law that reduce the effective rate paid by Liechtenstein corporations.

First, *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations* indicates that 80 percent of the net income attributable to patents, designs, models, utility models, trademarks, and copyrights (intellectual property) is excluded from Liechtenstein corporate income tax. It also indicates that this intellectual property tax exemption applies to acquired or developed intellectual property. Also, past research and development costs must be recaptured and added to intellectual property income.¹³⁰

Second, Liechtenstein corporations are allowed to deduct 4 percent of their weighted equity value against their income. This is referred to as a “notional interest deduction.”¹³¹ Typically, corporations are allowed to deduct interest they pay on their debts while they are not allowed to deduct dividends paid. The economic justification for a notional interest deduction is to remove the tax preference that favors debt over equity.¹³² It is possible that a Liechtenstein corporation holding intellectual property pays a zero effective tax rate, even if their weighted equity value equals their net income.

In summary, there is no evidence that a company needs to have a substantive connection to Liechtenstein to take advantage of the Liechtenstein tax system. This implicates criterion 3 of the 2011 MTC tax haven criteria.

Luxembourg

Luxembourg is a nation located between Belgium and Germany, with a population of approximately 521,000 people. French, German, and Luxembourgish are the official languages. Financial services are the largest part of Luxembourg’s economy.¹³³

U.S. corporations reported \$95.036 billion in profits in Luxembourg during 2012.¹³⁴ Luxembourg has a headline corporate tax rate of 28 percent.¹³⁵

Recent media coverage has focused on Luxembourg’s role in various tax avoidance schemes.¹³⁶ The 2000 OECD report indicated that Luxembourg operated a preferential tax regime due to the Luxembourg 1929 Holding Company legislation,¹³⁷ which has since been repealed.¹³⁸

Luxembourg- A Hub for Intellectual Property indicates that Luxembourg exempts 80 percent of net income or capital gains attributed to the use or right to use patents, trademarks, or copyrights (intellectual property) acquired from a third party. Eighty

percent of the income from self-developed intellectual property is excluded from Luxembourg income tax. The research and development for the intellectual property can occur outside Luxembourg. Income from intellectual property may be excluded from tax only if the intellectual property was acquired or developed after 2007.¹³⁹

In addition, Luxembourg differentiates between resident and non-resident companies. A resident company has their registered office or central administration in Luxembourg, whereas a non-resident company has their registered office or central administration outside Luxembourg. Luxembourg resident companies are taxed on their worldwide income while Luxembourg non-resident companies are taxed on their Luxembourg source income.¹⁴⁰

A Global Forum report indicated that Luxembourg failed to enforce its exchange of information and tax transparency laws. Namely, Luxembourg does not use its legal powers to obtain taxpayer information, or enable effective exchange of information with other jurisdictions. Also, Luxembourg does not have sufficient laws to provide for transparency of company ownership information.¹⁴¹

Also, the profits reported by U.S. corporations in Luxembourg are greater than the entire GDP of Luxembourg.¹⁴² In addition, most banks in Luxembourg are foreign-owned and financial sector accounts for 36% of GDP. The offshore financial center in Luxembourg is subject to no or nominal tax and constitutes a large part of the Luxembourg economy. Accordingly, Luxembourg has created a tax regime favorable for tax avoidance.

In summary, Luxembourg taxes large categories of corporate income at a nominal rate due to its tax treatment of intellectual property, and the exclusion of the foreign source income of a non-resident Luxembourg company from Luxembourg tax. A Luxembourg company can seek this advantageous tax treatment without a substantial connection to Luxembourg. This implicates criterion 3 of the 2011 MTC tax haven criteria. Also, Luxembourg's exchange of information and tax transparency laws and practices are insufficient, implementing criteria 1 and 2. Finally, Luxembourg has created a tax regime favorable for tax avoidance, implicating criterion 5.

Malta

Malta is an island in the Mediterranean Sea, located between Sicily and Libya, with a population of approximately 413,000 people. Malta's official languages are English and Maltese. Financial services, manufacturing, trade, and tourism are significant economic activities in Malta.¹⁴³

U.S. corporations reported \$213 million in losses in Malta during 2012.¹⁴⁴

Malta has a corporate income tax rate of 35 percent. Any company incorporated in Malta is considered tax resident in Malta.¹⁴⁵ However, Section 3 of the Legal Notice 429 of 2010 provides that royalties received on patents are exempt from Maltese corporate income tax. There is no requirement that research leading to the patent be performed in whole or in part in Malta.¹⁴⁶ *Malta: the IP and R&D Jurisdiction* indicates that copyrights

are also exempt from income.¹⁴⁷ It is unclear what kind of connection the copyrights or trademarks need to have with Malta in order to take advantage of the exemption.

In summary, Malta has an effective tax rate of zero on patent royalty receipts. There is no requirement that the Maltese company holding the patent have a substantive connection to Malta, or that any research for the patent needs to be performed in Malta. This implicates criterion 3 of the 2011 MTC tax haven criteria.

Marshall Islands

The Marshall Islands is located in the Pacific Ocean, with a population of approximately 71,000 people. English and Marshallese are the official languages. Agriculture is the main industry of the Marshall Islands.¹⁴⁸

BEA statistics indicate that U.S. corporations reported \$414 million in losses in the Marshall Islands during 2012.¹⁴⁹ The Marshall Islands has a business gross revenue tax of 3 percent, per Section 109 of the Marshall Islands Income Tax Act.¹⁵⁰

Section 12 of the Marshall Islands Business Corporations Act provides that a non-resident domestic corporation is exempt from tax and fees aside from incorporation and annual registration fees. Section 2(c) of the act defines a domestic corporation as a corporation formed in the Marshall Islands. A non-resident corporation, according to Section 2(i) of the act, is a corporation not doing business in the Marshall Islands. Furthermore, Section 2(o) of the act allows for a wide spectrum of activities to be performed in the Marshall Islands, including maintaining a bank account and office, before the corporation is considered to be doing business in the Marshall Islands.¹⁵¹

A Global Forum report indicated that the Marshall Islands lacked sufficient corporate accounting regulations and sufficient records of corporate ownership to comply with transparency requirements.¹⁵²

In summary, the Marshall Islands exempts corporations not doing business in the Marshall Islands from Marshall Islands tax. Also, corporations not resident in the Marshall Islands enjoy the exemption from Marshall Islands tax if they do not take part in the Marshall Islands economy. This implicates criteria 3 and 4 of the 2011 MTC tax haven criteria. Also, the Marshall Islands' tax transparency provisions are insufficient, implicating criterion 2.

Mauritius

Mauritius is an island nation located in the Indian Ocean near Madagascar, with a population of approximately 1.3 million people. English, French and a creole language mostly based on French, are spoken. Mauritius' economy is based on tourism, textiles, sugar, and financial services.¹⁵³

BEA statistics show that U.S. corporations reported \$1.654 billion in profits in Mauritius during 2012.¹⁵⁴ Corporate income is taxed at a rate of 15 percent.¹⁵⁵

In Part 1, Section 19 of the Second Schedule of the Mauritius Income Tax Act indicates that corporations holding a Category 2 Global Business License are exempt from

Mauritius tax. Also, Section 76 of the same act indicates that corporations holding this license are not resident on Mauritius for tax purposes.¹⁵⁶

Section 71(1) of the Mauritian Financial Services Act provides that a Mauritian resident corporation may apply for a global business license to conduct business outside Mauritius. This implies that a Category 2 Mauritius Global Business Licensee may not participate in the Mauritian domestic market because Section 71(6) indicates that only firms holding Category 1 Global Business Licenses may participate in the Mauritian domestic market.¹⁵⁷

Section 71(3) of the Mauritian Financial Services Act provides that a Mauritian resident corporation cannot apply for a Category 2 Global Business License, unless the corporation is a private company and carries out activities other than those listed in the Fourth Schedule of the Financial Services Act.¹⁵⁸

Section 71(7) states that resident corporations include corporations that are incorporated or registered in Mauritius.¹⁵⁹ A private company, according to Section 2 of the Mauritian Companies Act, is a company incorporated or registered in Mauritius that has characteristics described in Part 21 of the Mauritian Companies Act.¹⁶⁰ Section 270 of the Mauritian Companies Act describes those characteristics. Most prominently, a Mauritian private company may have no more than 25 shareholders.¹⁶¹

The Fourth Schedule of the Mauritian Financial Services Act covers the following activities: banking, holding companies, financial services, providing registered office services to corporations, and trusteeship operations.¹⁶²

However, there is no indication that similar restrictions that are applicable to resident Mauritian corporations seeking a Category 2 Global Business License are also applicable to non-resident Mauritian corporations. Also, Section 73(2) of the Mauritius Financial Services Act prevents the holder of a Category 2 Global Business License from seeking substantial connections with Mauritius.¹⁶³

In summary, a corporation incorporated in Mauritius is exempt from tax if it is a non-resident corporation or meets the qualifications of a private company and conducting business outside Mauritius while being excluded from the Mauritian domestic market. Also, the holder of a Category 2 Global Business License is prevented from having a substantial connection with Mauritius. This implicates criteria 3 and 4 of the 2011 MTC tax haven criteria.

Monaco

Monaco is a small country on the Mediterranean Coast of France, with a population of approximately 31,000 people. French is the official language of Monaco. The main industry is financial services.¹⁶⁴

BEA statistics show that U.S. corporations reported losses of \$1 million in Monaco during 2012.¹⁶⁵

Monaco has a corporate income tax rate of 33.33 percent.¹⁶⁶ This tax is imposed on three kinds of corporate entities:

- Corporate entities that perform more than 25 percent of their business outside Monaco.
- Corporate entities who realize dividend income from non-Monaco entities if the Monaco entity owns more than 20 percent of the non-Monaco entity.
- Corporate entities realizing income from intellectual property rights.¹⁶⁷

However, a foreign corporation can set up an administrative office in Monaco and be exempt from Monaco tax, but the administrative office is not incorporated in Monaco.¹⁶⁸ This means that the income from the Monaco administrative office cannot be added back to an Oregon income tax return.

Under the provisions of ORS 317.715(2), corporations must include income from jurisdictions on the list if they are incorporated in the jurisdiction in question. In this case, no corporation can be incorporated in Monaco and be tax-exempt unless they conduct most of their activities in Monaco.

The department recommends that Monaco be subtracted from the list of jurisdictions in ORS 317.715(2)(b).

Montserrat

Montserrat is a Caribbean overseas territory of the U.K., with a population of approximately 5,000 people. English is the official language of Montserrat. Construction and government services are the main industries.¹⁶⁹

There is no information indicating how much U.S. companies profited specifically in Montserrat. However, other statistics indicate that U.S. corporations reported \$39.639 billion in profits during 2012 in Caribbean islands belonging to the U.K.¹⁷⁰

The *Doing Business in Montserrat Guide* states that Montserrat has a corporate income tax rate of 30 percent.¹⁷¹

Montserrat allows the incorporation of international business companies. Section 5 of the Montserrat International Business Company Act provides that an international business company established under the act may not carry on business in Montserrat. Section 111 of the Montserrat International Business Companies Act provides that a Montserrat international business company is exempt from tax for a period of at least 25 years.¹⁷²

In summary, companies that are tax exempt are excluded from the domestic market of Montserrat, and are prevented from establishing a substantial connection to Montserrat. This implicates criteria 3 and 4 of the 2011 MTC tax haven criteria.

Nauru

Nauru is an island located in the Southern Pacific Ocean, with a population of approximately 9,500 people. English and Nauruan are the primary languages. Nauru's economy is dependent on assistance from Australia.¹⁷³

BEA statistics do not show any profits reported by U.S. corporations in Nauru.¹⁷⁴ Nauru does not have a corporate income tax.¹⁷⁵

It appears that Nauru's reputation as a tax haven dates back to the 1990s when a Nauruan bank could be set up for \$25,000. These banks were not required to keep records. Concerns about money laundering grew as a result of the lax banking environment.¹⁷⁶ All banks on Nauru were shut down in 2006.¹⁷⁷

In the report *Tax Transparency 2013*, the Global Forum found that Nauru has insufficient exchange of information provisions and tax transparency provisions related to accounting regulations and company ownership information.¹⁷⁸

In summary, Nauru has no corporate income tax. Also, Nauru's provision for exchange of information is deficient and the Nauru tax system lacks transparency. This implicates criteria 1 and 2 of the 2011 MTC tax haven criteria.

The Netherlands

The Netherlands is a kingdom that borders the North Sea, with a population of approximately 16,000,000 people. Dutch is the official language. The economy is diversified and well-developed.¹⁷⁹

BEA statistics show that U.S. corporations reported \$168.279 billion in profits in the Netherlands during 2012.¹⁸⁰

The Netherlands has a corporate income tax rate of 20 percent on the first 200,000 euros of profits and 25 percent on the balance of profits. All companies incorporated in the Netherlands are subject to tax on their worldwide income.¹⁸¹

Nevertheless, there are a number of tax incentives and structures available to companies that incorporate in the Netherlands. For example, profits that are derived from self-developed intellectual property such as patents are taxed at an effective rate of 5 percent. Additionally, dividends arising from group financing and licensing activities are exempt from tax if less than half the assets of the group financing/licensing subsidiary are passive in nature. Also, dividends from a subsidiary not held as a portfolio investment are exempt from tax if the taxpayer owns at least 5 percent of the subsidiary.¹⁸²

Additionally, it is feasible to use hybrid financing arrangements to lower a Dutch tax bill. A recent Dutch Supreme Court decision makes clear that a financial instrument will be classified as debt or equity based on Dutch law without regard to how the financial instrument may be classified in a different country. One commentator noted this raises the possibility for profit shifting into the Netherlands. For example, dividends paid to a Dutch company by a non-Dutch company could be deductible interest payments for the non-Dutch company.¹⁸³

Most notably, Netherlands law allows a company to set up using a post office box. For example, 1,942 Dutch companies share PO Box 990, located in a 10-story office building in Amsterdam as their Dutch headquarters.¹⁸⁴ This leads to the conclusion that a foreign firm can take advantage of the Dutch tax system without the need for any kind of a

substantial connection to the Netherlands.

In addition, the profits reported by U.S. corporations in the Netherlands equal nearly one-quarter of Dutch GDP.¹⁸⁵ Also, wide publicity has been given to the role played by the Netherlands in tax avoidance schemes.¹⁸⁶ Clearly, these factors indicate that the Netherlands has created a tax regime favorable to tax avoidance.

In summary, the Netherlands allows companies to take advantage of a nominal (0 - 5 percent) corporate tax rate without a substantive connection to the Netherlands. This implicates criterion 3 of the 2011 MTC tax haven criteria. Additionally, the Netherlands has created a tax regime favorable to tax avoidance, implicating criterion 5.

The department recommends that the Netherlands be added to the list of jurisdictions in ORS 317.715(2)(b).

Netherlands Antilles

The Netherlands Antilles was dissolved on October 10, 2010.¹⁸⁷ Curacao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) became autonomous territories of the Kingdom of the Netherlands. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands.¹⁸⁸

The department recommends that the Netherlands Antilles be subtracted from the list of jurisdictions in ORS 317.715(2)(b).

Niue

Niue is located in the middle of the South Pacific Ocean, with a population of approximately 1,200 people. Niuean and English are the official languages of Niue. Niue's economy is centered on government and subsistence agriculture.¹⁸⁹

BEA statistics do not show any profits reported by U.S. corporations in Niue.¹⁹⁰ Niue has a corporate income tax rate of 30 percent.¹⁹¹

Niue used to have an International Business Company Act that exempted Niue corporations from tax, if they didn't conduct business within Niue.¹⁹² Niue repealed their International Business Companies Act in 2006, per Section 349 of the Companies Act.¹⁹³ Section 49 of the Niue Income Tax Act exempts some trust income and other types of company income.¹⁹⁴ Trusts are not incorporated entities, and fall outside the scope of ORS 317.715(2)(b).

Section 49(p) of the act exempts life insurance company income, if the insurance company income comes from life insurance premiums. Section 72(1) of the act provides that overseas insurance companies are taxable on their Niue source income, except for life insurance premiums.¹⁹⁵ Section 49(d) states that Niue does not tax dividends from companies subject to income tax.

A 2014 Global Forum table of determinations notes that Niue does not require Niue corporations to keep accounting records unless the Niue corporation has Niue source income or does business in Niue.¹⁹⁶

In summary, life insurance income is exempt from Niue taxation. In addition, Niue does not have effective tax transparency provisions. This implicates criterion 2 of the 2011 MTC tax haven criteria.

St. Kitts and Nevis

St. Kitts and Nevis is an island nation in the Caribbean, with a population of approximately 52,000 people. English is the main language of St. Kitts and Nevis. The main industries include agriculture, light manufacturing, and tourism. St. Kitts and Nevis was formerly known as St. Christopher and Nevis.¹⁹⁷

No statistics relating to U.S. corporations' profit in St. Kitts and Nevis was released for 2012, to avoid disclosing information related to particular companies.¹⁹⁸ St. Kitts and Nevis has a corporate tax rate of 33 percent.¹⁹⁹

Section 206 of the St. Kitts and Nevis Companies Act gives tax exempt status to a St. Kitts and Nevis company that conducts no business with residents of St. Kitts and Nevis.²⁰⁰

In summary, companies are exempt from tax and not allowed to compete in the St. Kitts and Nevis domestic market. This implicates criterion 4 of the 2011 MTC tax haven criteria.

St. Lucia

St. Lucia is an island in the Caribbean between Puerto Rico and South America, with a population of approximately 163,000 people. English is the official language. Offshore banking and tourism are important industries.²⁰¹

BEA statistics show that U.S. corporations reported \$56 million in profits in St. Lucia during 2012.²⁰² St. Lucia has a corporate income tax rate of 30 percent.²⁰³

St. Lucia has passed an International Business Company Act. Section 12 of this act prevents an international business company established under the act from conducting business with residents of St. Lucia. Section 109 of the act exempts international business companies from tax. Section 109 also indicates that a St. Lucian international business company may elect to pay a 1 percent income tax.²⁰⁴

In summary, St. Lucia imposes no or nominal taxes on international business companies. St. Lucia also prevents international business companies from taking part in the domestic market of St. Lucia. This implicates criterion 4 of the 2011 MTC tax haven criteria.

St. Vincent and the Grenadines

St. Vincent and the Grenadines is a chain of islands located in the Caribbean Sea near South America, with a population of approximately 103,000 people. English and a French patois are spoken here. Farming and tourism are the main industries.²⁰⁵

U.S. corporations reported \$1 million in losses in St. Vincent and the Grenadines during 2012.²⁰⁶ Corporate tax rates range from 15 percent to 32.5 percent.²⁰⁷

The St. Vincent and the Grenadines' International Business Company Act exempts an international business company from tax if the international business company does no business with residents of St. Vincent and the Grenadines. Section 180(2) of the act provides an option of paying a 1 percent tax, in lieu of the tax exemption.²⁰⁸

In summary, nominal taxation is imposed on an international business company and the international business company is not allowed to participate in the St. Vincent and the Grenadines economy. This implicates criterion 4 of the 2011 MTC tax haven criteria.

Samoa

Samoa is an island nation in the South Pacific, with a population of approximately 197,000 people. English and Samoan are languages spoken on Samoa. Samoa's economy is reliant on agriculture, development aid, and foreign remittances.²⁰⁹

BEA statistics indicate that U.S. corporations reported \$1 million in profits in Samoa during 2012.²¹⁰ Samoa has a corporate tax rate of 27 percent.²¹¹

Samoa enacted an International Companies Act. Section 6 of the act expressly forbids residents or domestic corporations of Samoa (with the exception of trust companies) from holding an interest in a Samoan international company. Section 249(4)(a) of the same act provides that a Samoan international company may not carry on business with persons ordinarily resident in Samoa. Section 249(2)(a) of the act provides that a Samoan international company is exempt from all taxes and stamp duty for non-Samoan source income.²¹²

In summary, Samoan international companies are not subject to tax. Samoan companies or residents may not own Samoan international companies and these companies may not do business in the Samoan domestic market. This implicates criterion 4 of the 2011 MTC tax haven criteria.

San Marino

San Marino is a small country high in the mountains of Central Italy, with a population of approximately 33,000 people. Italian is spoken in San Marino. Important industries include agriculture, banking and manufacturing.²¹³

BEA statistics include San Marino, but these statistics do not show whether American firms reported any profit or loss in San Marino.²¹⁴ Currently, San Marino's corporate income tax rate is 17 percent.²¹⁵

An International Monetary Fund report indicated that San Marino banks were used by Italians for tax avoidance. Eventually, Italy placed San Marino on a "blacklist" due to the country's refusal to turn over banking information to Italian authorities.²¹⁶ In February 2014, Italy removed San Marino from its blacklist.²¹⁷ A 2014 IMF report states that San Marino has lost half its deposits in the last few years due to the actions of the Italian government.²¹⁸

One source indicates San Marino's tax rate for corporations can be as low as zero, due to the holdings for intellectual property and providing intra-group services.²¹⁹ There is no evidence a company needs to have a substantial presence within San Marino to take advantage of the San Marino tax regime. In fact, it is questionable to what degree a company could establish a substantial presence in San Marino given the country's small size.

In summary, San Marino's tax rate on intellectual property holding companies and intra-group services vary between 0 and 6.5 percent, and there is no evidence of a substantial presence needed in San Marino to take advantage of the tax regime. This implicates criterion 3 of the 2011 MTC tax haven criteria.

Seychelles

Seychelles is an island nation located in the Indian Ocean, far off the east coast of Africa, with a population of approximately 92,000 people. English, French, and Seychellois creole are the official languages of Seychelles. Main industries in Seychelles include farming, fishing, and tourism.²²⁰

BEA statistics indicate that U.S. corporations reported between \$500,000 in losses and \$500,000 in profits in Seychelles during 2012.²²¹ Seychelles taxes corporate income at a maximum rate of 33 percent.²²²

Section 5 of the Seychelles International Business Companies Act prevents a company incorporated under the act from carrying on business in Seychelles. Section 109(1) and (2) of the same act provide for exemptions from payment of tax and stamp duty for Seychelles international business companies.²²³

A Global Forum report indicated that Seychelles failed to enforce its tax transparency laws. Namely, Seychelles fails to provide effective regulations or sanctions to ensure that company ownership information is available. Also, Seychelles does not monitor companies to ensure companies are abiding by accounting regulations.²²⁴

In summary, international business companies incorporated in Seychelles are exempt from tax, while being excluded from the domestic market of Seychelles and prevented from establishing a substantive presence in Seychelles. This implicates criteria 3 and 4 of the 2011 MTC tax haven criteria. Also, the Seychelles' tax transparency practices are insufficient, implicating criterion 2.

Switzerland

Switzerland is a federal system composed of a central government and cantons, with a population of approximately 8,000,000 people. Cantons are approximately equivalent to a state in the U.S. The official languages spoken in Switzerland include French, German, Italian and Romansch. Switzerland's economy is well developed and diversified.²²⁵

BEA statistics show that U.S. corporations reported \$55.374 billion in profits in Switzerland during 2012.²²⁶

Currently, Swiss law provides for a corporate tax rate of between 12 percent and 22

percent. The Swiss federal corporate tax rate is 8.5 percent. The effective Swiss federal corporate tax rate is 7.8 percent because income taxes are deductible when determining taxable income. The balance of remaining tax due results from cantonal tax rates that vary.²²⁷

Swiss law provides for resident and non-resident companies. A Swiss resident company has their registered office or place of management in Switzerland. Swiss resident companies are taxed on their worldwide income while Swiss non-resident companies are taxed on Swiss source income.²²⁸

According to a KPMG document, it is possible to set up a Swiss holding corporation that is exempt from cantonal level taxes. The same document indicates this holding company must derive two-thirds of its income from holdings in related companies. Additionally, dividends received by a Swiss holding company may qualify for a complete tax exemption.²²⁹ Therefore, the effective tax rate on a Swiss holding company is 7.8 percent or lower and could, conceivably, approach zero.

The Swiss Corporate Income Tax System by KPMG, indicates that Swiss federal law allows for the establishment of a principal company.²³⁰ *The Swiss Principal Companies* presentation from KPMG, indicates that a Swiss principal company handles administrative functions, such as research or strategy for a particular region. Anywhere from 70 to 100 percent of the profits of the principal company are attributable to sales. Between 35 and 50 percent of Swiss company sales profits are deemed to be attributable to a non-Swiss permanent establishment of the principal company and are exempt from Swiss tax.²³¹

According to *Corporate Tax Relief in Switzerland* by Ernst and Young, effective tax rates for Swiss principal companies run between 5 and 9 percent.²³²

The Swiss Corporate Income Tax System by KPMG states that Swiss cantons also allow for the establishment of a mixed company.²³³ *Switzerland Taxation and Investment* by Deloitte and Touche indicates that a mixed company must derive no less than 80 percent of its income from non-Swiss sources. However, the Swiss central government does not grant a tax break for a mixed company.²³⁴ *The Swiss Corporate Income Tax System* document indicates that the effective tax rate for a mixed company run between 8.5 and 12 percent.²³⁵

Switzerland provides tax incentives for financing activities. In essence, a non-Swiss corporate group can set up a Swiss finance branch and allocate equity to the Swiss finance branch. In return, the Swiss finance branch uses the equity of the corporate group to make interest-bearing loans to the rest of the corporate group. In addition, Swiss federal law allows a notional interest deduction to the Swiss finance branch.²³⁶

This arrangement allows for earnings stripping because the corporate group can deduct interest paid to the Swiss finance branch. On the other hand, the Swiss finance branch pays a tax of 1.5 percent to 3 percent on its income, according to *Corporate Tax Relief in Switzerland* by Ernst and Young.²³⁷

Switzerland also provides for intellectual property tax incentives. Swiss law provides

that the profits of a foreign branch of a Swiss corporation are not taxable by Switzerland if the foreign branch has sufficient connection with its country. A foreign branch of a Swiss company may license intellectual property. Accordingly, the licensing receipts of the foreign company are not taxable by Switzerland.²³⁸

In addition, a Global Forum table of determinations indicates that Switzerland lacks the sufficient disclosure of ownership provisions and sufficient exchange of information provisions with other jurisdictions, as required for compliance with exchange of information and tax transparency legal provisions.²³⁹

In summary, various types of foreign source income are effectively exempt from tax in Switzerland. Switzerland has a tax system that enables tax avoidance through tax rules that enable earnings stripping and by allowing Swiss companies to exempt income from foreign branches. This implicates criterion 5 of the 2011 MTC tax haven criteria. Also, Switzerland's exchange of information and tax transparency practices are insufficient, implicating criteria 1 and 2.

The department recommends that Switzerland be added to the list of jurisdictions in ORS 317.715(2)(b).

Trinidad and Tobago

Trinidad and Tobago is a Caribbean island nation, with a population of approximately 1,200,000 people. English is the official language of Trinidad and Tobago. Energy is a mainstay of the Trinidad and Tobago economy.²⁴⁰

BEA statistics show that U.S. corporations reported \$970 million in profits in Trinidad and Tobago during 2011.²⁴¹ Trinidad and Tobago has a corporate tax rate of 25 percent.²⁴²

Trinidad and Tobago determines corporate residency with respect to where the corporation is managed or controlled. Resident companies are taxed on their worldwide income. Non-resident are only taxed on their Trinidad and Tobago source income.²⁴³ Accordingly, a company can be incorporated in Trinidad and Tobago and pay zero tax if the income of the company is sourced outside of Trinidad and Tobago.

There are also issues with Trinidad and Tobago's exchange of information provisions. For example, a presidential order is required for Trinidad and Tobago to share tax information with another jurisdiction. Trinidad and Tobago has been determined to be non-compliant with internationally accepted exchange of information standards.²⁴⁴

In summary, Trinidad and Tobago has a tax rate of zero on foreign source income for non-resident companies and lacks effective exchange of information provisions. This implicates criterion 1 of the MTC criteria.

The department recommends that Trinidad and Tobago be added to the list of jurisdictions in ORS 317.715(2)(b).

Turks and Caicos Islands

The Turks and Caicos Islands is a U.K. overseas territory located in the Caribbean, with a population of approximately 49,000 people. English is the official language of the Turks and Caicos Islands. The main industries are financial services and tourism.²⁴⁵

There is no specific information on how much profit U.S. corporations earn in the Turks and Caicos Islands. However, other statistics indicate that U.S. corporations reported \$39.639 billion in profits during 2012 in Caribbean islands belonging to the U.K.²⁴⁶ *Doing Business in the Turks and Caicos Islands* indicates that the Turks and Caicos Islands do not tax corporate income.²⁴⁷

The Turks and Caicos Companies Ordinance provides for the establishment of exempted companies. This is unimportant, as the Turks and Caicos Islands have no income tax. However, the Turks and Caicos Companies Ordinance provides for the establishment of companies that can take advantage of the Turks and Caicos tax system without a substantive presence in the islands.²⁴⁸

Section 189 of the ordinance provides that exempted companies must carry out most of their activities outside the Turks and Caicos Islands. Section 202 provides that trade by an exempted company is forbidden within the Turks and Caicos Islands, unless the trade is minor or ancillary to trade carried on outside the Turks and Caicos Islands.²⁴⁹

Section 209 of the ordinance provides that an exempt company is exempt from tax for a period of 20 years.²⁵⁰

Also, it has been noted that the Turks and Caicos' economy is based, in part, on offshore financial services.²⁵¹ It follows that the Turks and Caicos' untaxed offshore financial services industry is significant part of the Turks and Caicos economy. Accordingly, the Turks and Caicos Islands has created a tax regime favorable for tax avoidance.

In summary, there is a zero tax rate for exempt companies for a period of 20 years. An exempt company has no need to establish a substantial presence in the Turks and Caicos domestic market. In fact, such a presence is prohibited by law. This implicates criteria 3 and 4 of the 2011 MTC tax haven criteria. Additionally, the Turks and Caicos Islands possess a significant untaxed offshore financial services sector, implicating criterion 5.

U.S. Virgin Islands

The U.S. Virgin Islands (USVI) is a U.S. territory located in the vicinity of Puerto Rico, with a population of approximately 104,000. English is the main language of the USVI and tourism is the main economic activity.²⁵²

No statistics are available on how much profit U.S. corporations reported in the U.S. Virgin Islands.²⁵³ The U.S. Virgin Islands have a corporate tax rate of 35 percent.²⁵⁴

USVI operates a system of taxation that "parallels" the U.S. tax system.²⁵⁵ Typically, a U.S. citizen with income from the USVI has to fill out two separate tax returns unless that person is a bona fide resident of the U.S. Virgin Islands.²⁵⁶

USVI operates an exempt company regime. 13 V.I.C. 851(a) provides that an exempt company is a corporation organized in the U.S. Virgin Islands. 13 V.I.C. 852(1)²⁵⁷ states that a USVI exempt company cannot carry on business within the United States unless the corporation is an exempt insurer that is a domestic corporation per I.R.C. 7701(a)(3) and (4) or has made an election under I.R.C. 953(d). An exempt insurer is a company that meets the definition of “exempt international insurer” in 22 V.I.C. 1401(l).²⁵⁸

22 V.I.C. 1401(L) defines an exempt international insurer as any international insurance company that makes an election under 22 V.I.C. 1415. An international insurance company, per 22 V.I.C.1401(t), is a company that insures risks outside the U.S. Virgin Islands. 22 V.I.C. 1415(a) provides for an election by an international insurance company to be treated as an Exempt Company. Licensure of an exempt international insurer on St. Croix results in a total reduction of tax liability whereas the licensure on St. Thomas results in an 80 percent reduction of tax liability.²⁵⁹

Therefore, it is possible for a U.S. corporation to form an exempt corporation under USVI law if the insurer only insures risks outside the U.S. Virgin Islands. Furthermore, the U.S. corporation form in the USVI is not included in the U.S. consolidated group.²⁶⁰

These laws may result in tax avoidance due to the existence of captive insurance companies. A captive insurance company is an insurance company that is owned by a corporate group and only insures that corporate group. It follows that the use of a captive insurance company could lead to tax avoidance if the premiums paid to the captive insurance by the corporate group are overpriced.²⁶¹

In summary, captive insurers are exempt from taxation, and are not allowed to compete in the U.S. Virgin Islands insurance market. This implicates criterion 4 of the 2011 MTC tax haven criteria.

Vanuatu

Vanuatu is a nation located in the Pacific Ocean, with a population of approximately 267,000 people. Bislama, French and English are the official languages. Agriculture, cattle, financial services, fishing, and tourism are prominent industries in Vanuatu.²⁶²

U.S. corporations reported \$6 million in profits in Vanuatu during 2012.²⁶³ Vanuatu does not have a corporate income tax.²⁶⁴

Section 10 of the Vanuatu International Companies Act prevents an international company from carrying on business within Vanuatu. However, Section 118 provides that the Vanuatu international company is exempt from all Vanuatu fees, stamp duties, and taxes.²⁶⁵

A Global Forum report indicated that Vanuatu lacked the following exchange of information and tax transparency provisions:

- Sufficient corporate accounting regulations.
- Sufficient mechanism to require disclosure of information by taxpayers.
- Sufficient exchange of information provisions.

- Sufficient exchange of information network with all relevant partners.²⁶⁶

In summary, foreign income is not taxed, the corporation enjoying the lack of taxation on foreign sourced income is prevented from competing in the Vanuatu domestic market, and the corporation does not need a substantial connection to Vanuatu. This implicates criterion 3 of the 2011 MTC tax haven criteria. Also, Vanuatu's exchange of information and tax transparency provisions are insufficient, implicating criteria 1 and 2.

Jurisdictions created by the dissolution of the Netherlands Antilles

The Netherlands Antilles was dissolved on October 10, 2010.²⁶⁷ Curacao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) became autonomous territories of the Kingdom of the Netherlands. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands.²⁶⁸

Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten have populations of approximately 17,000²⁶⁹, 147,000²⁷⁰, 2,000, 4,000²⁷¹ and 40,000²⁷² respectively.

The official language in Bonaire is Dutch.²⁷³ The main industry in Bonaire is tourism.²⁷⁴

The languages spoke in Curacao include Dutch, English and Papiamentu. Main industries in Curacao include financial services and tourism.²⁷⁵

The official language in Saba is Dutch.²⁷⁶ Tourism is the main industry of Saba.²⁷⁷

The official language in Sint Eustatius is Dutch.²⁷⁸ Tourism is the main industry of Sint Eustatius.²⁷⁹

The official languages in Sint Maarten are Dutch and English. Tourism is the main industry of Sint Maarten.²⁸⁰

BEA statistics for 2012 indicate that U.S. corporations reported \$8.963 billion in profits in Curacao. The 2012 statistics for Sint Maarten and the municipalities mentioned above were suppressed to avoid disclosing the data of individual companies.²⁸¹

Curacao and Sint Maarten tax corporate income at a 27.5 percent²⁸² rate and 30 percent²⁸³ rate respectively. Both nations allow for the establishment of an exempted company. Both nations allow a complete tax exemption to companies that limit their activities to financial investments and licensing of intellectual property.²⁸⁴

Both Curacao and Sint Maarten exempt companies from taxation while preventing the exempt companies from competing in the domestic markets of Curacao and Sint Maarten. This implicates criterion 4 of the 2011 MTC tax haven criteria.

The remaining islands, Bonaire, Sint Eustatius and Saba (BES), now have their tax system determined by the Netherlands. Companies established in these islands are subject to Dutch corporate tax or the property and distribution tax of the islands. A distribution tax applies to proceeds from shares and is imposed at a 5 percent rate.²⁸⁵ An entity that performs group financing or licensing activities must employ at least three BES islanders and have an office in one of the three islands to be taxed at the distribution tax rate.²⁸⁶

The BES islands should be considered separately from the Netherlands because they have a separate tax system from the remainder of the Netherlands. A 5 percent tax rate is a nominal tax rate because it is substantially below the U.S. corporate tax rate. Also, a substantial presence in the BES islands is not required to take advantage of this tax rate. This implicates criterion 3 of the 2011 MTC tax haven criteria.

The department recommends that Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten be added to the list of jurisdictions in ORS 317.715(2)(b).

¹ United States. Central Intelligence Agency. "Andorra." *The World Factbook 2013-2014*. cia.gov. n.d. Web. 26 Nov. 2014.

² United States; Dept. of Commerce; Bureau of Economic Analysis; International Data Direct Investment and MNE; Financial and Operating Data, U.S. Direct Investment Abroad, All Majority-owned Foreign Affiliates (data for 2009 and forward), Net Income by Country Only (All Countries) (Millions of Dollars); U.S. Dept. of Commerce, 1 Dec. 2014; Web. 1 Dec. 2014.

³ "Business: Andorra to introduce income tax for first time." *bbc.com*. BBC News. 2 June 2013. Web. 1 Dec. 2014.

⁴ Deloitte Touche Tohmatsu Limited. *International tax: Andorra Highlights 2014*. 2014. PDF file.

⁵ Invest with Andorra. *Andorra and its new economic and tax model: economic liberalization, competitive tax burden and international scope*. Pg. 9. 2013. PDF file.

⁶ Invest with Andorra. *Andorra and its new economic and tax model: economic liberalization, competitive tax burden and international scope*. Pg. 10. 2013. PDF file.

⁷ Invest with Andorra. *Andorra and its new economic and tax model: economic liberalization, competitive tax burden and international scope*. Pg. 7. 2013. PDF file.

⁸ United States. Central Intelligence Agency. "Anguilla." *The World Factbook 2013-2014*. cia.gov. n.d. Web. 26 Nov. 2014.

⁹ United States; Dept. of Commerce; Bureau of Economic Analysis; International Data Direct Investment and MNE; Financial and Operating Data, U.S. Direct Investment Abroad, All Majority-owned Foreign Affiliates (data for 2009 and forward), Net Income by Country Only (All Countries) (Millions of Dollars); U.S. Dept. of Commerce, 1 Dec. 2014; Web. 1 Dec. 2014.

¹⁰ Deloitte Touche Tohmatsu Limited. *International tax: Anguilla Highlights 2014*. 2014. PDF file.

¹¹ Anguilla. Interim Revised Statutes of Anguilla 2000. *International Business Companies Act*. n.d. PDF file.

¹² United States. Central Intelligence Agency. "Antigua and Barbuda." *The World Factbook 2013-2014*. cia.gov. n.d. Web. 26 Nov. 2014.

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Appendix 2

Liechtenstein and Luxembourg letters of concern

Liechtenstein

Liechtenstein is a small country located between Switzerland and Austria, with a population of approximately 37,000 people. German is the official language of Liechtenstein. Finance is one of the major industries.¹

Bureau of Economic Analysis statistics do not indicate the 2012 net income of U.S. corporations in Liechtenstein, to avoid disclosing the identity of individual corporations.² Liechtenstein taxes corporate income at a 12.5 percent rate.³

However, there are two key provisions of Liechtenstein tax law that reduce the effective rate paid by Liechtenstein corporations.

First, *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations* indicates that 80 percent of the net income attributable to patents, designs, models, utility models, trademarks, and copyrights (intellectual property) is excluded from Liechtenstein corporate income tax. It also indicates that this intellectual property tax exemption applies to acquired or developed intellectual property. Also, past research and development costs must be recaptured and added to intellectual property income.⁴

Second, Liechtenstein corporations are allowed to deduct 4 percent of their weighted equity value against their income. This is referred to as a “notional interest deduction.”⁵ Typically, corporations are allowed to deduct interest they pay on their debts while they are not allowed to deduct dividends paid. The economic justification for a notional interest deduction is to remove the tax preference that favors debt over equity.⁶ It is possible that a Liechtenstein corporation holding intellectual property pays a zero effective tax rate, even if their weighted equity value equals their net income.

In summary, there is no evidence that a company needs to have a substantive connection to Liechtenstein to take advantage of the Liechtenstein tax system. This implicates criterion 3 of the 2011 MTC tax haven criteria.

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EMBASSY
OF THE PRINCIPALITY OF LIECHTENSTEIN

BOTSCHAFT
DES FÜRSTENTUMS LIECHTENSTEIN

COMBATING FINANCIAL CRIMES

Combating and preventing money laundering, terrorist financing, corruption, organized crimes and tax evasion are a major focus of Liechtenstein's financial center policy. Liechtenstein banking secrecy offers no protection to criminals and through the use of domestic and international legal mechanisms, financial secrecy is lifted in cases of suspected criminality. Liechtenstein has prevention and punishment systems to combat money laundering and terrorist financing.

Liechtenstein has made many comprehensive reforms in the regulation of its financial sector over the last ten years. Its initial reforms concentrated on anti-money laundering efforts. More recently, the government of Liechtenstein signed a landmark Tax Information Exchange Agreement (TIEA) with the United States and numerous other countries and concluded negotiations of an Anti-Fraud Agreement with the European Union. The United States government acknowledges Liechtenstein to be a trusted and effective collaborator in combating a wide range of financial crimes, including money laundering, terrorist financing, and tax fraud and recent reforms guarantee that Liechtenstein will provide the United States and others with a markedly increased range of cooperation on tax matters.

In addition to compliance with the highest international standards set by the Financial Action Task Force (FATF) in the fight against money laundering, Liechtenstein authorities also actively take part in the international dialogue on the further development of common standards. Milestones in the fight against money laundering and terrorist financing include:

- Liechtenstein is a State Party to the Convention of the Council of Europe on Money Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime (1990)
- Implementation of the 1st EU Money Laundering Directive (1995)
- Due Diligence Act enters into force (1997)
- Total revision of the Liechtenstein Mutual Legal Assistance Act (2000)
- Establishment of the Liechtenstein Financial Intelligence Unit (2001)
- Mutual Legal Assistance Treaty with the United States and adoption of the "Counterterrorism Package" (2002)
- Tightening of the Law on Professional Due Diligence in Financial Transactions (Due Diligence Act) (2004)
- Establishment of the Liechtenstein Financial Market Authority through enactment of the Financial Market Authority Act (2004)
- Implementation of the 2nd EU Money Laundering Directive (2005)
- Partial revision of the Mutual Legal Assistance Act (2008)
- Implementation of the 3rd EU Money Laundering Directive (2008)
- Signing of a Criminal Law Convention on Corruption and a Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2009)
- Liechtenstein is a member of the Group of States against Corruption (GRECO), the monitoring body established by the Council of Europe to improve the capacity of countries to prevent and combat corruption (2010)

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June 6, 2013

The Honorable Ginny Burdick
Chair, Senate Finance and Revenue Committee
900 Court St. NE, S-213
Salem, OR 97301

Honorable Members of the Oregon Senate

RE: COST Opposition to HB 2456A (Designated "Tax Havens")

Dear Chair Burdick and Members of the Oregon Senate:

I am writing to express COST's opposition to HB 2456A, which we understand may continue to be under consideration as your session nears its end. The proposal would require that unitary members incorporated in one or more designated "tax haven" countries be included in the measure of income for Oregon corporate income tax purposes. The branding of specific nations as "tax havens" and thereby penalizing companies who merely do business there is bad tax policy. To the extent a taxpayer may be engaging in tax avoidance transactions there are other more precise and equitable methods to address those circumstances than the blacklisting approach of HB 2456A. Blacklisting of specific countries is over broad because it may result in double taxation of legitimate business activities. The blacklisting approach has been almost universally rejected as a means of dealing with tax avoidance strategies; in particular both California and the Multistate Tax Commission in their model legislation have rejected the approach proposed by HB 2456A.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of nearly 600 major corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

Tax Haven Lists are Arbitrary and Misleading

Although multi-national corporate affiliations existed well before the turn of the century, it wasn't until sometime in the early 1970s that some states began to require foreign affiliates to be combined as part of a "unitary group." This method, known as "worldwide combination", became the subject of much international attention because of its implications for taxing foreign earned income.

The objection to worldwide combination came from many of our nation's strongest trading partners, in particular the British and Japanese. It's not often that the tax policies of a State are the subject of debate in the British Parliament, much less legislation. Worldwide combination was that, and more. In 1985, the U.K. approved legislation that would have allowed the U.K. Treasury to penalize multinational companies with operations in any U.S. state which employed the worldwide unitary method. No nation, not even the U.S., has

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adopted a unitary apportionment methodology for the purpose of taxing *international* businesses. International tax, and the numerous bilateral double taxation treaties to which the U.S. is a party, is predicated largely on the arm's length / separate accounting methodology where tax is imposed on foreign-owned companies only on the profits arising in the country or state in which they operate. Thus, from a foreign competitor's point of view, when a U.S. company goes abroad, they are not subjected to the type of tax reach that worldwide combination was seen as trying to place on foreign companies coming to the U.S. This duplicity was the foundation for what could have resulted in an international tax war had the states adopting worldwide combination not done something to limit its scope.

The solution was the "water's-edge" election (or as in Oregon's approach, reliance on the federal consolidated return). Under either methodology, the states effectively limit their tax reach to what the federal government views as within reach for federal income tax purposes.

Some states have previously considered identifying certain countries as so called "tax havens." The list of countries identified was derived largely from a list created by the OECD (Organization for Economic Co-operation and Development) in 1998, which has since been largely repudiated as a basis for blacklisting specific nations for tax purposes. In fact, only three other jurisdictions—Montana, West Virginia, and the District of Columbia—have maintained any provisions dealing with "tax haven" countries. Only Montana has taken the blacklist approach. The Multistate Tax Commission, when consideration was given to this matter for their model state legislation, has now specifically rejected the blacklist approach in favor of criteria. California as well conducted an extensive examination of such a "tax haven" approach and rejected it as well.¹

Moreover, the mere fact that a company is incorporated in a so-called tax haven country does not by any definition mean that the company is somehow engaged in an abusive tax avoidance strategy (which is the alleged rationale for blacklisting these countries). A consumer products company, for example, can hardly be claimed to engage in abusive tax avoidance merely because they choose to incorporate a business unit in a blacklisted country in order to access customers there. It is wrong to assume that companies incorporated in these countries are de facto engaged in untoward activities and thus should be subject to punitive taxation by one U.S. State.

Certainly, states have an interest in ensuring that companies engaging in multinational business enterprises fairly apply the tax laws and are not engaged in illegal tax avoidance strategies. There are other tools which can address such issues without the arbitrary approach created by this proposal.

COST respectfully urges you to reject HB 2456A, should it be brought up for consideration.

Cordially,



Wm. Gregory Turner

cc: COST Board of Directors
Douglas L. Lindholm, President & Executive Director, COST

¹ See the California report here:
http://caleuropeantrade.senate.ca.gov/sites/caleuropeantrade.senate.ca.gov/files/Waters_Edge_CA_Jobs_and_International_Investment_Opportunities_5-19-2010.pdf

Oregon

Oregon Poised to Capture Corporate Income From Tax Haven Countries with New Statute

By Paul Shukovsky

SEATTLE--Oregon is poised to implement a new corporate tax law intended to blunt the impact of tax havens, which prominent attorneys are calling a problematic “hybrid” between water's edge and worldwide combined filing that invites a court challenge of the measure.

H.B. 2456--which goes into effect in October for tax years beginning with 2014--was signed into law by Gov. John Kitzhaber (D) Aug. 1 after unanimous passage in both the House and Senate. The new law will require corporations filing consolidated returns in Oregon--a water's edge state--to include income from affiliated entities incorporated in one of 39 countries on a list of tax havens beginning with Andorra and ending with the U.S. Virgin Islands and Vanuatu.

“Eventually somebody will say it's worth fighting. I just don't know who or when.”

Eric J. Kodesch, Stoel Rives LLP, Portland

In states with a water's-edge election, non-U.S. affiliates that conduct a certain amount of business outside the United States may be excluded from the combined return. The worldwide reporting model requires corporations to include non-U.S. affiliates in the combined return.

Attorney Eric J. Kodesch of Stoel Rives LLP in Portland told BNA Aug. 19: “Trying to figure what is a tax haven has been tried for decades. It is inherently difficult to figure out if a low tax in a jurisdiction is an inherently bad tax feature or if it is a logical policy choice to promote jobs and economic development.”

The principality of Liechtenstein--which is on Oregon's list--made the same point as Kodesch in a letter to Senate President Pro Tempore Ginny Burdick (D), also chair of the Finance and Revenue Committee. “The designation unfairly places Liechtenstein in a category that no longer reflects its current laws and policies with the US pertaining to tax information sharing or how Liechtenstein is officially recognized by the US and internationally,” wrote Claudia Fritsche, Liechtenstein's ambassador to the United States.

Liechtenstein Aggrieved.

Matthew Keller, the ambassador's senior political adviser, told BNA Aug. 19: “One thing of concern to us with the Oregon legislation is that we did not see any clearly defined methodology with how they came up with this list and how they will maintain it for the future.”

He noted that Liechtenstein has been removed from the Organization for Economic Cooperation and Development's list of uncooperative tax havens. Preferring the term low-tax state to tax haven, he added: “We don't think that Liechtenstein deserves to be on that list.”

Oregon Legislative Revenue Officer Paul D. Warner told BNA Aug. 16 that the law is “closely modeled” on a similar statute in Montana that has been in effect since 2003.

In a report to lawmakers, Warner wrote that “countries listed as tax havens in the bill are based on a large body of research over the past twenty years” and developed on an OECD framework.

Montana Department of Revenue Senior Tax Counsel Brenda J. Gilmer, in a July 16, 2012, internal memo entered into the Oregon Legislative record, wrote that the role of OECD information on the department's recommendations on listed nations has “declined in importance” because the OECD's attention has “shifted almost exclusively to money laundering and terrorist financing.”

Kodesch contributed to drafting a May memo signed by eight tax attorneys and sent to the Senate Finance and Revenue Committee that pointed out a potential problem with the Oregon bill. The memo alerted lawmakers to the fact that unlike Montana--which taxes on the basis of unitary worldwide combined business income--the new law simply appends corporate entities in listed countries onto Oregon's otherwise water's edge system.

'Unique Among the States.'

One problem, said Kodesch, is that a multinational with income from a corporate affiliate in a listed tax haven country and another affiliate in an unlisted country that has losses and/or expenses must file the income from the listed country but is not allowed to take the loss or expenses. In Montana, the multinational would have the opportunity to file the results from both affiliates. Not so in Oregon.

The May memo by the attorneys warned legislators that the “hybrid approach that extends the tax base beyond U.S. corporations, without also allowing the rest of the worldwide tax base to be counted, would be unique among the states and has not been tested in the courts.”

“I imagine this will spark some litigation,” said Kodesch. “Eventually somebody will say it's worth fighting. I just don't know who or when.”

Other states with statutes on capturing corporate income from tax haven countries include Alaska and West Virginia.

Tax Havens.

Oregon's new law designates tax haven countries as: Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Islands, the U.S. Virgin Islands, and Vanuatu.

By Paul Shukovsky

Text of H.B. 2456 is at <http://www.leg.state.or.us/l3/reg/measpdf/hb2400.dir/hb2460.en.pdf>. Text of Liechtenstein's letter to Burdick is at <http://op.bna.com/der.nsf/r?Open=emcy-9aqt5g>.

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OECD PROGRESS REPORT

A PROGRESS REPORT ON THE JURISDICTIONS SURVEYED BY THE OECD GLOBAL FORUM IN IMPLEMENTING THE INTERNATIONALLY AGREED TAX STANDARD¹

Progress made as at 5 December, 2012 (Original Progress Report 2nd April 2009)

Jurisdictions that have substantially implemented the internationally agreed tax standard			
Andorra	Curacao	Japan	St Kitts and Nevis
Anguilla	Cyprus	Jersey	St Lucia
Antigua and Barbuda	Czech Republic	Korea	St Vincent and the Grenadines
Argentina	Denmark	Liberia	Samoa
Aruba	Dominica	Liechtenstein	San Marino
Australia	Estonia	Luxembourg	Seychelles
Austria	Finland	Macau, China	Singapore
The Bahamas	France	Malaysia	Sint Maarten
Bahrain	Germany	Malta	Slovak Republic
Barbados	Gibraltar	Marshall Islands	Slovenia
Belgium	Greece	Mauritius	South Africa
Belize	Grenada	Mexico	Spain
Bermuda	Guatemala	Monaco	Sweden
Brazil	Guernsey	Montserrat	Switzerland
British Virgin Islands	Hong Kong, China	Netherlands	Turkey
Brunei	Hungary	New Zealand	Turks and Caicos Islands
Canada	Iceland	Norway	United Arab Emirates
Cayman Islands	India	Panama	United Kingdom
Chile	Indonesia	Philippines	United States
China	Ireland	Poland	Uruguay
Cook Islands	Isle of Man	Portugal	US Virgin Islands
Costa Rica	Israel	Qatar	Vanuatu
	Italy	Russian Federation	

Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented					
Jurisdiction	Year of Commitment	Number of Agreements	Jurisdiction	Year of Commitment	Number of Agreements
Tax Havens²					
Nauru	2003	(0)	Nue	2002	(0)
Other Financial Centres					

Jurisdictions that have not committed to the internationally agreed tax standard			
Jurisdiction	Number of Agreements	Jurisdiction	Number of Agreements
All jurisdictions surveyed by the Global Forum have now committed to the internationally agreed tax standard			

^{*} Readers are referred to the outcomes from the Global Forum peer reviews for an in-depth assessment of a jurisdiction's (a) legal and regulatory framework (Phase 1 reviews) and (b) implementation of the standard in practice (Phase 2 reviews) (<http://www.oecd.org/tax/transparency>)

¹ The internationally agreed tax standard, which was developed by the OECD in co-operation with non-OECD countries and which was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.

² These jurisdictions were identified in 2000 as meeting the tax haven criteria as described in the 1998 OECD report.



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Press Releases

14.11.2013

Liechtenstein issues Governmental Declaration on international tax co-operation / Legal certainty and clear prospects for the financial centres clients

In Vaduz today, the Liechtenstein government issued a Governmental Declaration on continued international co-operation in tax matters. In this statement, presented by the Head of Government Adrian Hasler, the country reaffirms its commitment to the applicable OECD standards. It also defines its position on the future development of global standards while respecting the legitimate interests of the financial centres clients.

Active participation in development and implementation of an international standard for information exchange

Liechtenstein will sign the OECD/European Council Multilateral Convention on Mutual Administrative Assistance in Tax Matters in Jakarta on 21 November 2013. After ratification of the convention Liechtenstein will implement the applicable standard of administrative assistance with all contracting states. Liechtenstein has also defined its position on co-operation in tax matters. The Principality of Liechtenstein assumes that automatic information exchange in tax matters will in future become the international standard. Thus Liechtenstein is offering to participate actively at OECD and Global Forum level in the discussion about the development of an international standard based on clarity, predictability and equal treatment. A level playing field for all the different financial centres and the global effectiveness of new measures need to be ensured, said Head of Government Adrian Hasler in Vaduz.

Offer to open negotiations

Liechtenstein is prepared to negotiate bilateral agreements on automatic exchange of tax information based on the future OECD standard provided these agreements give due consideration to the legitimate interests involved with states that fulfill the requirements for this transparent approach. Liechtenstein is paying particular attention in this regard to the G5 countries Germany, the UK, France, Italy and Spain.

Protection of the legitimate interests of the financial centre's clients

The Liechtenstein Government believes that effective tax co-operation includes more than just information exchange. Liechtenstein is pursuing a comprehensive approach encompassing models to ensure past and future tax compliance as well as agreements to prevent double taxation and discrimination. This all centres on the longstanding relationship of trust with the financial centres clients and their right to protection of personal data and to a proper process for

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determining their rights and obligations in tax matters. Liechtenstein is thus providing customers of its financial centre with greater legal certainty and clearer prospects. It is also strengthening its international position as a reliable and trustworthy partner.

Broad inclusion of all major players

Liechtensteins position as set out in this Declaration is a result of the involvement of all the major players in the financial centre.

Response to Liechtenstein

On September 24, 2014, Matthew Keller, of the Liechtenstein embassy in Washington, D.C., sent an email to the department expressing concern about the inclusion of Liechtenstein in ORS 317.715(2)(b).

Mr. Keller raised the following concerns:

- Oregon uses dated and obsolete data about tax havens.
- Oregon's tax haven law undermines Liechtenstein-U.S. relations.
- Oregon's tax haven law may discourage investment in Oregon.

As noted in the tax haven report, the department uses 2011 MTC tax haven criteria to evaluate jurisdictions. We applied these criteria to current information about Liechtenstein, and arrived at the conclusion that Liechtenstein should still be listed in ORS 317.715(2)(b). Our recommendation to include Liechtenstein is not discriminatory because our recommendation is based on definitive criteria, not opinions.

Mr. Keller points out the cooperation between the U.S. and Liechtenstein in the fight against financial crimes, and suggests including Liechtenstein will prejudice this cooperation by casting aspersions on Liechtenstein's will to "crack down on tax evaders."

Actually, we found that Liechtenstein is a tax haven because Liechtenstein imposes nominal taxation on foreign income without the need for a substantial connection to Liechtenstein, which makes the country a favorable environment for tax avoidance. Liechtenstein's efforts to combat tax evasion, laudable as they are, don't change our conclusion that Liechtenstein provides a favorable environment for tax avoidance.

Mr. Keller also said that the inclusion of Liechtenstein in ORS 317.715(2)(b) may impede investment in Oregon. At this time, there is no data regarding this claim for us to evaluate.

Despite Mr. Keller's objections, the department recommends Liechtenstein's continued inclusion in ORS 317.715(2)(b).

Luxembourg

Luxembourg is a nation located between Belgium and Germany, with a population of approximately 521,000 people. French, German, and Luxembourgish are the official languages. Financial services are the largest part of Luxembourg's economy.ⁱ

U.S. corporations reported \$95.036 billion in profits in Luxembourg during 2012.ⁱⁱ Luxembourg has a headline corporate tax rate of 28 percent.ⁱⁱⁱ

Recent media coverage has focused on Luxembourg's role in various tax avoidance schemes.^{iv} The 2000 OECD report indicated that Luxembourg operated a preferential tax regime due to the Luxembourg 1929 Holding Company legislation,^v which has since been repealed.^{vi}

Luxembourg- A Hub for Intellectual Property indicates that Luxembourg exempts 80 percent of net income or capital gains attributed to the use or right to use patents, trademarks, or copyrights (intellectual property) acquired from a third party. Eighty percent of the income from self-developed intellectual property is excluded from Luxembourg income tax. The research and development for the intellectual property can occur outside Luxembourg. Income from intellectual property may be excluded from tax only if the intellectual property was acquired or developed after 2007.^{vii}

In addition, Luxembourg differentiates between resident and non-resident companies. A resident company has their registered office or central administration in Luxembourg, whereas a non-resident company has their registered office or central administration outside Luxembourg. Luxembourg resident companies are taxed on their worldwide income while Luxembourg non-resident companies are taxed on their Luxembourg source income.^{viii}

A Global Forum report indicated that Luxembourg failed to enforce its exchange of information and tax transparency laws. Namely, Luxembourg does not use its legal powers to obtain taxpayer information, or enable effective exchange of information with other jurisdictions. Also, Luxembourg does not have sufficient laws to provide for transparency of company ownership information.^{ix}

Also, the profits reported by U.S. corporations in Luxembourg are greater than the entire GDP of Luxembourg.^x In addition, most banks in Luxembourg are foreign-owned and financial sector accounts for 36% of GDP. The offshore financial center in Luxembourg is subject to no or nominal tax and constitutes a large part of the Luxembourg economy. Accordingly, Luxembourg has created a tax regime favorable for tax avoidance.

In summary, Luxembourg taxes large categories of corporate income at a nominal rate due to its tax treatment of intellectual property, and the exclusion of the foreign source income of a non-resident Luxembourg company from Luxembourg tax. A Luxembourg company can seek this advantageous tax treatment without a substantial connection to Luxembourg. This implicates criterion 3 of the 2011 MTC tax haven criteria. Also, Luxembourg's exchange of information and tax transparency laws and practices are insufficient, implementing criteria 1 and 2. Finally, Luxembourg has created a tax regime favorable for tax avoidance, implicating criterion 5.

ⁱ United States. Central Intelligence Agency. "Luxembourg." *The World Factbook 2013-2014*. cia.gov. n.d. Web. 26 Nov 2014.

ⁱⁱ United States; Dept. of Commerce; Bureau of Economic Analysis; International Data Direct Investment and MNE; Financial and Operating Data, U.S. Direct Investment Abroad, All Majority-owned Foreign Affiliates (data for 2009 and forward), Net Income by Country Only (All Countries) (Millions of Dollars); U.S. Dept. of Commerce, 1 Dec. 2014; Web. 1 Dec 2014.

ⁱⁱⁱ Deloitte Touche Tohmatsu Limited. *International tax: Luxembourg Highlights 2014*. 2014. PDF file.

^{iv} Houlder, Vanessa "Global Economy: Global report piles pressure on tax haven Luxembourg." *Financial Times*, 22 Nov 2014. Web. 1 Dec 2014.

^v Organization for Economic Cooperation and Development. *Report to the 2000 Ministerial Council Meeting and Recommendations by the Committee on Fiscal Affairs: Progress in Identifying and Eliminating Harmful Tax Practices 2000*. PDF file.

^{vi} "Luxembourg: The demise of 1929 Holding Companies" *International Tax Review*. 1 Jun 2007. Web. 1 Dec 2014.

^{vii} KPMG. *Luxembourg. A Hub for Intellectual Property 2014*. Pg. 5. PDF file.

^{viii} Deloitte Touche Tohmatsu Limited 2014. *International tax: Luxembourg Highlights 2014*. 2014. PDF file.

^{ix} Global Forum on Transparency and Exchange of Information for Tax Purposes. *Peer Review Report Phase 2 Implementation of the Standard in practice: Luxembourg*. 2013. Pg. 119-124. PDF file.

^x United States. Central Intelligence Agency. "Luxembourg." *The World Factbook 2013-2014*. cia.gov. n.d. Web. 26 Nov 2014.



GRAND DUCHY OF LUXEMBOURG
Embassy in Washington, D.C.

Washington, September 9th, 2014

Réf: L 275-14

Re: Study Mandated by HB 2460B, An Act Related to Taxation

Dear Mr. Bucholz,

I understand that your Department is currently preparing the report mandated by section 4 of HB 2460B. This provision requires the Oregon Department of Revenue (DOR) to report to the Legislative Assembly by January 1, 2015 DOR's recommendations for additions or subtractions to the list of jurisdictions included in section 317.715 (2)(b) of the Oregon Revised Statutes, a list of alleged tax havens that includes my country, Luxembourg.

The term "tax haven" should be used to identify countries or territories that levy no or very low taxes on income, wealth, capital and profits. Luxembourg does not belong in that category, for it has a comprehensive and balanced tax system that imposes an overall tax burden at comparable international levels. According to data collected by the Organization for Economic Cooperation and Development (OECD), Luxembourg's fiscal quota (total tax revenue expressed as a percent of GDP) exceeds that of the United States (38 percent and 25.1 percent respectively). The ratio of corporate taxes to GDP in Luxembourg is 5.7 percent, amongst the highest in the OECD; the same ratio for the United States is 2.7 percent.

I would like to submit that Luxembourg's inclusion on the list was erroneous, based on an outdated and flawed list used in another state. The haste with which this legislation was adopted last summer prevented the State of Oregon from making an independent, reasoned and factually-supported determination regarding the effective fiscal foundations of Luxembourg. I hope that the attached comments and supporting documents shall prove instructive and helpful to the Oregon Department of Revenue as it prepares the report mandated by the legislature.

I would be most obliged to you if you would take these comments under consideration, and respectfully request that they be included on the record. Should you require any additional information, please do not hesitate to contact

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my advisor, Ms. Jennifer Riccardi, at 202.265.4171 or jennifer.riccardi@mae.etat.lu. We shall be happy to provide hard copies of any of the sources cited in the attached paper if that might be helpful to your deliberations.

Please accept the assurances of my highest consideration.

With distinguished regards,

A handwritten signature in blue ink, appearing to read 'J. Wolzfeld', with a long horizontal line extending from the middle of the signature.

Jean-Louis Wolzfeld
Ambassador of the Grand Duchy of Luxembourg
to the United States of America

Mr. Jim Bucholz
Oregon Department of Revenue
955 Center St NE
Salem, OR 97301-2555

cc: Mr. Gary Humphrey, Corporation/Estate Section Manager

Enclosure

**COMMENTS OF THE GOVERNMENT OF LUXEMBOURG
ON THE REPORT MANDATED BY HB 2460 SECTION 4**

In 2013, the Oregon legislature passed a provision of law that identified alleged “tax havens.” Income earned by Oregon corporations with affiliates in these countries would be treated differently than income earned elsewhere, putting the tax system in Oregon at odds with 48 other states and the federal government.

The record on which the legislature made this significant change in law is quite sparse, and seems to be wholly based on the work of the Montana Department of Revenue.¹ The Montana law on which Oregon’s law is modeled, however, predates significant changes in Luxembourg law, changes which have never been considered by Montana. We hope the Oregon DOR corrects this miscarriage of justice.

The evidence relied upon by the Montana DOR has consistently been miscited and misquoted by that Department. This history of misciting evidence is recounted below. Next, we walk through the OECD’s factors for identifying tax havens, explaining how Luxembourg cannot be considered a tax haven under this test. Finally, we note the recent changes in Luxembourg that attest to the country’s commitment to transparency and the exchange of tax information. What

¹ A review of the legislative record identified a single analysis of the question of which jurisdictions were tax havens, a staff memorandum prepared by the Montana Department of Revenue and submitted on the record by the Montana DOR’s former director, Dan Bucks. Memorandum from Brenda J. Gilmer, Senior Tax Counsel to Dan R. Bucks, Director of Revenue, “Corporation Tax Water’s Edge Election – Tax Haven Countries” (July 16, 2012) (“Gilmer Memo”). In addition, at a recent hearing of the Montana Interim Committee on Revenue and Taxation, a representative of the Montana Department of Revenue testified that his department had been working with the Oregon Department of Revenue on how to identify a tax haven. Montana Interim Committee on Revenue and Transportation, Hearing of September 5, 2014 at hour 4.

may have been true in the distant past is no longer valid, and Luxembourg should be removed from the list of tax havens codified in Oregon state law.

OREGON'S IDENTIFICATION OF LUXEMBOURG AS A TAX HAVEN IS BASED ON OUTDATED SOURCES AND MISCHARACTERIZED EVIDENCE

In its rush to pass legislation, the Oregon legislature appears to have spent very little time considering which jurisdictions are properly included in section 317.715(2)(b) of the Oregon Revised Statute. Indeed, a review of the record considered by the legislature identified a single document: an analytical memorandum prepared by the Brenda Gilmer, a staffer at the Montana Department of Revenue in 2012.² The Gilmer Memo identifies several sources for its contention that Luxembourg is properly characterized as a tax haven. As demonstrated below, none of this evidence supports that contention.

The Gilmer Memo notes that "the list of tax havens in 15-31-322, MCA, was developed primarily, but not exclusively from the Organization for Economic Co-Operation and Development (OECD)."³ At Addendum A, a table claims that a 2000 OECD report identified Luxembourg as "having a potentially harmful preferential tax regime." While the 2000 OECD Report does identify countries that met, at that time, the OECD's definition of a "tax haven," *Luxembourg is not included on that list.*⁴ A designation as a "potentially harmful preferential tax

² E.g., <https://olis.leg.state.or.us/liz/2013RI/Measures/Exhibits/HB2460>.

³ Gilmer Memo at 3.

⁴ Committee on Fiscal Affairs, Organization for Economic Co-Operation and Development, "Towards Global Tax Co-operation: Report to the 2000 Ministerial Council Meeting and Recommendations" at 17 (2000) ("OECD 2000"); see also Congressional Research Service, "Tax Havens: International Tax Avoidance and Evasion" at 4, notes b and e (Sept. 3, 2010) (Luxembourg not included on original

regime” worthy of additional investigation is not the same as an OECD designation of being a tax haven and should not be treated in the same manner – particularly when the “potential preference” identified by the OECD Report has been subsequently revoked by the country in question.

Specifically, the “potentially preferential” regime identified by the OECD was the Holding Companies Acts of 1929 and 1938, under which some foreign-controlled companies could pay a lower tax rate than domestic firms.⁵ These laws were repealed by the Luxembourg Parliament in 2006, in response to a European Union proceeding, and have completely ceased to have any effect since January 1st, 2011.⁶

The OECD was not alone in its concern about this law. Indeed, several EU partners, including Portugal and Spain, also considered this unfair tax competition. Portugal went so far as to include Luxembourg on a list of tax havens. When the 1929 Holding Company Act was repealed and its tax benefits abolished, however, Luxembourg was removed from the Portuguese list in 2011.⁷ Montana has willfully refused to so much as acknowledge this change in the Luxembourg law that serves as the very basis for Luxembourg’s inclusion on the Montana tax

OECD list and is currently on the White List). The OECD briefly included Luxembourg on its grey list of “non-cooperative jurisdictions” in 2009. Luxembourg was removed from that list within a matter of months, following its swift implementation of OECD standards on the exchange of information. OECD, “Luxembourg makes progress in OECD standards on tax information exchange” (July 8, 2009).

⁵ OECD 2000 at 13, 15.

⁶ Loi de 22 décembre 2006, Mémorial A. No. 241 (29 décembre 2006); European Commission Décision 2006/940/EC.

⁷ *E.g.*, PLMJ, “Updating of the Portuguese Tax Haven Blacklist” (Nov. 2011).

haven list. This alone should be sufficient reason for Oregon to question its reliance on the Montana list.

Montana cites other "evidence" in Addendum A that allegedly demonstrates Luxembourg is a tax haven. Every major report cited by Montana pre-dates the revocation of benefits under the 1929 Holding Company law. As demonstrated below, reliance on such reports is unpersuasive for both this and other reasons, and should not be relied upon by Oregon.

First, the Gilmer Memo notes Luxembourg's inclusion in a list of tax havens published in a working paper published by the National Bureau of Economic Research in 2006.⁸ This list was derived from a 1994 paper that identified tax havens by "the coexistence of low business tax rates in a jurisdiction in 1982 and its identification as a tax haven by multiple authoritative sources."⁹ In addition to predating the repeal of the 1929 Holding Companies Act, the NBER paper does not identify these supposedly authoritative sources nor does it attempt to update the thirty year old tax rate research. Not surprisingly, tax rates have changed in Luxembourg over the course of thirty years, as they have in the United States. ***Moreover, the 2006 NBER source relied upon in fact acknowledges that under the OECD definition, Luxembourg cannot be considered a tax haven.***¹⁰

The sources cited simply do not support the conclusion reached in the Gilmer Memo.

⁸ Gilmer Memo at Addendum A, citing Dharmapala & Hines, "Which Countries Become Tax Havens," NBER Working Paper 12802 (Dec. 2006) ("NBER 2006").

⁹ NBER 2006 at 8.

¹⁰ NBER 2006 at 29 (explaining tax haven status methodology) and 32 (excluding Luxembourg from the "tax haven" column).

Second, the Gilmer Memo notes that Luxembourg was included on a list of 34 jurisdictions for which the United States sought permission to issue a John Doe Summons on PayPal in 2005.¹¹ As such, this source too pre-dates the repeal of the 1929 Holding Companies Act. Moreover, the Federal Government has disavowed this list. A subsequent Government Accounting Office Congressional Report explains that, according to the IRS, the list was developed for a research project, not official use, and “was developed many years ago.”¹² Holding aside the fact that lawyers seek as broad of discovery as possible in litigation, **the U.S. government does not believe the list is an accurate list of tax havens.** As described by the then-Deputy Assistant Secretary for International Tax Affairs:

The list of jurisdictions in that summons was put together for a very specific purpose and was not at all intended to suggest a general list of jurisdictions that the Treasury Department and IRS consider tax havens. Moreover, the specific nature of the John Doe Summons – which focused on individual taxpayers – makes use of the list of countries in that summons all the more inapposite since the draft GAO report deals not with individuals but with foreign subsidiaries of U.S. corporations. Because the problems identified in the draft report and the John Doe Summons are so different, it is unclear what relevance the list of countries in the John Doe summons has in the context of the report. For these reasons, we requested that the GAO not use the summons list as a source for its tax havens list. Moreover, we are concerned that such use will lead others to believe that the Treasury Department intended the summons list to be a list of tax havens.¹³

¹¹ Gilmer Memo at Addendum A.

¹² GAO, “International Taxation: Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions,” GAO-09-157 at 11, n. 12 (Dec. 2008) (“GAO Report”).

¹³ Letter from Michael Mundaca, Deputy Assistant Secretary International Tax to James R. White, Director, Tax Issues, General Accounting Office at 2 (undated), appended to GAO Report at Appendix IV.

It is similarly inapposite for the Oregon Department of Revenue to rely on the 2005 John Doe Summons to identify purported tax havens in 2014.

Third, the Gilmer Memo relies upon a 2000 report from the Financial Stability Forum, claiming that this document identifies Luxembourg as a tax haven.¹⁴ Not only does this source pre-date the repeal of the 1929 Holding Company Act, the Montana Department of Revenue mischaracterizes the document. The FSB Working Report does not purport to identify tax havens nor does it render judgments of any kind. Rather, the Working Party was convened to consider the significance of offshore financial centers (OFC) in relation to financial stability.¹⁵ The Working Party sent questionnaires to both "offshore financial centers" (37 jurisdictions) and to "major financial centers" (30 jurisdictions).¹⁶ Luxembourg received and responded to a "major financial center" questionnaire, along with the United States, the United Kingdom, Germany, Italy and Canada. ***The Working Group did not consider Luxembourg an OFC, let alone a tax haven, but simply a major financial centre, the same characterization as the United States.***

Even if the Working Group had included Luxembourg in the offshore list, that in and of itself is not an indication of a country's status as a tax haven. As the working group notes:

¹⁴ Gilmer Memo at Addendum A, citing Report of the Working Group on Offshore Financial Centres (April 5, 2000) ("FSB Report").

¹⁵ FSB Report ¶1.

¹⁶ *Id.* at 14, Table 1.

Not all OFCs are the same. Some are well supervised and prepared to share information with other centres, and co-operate with international initiatives to improve supervisory practices.¹⁷

There are . . . highly reputable OFCs that actively aspire to and apply internationally accepted practices, and there are some legitimate uses of OFCs.¹⁸

The prudential and market integrity concerns raised by problematic OFCs – lack of cooperation, weak supervision, lack of due diligence¹⁹ – simply do not apply to Luxembourg, as demonstrated *infra*.

Fourth, the Gilmer Memo cites a list prepared by the Tax Justice Network (TJN) in 2005.²⁰ This source also pre-dates the repeal of the 1929 Holding Companies Act. Moreover, this list is nothing but a compilation of the OECD and FSB lists discussed above, as well as “reputational” tax havens identified by TJN’s members.²¹ As such, this source suffers from the same flaws identified above – neither the OECD nor the FSB identify Luxembourg as a tax haven and the “reputational sources” are both undisclosed and out of date.

In short, not a single source from Addendum A supports Montana’s contention. Some expressly state that Luxembourg is not a tax haven, while others do not even address the issue of tax havens. Similar difficulties exist with other sources cited by the Montana Department of Revenue.

¹⁷ *Id.* ¶15.

¹⁸ *Id.* ¶19.

¹⁹ *Id.* ¶7.

²⁰ Gilmer Memo at Addendum A, citing 2005 List of the Tax Justice Network.

²¹ TJN admits that the OECD, Montana’s “primary source,” does not characterize Luxembourg as a tax haven. TJN 2005 at 8.

This habit of citing irrelevant and inapposite materials continue in the Gilmer Memo. Indeed, in one such report, Luxembourg is not even discussed as a tax haven.²²

Other “new” sources in fact rely on the outdated, unsupported sources discussed above. For example, the Gilmer Memo discusses a report prepared by staff of the Homeland Security and Governmental Affairs Committee in 2011.²³ The Gilmer Memo claims that this report included Luxembourg on a list of tax havens.²⁴ The Report makes clear that it relied on a Government Accounting Office Report for its list of alleged tax havens.²⁵ The GAO Report, in turn, makes clear that it is relying on the same sources discussed and discredited above: the 2008 OECD Report, the 2006 NBER Report and the John Doe Summons.²⁶

Notably, the GAO acknowledges that the OECD Report does not identify Luxembourg as a tax haven.²⁷

²² E.g., 2011 Testimony of Martin Sullivan before the House Ways and Means Committee, cited in Gilmore Memo at 5 (discussing the need to reform five countries he identified as tax havens, three of which are excluded from Oregon 317.715(2)(b)).

²³ Gilmer Memo at 13.

²⁴ Id.

²⁵ “Repatriating Offshore Funds: 2004 Tax Windfall for Select Multinationals,” Permanent Subcommittee on Investigations, Senate Committee on Homeland Security and Governmental Affairs (Oct. 11, 2011).

²⁶ “International Taxation: Large US Corporations and Federal Contractors with Subsidiaries Listed in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions,” Government Accountability Office, Rep. No. GAO-09-157 at 12-17 (Dec. 2008) (“GAO Report”).

²⁷ Id. at 12.

Similarly, the October 2011 "ActionAid" report cited by the Montana DOR relied upon the GAO Report for its list of putative tax havens, and is thus unsupported.²⁸ The Montana DOR also relies on a March 2009 accounting paper that identifies alleged tax havens based on a 2008 internet list published by the Global Policy Organization.²⁹ The internet link provided as evidence connects to a website, but no list of tax havens is available at the provided address nor is any information provided regarding the sources consulted in creating the list. According to the accounting paper, however, the website relied on four sources: the 2008 OECD Report; a 2007 draft Senate bill that contains a list of purported tax havens but does not provide sources for its list; the International Monetary Fund; and the Tax Research Organization. While details are not provided about the IMF report, we believe it is a reference to a 2000 IMF study of "Offshore Financial Centers." Included in the purported IMF list of tax havens are London, Ireland, the Netherlands and Switzerland. We cannot identify any tax haven research conducted by the "Tax Research Organization." The only credible source relied on by this article is the 2008 OECD Report, which as noted above, addressed a potential concern about a Luxembourg law that has subsequently been revoked, and which expressly states that Luxembourg is not a tax haven.

²⁸ Gilmer Memo at 20, citing ActionAid UK's "Addicted to tax havens."

²⁹ Gilmer Memo at 21, citing Dyreng & Lindsey, "Using Financial Accounting Data to Examine the Effect of Foreign Operations Located in Tax Havens and Other Countries on US Multinational Firms Tax Rates (Mar. 2009).

Notably, the Gilmer Memo concedes that while Luxembourg was included on a list published in a 1994 tax haven paper published by Dharmapala and Hines, it was subsequently dropped from the list prepared by the same author in 2010.³⁰

Finally, the Montana DOR cites two television programs, broadcast on CBS in 2011 and the BBC in 2012. The CBS program deals exclusively with Zug, Switzerland, a location included in neither Montana's nor Oregon's list of tax havens. The BBC program does deal with Luxembourg, but talks about events in 2009, before the 1929 Holding Company Act had ceased having effect, and notes that the arrangement in question has been terminated.

These arguments regarding Luxembourg have repeatedly been presented to the Montana Department of Revenue. Only once has the Montana DOR prepared a response – but that response did not address any of the arguments presented by the Government of Luxembourg and recited here. Rather, Montana DOR recommended retaining Luxembourg on its list of tax havens because Luxembourg is the top source of additional tax revenue generated by the law for Montana.³¹ While Montana DOR feebly asserts that Luxembourg is “frequently cited in reports” as a tax haven, it does not address or consider the arguments made herein demonstrating why reliance on these outdated reports is untenable and results in a law based on conjecture and not fact. DOR's arguments about the large amounts of income allegedly shifted to Luxembourg ignores Luxembourg's role on the continent as the largest site of mutual funds outside of New York City,

³⁰ Gilmer Memo at 22.

³¹ Memorandum from Dan Bucks to the Revenue and Transportation Committee at 5 (July 19, 2012). This argument is graphically represented in the 2012 Gilmer Memorandum in the table at page six.

a role created not by tax policy but by its traditional early implementation of EU rules governing such investments. The mere fact that the tax haven list generates additional tax revenue for the state is not a legitimate reason to continue to keep Luxembourg on the tax haven list, particularly when there is no evidence that the tax payers in question have engaged in tax evasion of any kind.

Decisions such as these must be based on law and fact, and should not be revenue driven as is the case in Montana. No evidence on the legislative record supports the inclusion of Luxembourg – a founding member of both NATO and the European Union – on a list of tax havens. We respectfully request that the Oregon DOR recommend Luxembourg's removal from this list.

LUXEMBOURG DOES NOT MEET THE OECD'S DEFINITION OF A TAX HAVEN

Virtually all of the sources identified above describe a tax haven by reference to four key identifying factors:

1. No or only nominal taxation;
2. Lack of effective exchange of information;
3. Lack of transparency; and
4. No substantial activities.

Luxembourg cannot be deemed to qualify as a tax haven under any of these factors.

Luxembourg's corporate tax rate. A key hallmark of a tax haven is that it attracts investment by imposing no or only minimal taxes. This is simply not true in Luxembourg, where the national corporate tax rate is 21%, there is a surtax of 5% for the unemployment fund, and there is a minimum flat tax in effect.³² Most

³² *E.g.*, Deloitte, "International Tax: Luxembourg Highlights 2012" at 1.

transnational businesses locate in the city of Luxembourg, which imposes a local tax of 6.75%, for a combined tax rate of 28.80%.³³ While not as high as the combined U.S.-Oregon tax rate, this cannot be characterized as nominal – especially when it is considered that corporations are also subject to a value added tax of up to 15%. As concluded by PriceWaterhouseCooper “the country cannot be deemed to be of low or nil taxation. This was confirmed, both by the OECD and by the G20 summit held in London on 2 April 2009.”³⁴

Luxembourg engages in effective exchange of information. In late 2011, the OECD's Centre for Tax Policy and Administration published a Phase I peer review of Luxembourg on behalf of the Global Forum on Transparency and Exchange of Information for Tax Purposes. The Peer Review found:

Since its commitment to the international standard of transparency and exchange of information in March 2009, Luxembourg has been very active and quick in negotiating exchange of information mechanisms that incorporate the full and generally consistent version of article 26 of the OECD Model Tax Convention.³⁵

In order to conform to the international transparency standard, Luxembourg recently introduced legislation, and in particular a new law governing access to banking information or information protected by secrecy rules. This legislation implements Luxembourg's international commitments into domestic law.³⁶

³³ ICLG, Corporate Tax 2012 (www.iclg.co.uk).

³⁴ PriceWaterhouseCoopers, “Summary of recent Luxembourg Government's statements on tax related matters” (April 27, 2009) <www.pwc.com.lu>.

³⁵ OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Luxembourg 2011* ¶2.

³⁶ *Id.* ¶4.

Banking information is, in particular, available thanks to the anti-money laundering (AML) legislation.³⁷

Luxembourg law guarantees the availability of information on companies and partnerships.³⁸

The Peer Review praised Luxembourg for quickly seeking to negotiate bilateral information exchange mechanisms.³⁹ Luxembourg's network covers 68 jurisdictions, 27 of which fully implement OECD standards. Luxembourg has long had a double taxation treaty with the United States,⁴⁰ and participates in the Qualified Intermediary (QI) program with the Treasury Department.⁴¹ The QI program provides the IRS assurance that tax on U.S. source income sent offshore is properly withheld and reported, and indicates that the United States government approves of another nation's "Know Your Customer" rules.⁴²

The Phase II GFT Peer Review identified some areas for Luxembourg to work on, an obligation that Luxembourg took seriously. Luxembourg has subsequently passed legislation reforming bearer bonds, adopted the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, and taken remedial action to reform how information exchange requests are dealt with internally. The government notes that the review period for phase two concluded

³⁷ *Id.* ¶15. The law of 31 March 2010 allows for the waiver of banking secrecy provisions in financial and tax legislation. Such information is accessible for those bilateral agreements allowing for this possibility. *Id.* ¶ 182.

³⁸ *Id.* ¶16.

³⁹ *Id.* ¶¶ 214-219.

⁴⁰ Luxembourg Double Taxation: Taxes on Income and Property, entered into force December 22, 1964, available at www.irs.gov/pub/irs-treaty/luxem.pdf.

⁴¹ See e.g. www.irs.gov/pub/irs-try/luxembourg-lates-attachment.pdf.

⁴² GAO, "Tax Compliance: Qualified Intermediary Program Provides Some Assurance that Taxes on Foreign Investors are Withheld and Reported, but Can Be Improved," GAO-08-99 (Dec. 2007).

before Luxembourg adopted automatic exchange of information standards, and the government anticipates a much stronger Peer Review when the supplemental review report is released this fall.

Luxembourg's commitment to information exchange extends to the United States. Luxembourg and the United States negotiated a protocol to the existing treaty against double taxation that implements the OECD exchange standard.⁴³ As stated in the letter of submittal to the President, the Protocol "provides for more robust exchange of information . . . [that] generally follow[s] the current U.S. Model Income Tax Convention and the Organization for Economic Cooperation and Development standards for exchange of information."⁴⁴ Luxembourg has already ratified this protocol. The U.S. Senate Foreign Relations Committee favorably voted the Protocol out of committee; it is awaiting a full vote by the Senate.⁴⁵

As reported by the BBC, after the 2008 financial crisis:

Luxembourg responded by taking steps to improve the transparency of its financial arrangements. By July 2009 it had signed agreements on the exchange of tax information with a dozen countries and was commended by the OECD for its prompt efforts to implement the internationally agreed standard.⁴⁶

Luxembourg has significantly improved the efficiency and effectiveness of its information exchange with both the United States and third countries.

Indeed, on April 10, 2013, the Luxembourg Prime Minister announced the end of banking secrecy in Luxembourg. Prime Minister Juncker said that from

⁴³ Protocol Amending the Tax Convention with Luxembourg, Treaty Doc. 111-8.

⁴⁴ Letter from Hillary Clinton, Secretary of State to the President (Aug. 3, 2010).

⁴⁵ See Treaty Doc. 111-8, Senate History, available at www.thomas.gov.

⁴⁶ BBC, Country Profile: Luxembourg <www.newsvote.bbc.co.uk> (downloaded March 27, 2012).

January 1, 2015, Luxembourg would engage in the automatic exchange of information regarding interest payments with other governments, both in the European Union (through the Savings Directive) and with the United States through a bilateral agreement intended to implement FATCA, a U.S., federal law designed to gather information regarding income and interest paid to U.S. citizens around the world.

Later that month, the Finance Minister took the concept even further, proposing in an April 29 interview with the Financial Times that governments take this system even further, by extending the automatic exchange of information to multinational corporations.⁴⁷ In his words, “the fight against tax evasion is at the top of the agenda.”⁴⁸

Luxembourg has engaged on this issue at a multilateral level, by actively participating in the OECD's work on BEPS (base erosion and profit shifting). Luxembourg believes that Tax Treaties intended to avoid double taxation cannot be permitted to be misused so as to secure double non-taxation.

These improvements should be recognized by the Oregon Department of Revenue in its report to the Legislature.

Luxembourg's tax laws are fully transparent. The third OECD factor to be considered is whether there is a lack of transparency in the operation of legislative, legal, or administrative provisions of a country's tax laws. Luxembourg is an open

⁴⁷ “Great Tax Race: Luxembourg set to share companies' bank details” (Apr. 29, 2013).

⁴⁸ MOF Press Release, Statement by Luc Frieden, Minister of Finance of Luxembourg (April 20, 2013).

and transparent democracy. Legislation is published in the Official Journal, the *Annuaire Officiel d'Administration et de Legislation*. All legislative proceedings are open to public scrutiny. Administrative and regulatory decisions regarding tax decisions are reported there as well, while judicial decisions are reported in the *Repertoire Analytique du Droit Luxembourgeois*.⁴⁹ There is no reasonable basis to conclude that there is a lack of transparency in the domestic legal and regulatory regime.

Luxembourg requires economic activity from firms incorporated in its territory. The final OECD factor is whether the state requires substantial economic activity from investors, the assumption being that jurisdictions without such a requirement may be attempting to attract investment that is simply tax driven. While some purported tax havens prohibit certain companies from doing business in their territory, Luxembourg requires economic activity. There is no Luxembourgish version of the Caribbean's "Ugland House," home to some 19,000 paper corporations. This is not to suggest that Luxembourg does not engage in some tax competition. Its VAT rate, for example, is less than that of neighboring Germany and its other economic powerhouse neighbors. Like all countries, it does seek to attract investment.⁵⁰ But it also seeks jobs for its citizens and real economic growth.

⁴⁹ Both the *Annuaire Officiel* and the *Repertoire Analytique* are available at <www.legilux.public.lu>.

⁵⁰ We note that U.S. states also engage in such efforts, and that Oregon seeks to distinguish itself from its bigger, wealthier neighbors. *E.g.*, "Doing Business in Oregon," <oregon4biz.com/the-oregon-advantage>.

It is notable that not a single source relied upon in the Gilmer Memo supports the conclusion that Luxembourg is a tax haven. Indeed, several of the sources reach expressly the opposite conclusion, as does more recent research. The simple truth is that the world is not the same now as it was in 2003, when Montana first adopted its tax haven law. "{G}overnments increasingly engage in tax cooperation to reign in tax arbitrage and competition. While off to a slow start in the 1960s, tax cooperation has gained momentum in recent years, especially after the financial crisis in 2008."⁵¹

It is worth noting that in 2012 (the most recent year for which data are available), Luxembourg ranked in the top ten largest source of foreign direct investment in United States.⁵² Luxembourg, which is a founding member of the European Union and NATO, has a free market economy which is open to the world. Being mischaracterized by the State of Oregon in this way is harmful to Luxembourg, and could bring harm to the economy of Oregon by discouraging foreign investments.

For all of these reasons, the Government of Luxembourg respectfully requests that the State of Oregon remove Luxembourg from the list of tax havens identified in section 317.715(2)(b) of the Oregon Revised Statute.

⁵¹ Phillip Genschel and Peter Schwarz, "Tax Competition: a Literature Review," *Socio-Economic Review* 9, 339 (Mar. 15, 2011).

⁵² *E.g.*, Organization for International Investment, 2013 *Foreign Direct Investment in the United States*.

Response to Luxembourg

On September 9, 2014, Luxembourg's ambassador to the United States, Jean-Louis Wolzfeld, wrote a letter to the department expressing concern about the inclusion of Luxembourg on the list of jurisdictions ORS 317.715(2)(b).

Ambassador Wolzfeld raised the following concerns:

- Oregon used outdated sources and mischaracterized evidence to place Luxembourg on the ORS 317.715(2)(b) list.
- Luxembourg does not meet the OECD definition of a tax haven.
- The inclusion of Luxembourg in the ORS 317.715(2)(b) list may harm foreign investment in Oregon.

As noted in the tax haven report, the department uses 2011 Multistate Tax Commission tax haven criteria to evaluate jurisdictions. We applied these criteria to current information about Luxembourg, and arrived at the conclusion that Luxembourg should still be listed in ORS 317.715(2)(b). Also, we did not rely, in any way, on the Montana tax haven report that is discussed in detail in the attachment to Ambassador Wolzfeld's letter.

Ambassador Wolzfeld indicates that Luxembourg does not meet the OECD definition of a tax haven because Luxembourg has a corporate tax rate of 28.8 percent and requires economic activity from corporations incorporated in Luxembourg. However, there are three issues with Ambassador Wolzfeld's assertions.

First, the OECD does not produce tax haven criteria any longer. Therefore, the application of OECD criteria to Luxembourg is no longer relevant to determining if Luxembourg is a tax haven.

Second, BEA statistics indicate that U.S. corporations in Luxembourg paid an effective tax rate of 1.1 percent. With this in mind, Ambassador Wolzfeld's letter does not draw the distinction between a statutory rate of tax (28.8 percent) and effective tax rate actually paid (1.1 percent). Clearly, a tax rate of 1.1 percent is a nominal tax rate.

Third, Ambassador Wolzfeld claims that U.S. corporations in Luxembourg need to have an economic presence in Luxembourg. No support is given by Ambassador Wolzfeld for this claim. BEA statistics indicate that U.S. corporations claimed they earned approximately \$95 billion in profits in Luxembourg. This clearly indicates that a corporation need not have economic presence in Luxembourg, given that Luxembourg's entire gross domestic product is \$56 billion.

Finally, Ambassador Wolzfeld does not provide any support for his claim that Luxembourg's inclusion on the ORS 317.715(2)(b) list may harm foreign investment in Oregon.

Despite Ambassador Wolzfeld's objections the department recommends Luxembourg's continued inclusion in ORS 317.715(2)(b).