



BERMUDA

INTERNATIONAL COOPERATION (TAX INFORMATION EXCHANGE  
AGREEMENTS) ACT 2005

2005 : 47

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WHEREAS it is expedient to make general provision for the implementation of tax information exchange agreements entered into by the Government of Bermuda, as authorized by the Government of the United Kingdom, with other jurisdictions and to enable the Minister of Finance to provide assistance to the competent authorities of such jurisdictions under such agreements:

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Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### Short title

1 This Act may be cited as the International Cooperation (Tax Information Exchange Agreements) Act 2005.

### Interpretation

2 (1) In this Act, unless the context otherwise requires—

“agreement” means a tax information exchange agreement, a Double Taxation Agreement, or a treaty or agreement that incorporates an agreement to exchange information concerning tax, entered into by the Government of Bermuda, as authorized by the Government of the United Kingdom, with another jurisdiction (and, for the avoidance of doubt, includes any such agreement entered into between the Government of Bermuda and the Government of the United Kingdom, any other British Overseas Territory or any British Crown Dependency); but does not include—

- (a) the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland (on behalf of the Government of Bermuda) and the Government of the United States of America Relating to the Taxation of Insurance Enterprises and Mutual Assistance in Tax Matters, set out in the Second Schedule to the USA - Bermuda Tax Convention Act 1986; and
- (b) the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland (on behalf of the Government of Bermuda) for the Exchange of Information With Respect to Taxes;

“Common Reporting Standard” means the Common Reporting Standard developed by the Organisation for Economic Co-operation and Development for automatic exchange of financial account information and the commentary as amended from time to time;

“competent authority” has the meaning given in section 3(1);

“control” in relation to the use of the term with respect to “information in the possession or control of a person” or “in the person’s possession or control”, means control of information, whether the information is located in Bermuda or outside of Bermuda;

“information” means any fact, statement or record in any form whatever that is relevant or material to tax administration and enforcement;

“Minister” means the Minister of Finance or such other Minister as may be appointed to administer this Act;

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“OECD Model Legislation relating to Country-by-Country Reporting” means the Organisation for Economic Co-operation and Development (“OECD”) Model Legislation Related to Country-by-Country Reporting (as may be amended from time to time) contained in Annex IV to Chapter V of the OECD Report of 2015;

“OECD Report of 2015” means the report on Action 13: Transfer Pricing Documentation and Country-by-Country Reporting – 2015 Final Report published by the OECD on 5 October 2015.

“prescribed” means prescribed by regulations under section 12;

“requesting party” means a party that makes a request for assistance under an agreement.

“self-certification” means information, howsoever called, that performs or is intended to perform a purpose of a self-certification under the Common Reporting Standard.

(2) In this Act, a reference to the Minister, in relation to any function to be performed by the Minister under this Act, is a reference to the Minister of Finance or such person, being an officer or servant, or an agency, of the Government of Bermuda, as the Minister of Finance may designate to perform the function (with or without a duty to refer back to the Minister of Finance) in his stead as his delegate.

(3) A reference in this Act to the performance of a function includes reference to the performance of a duty or the exercise of a power or right.

(4) Expressions that are used in this Act and the regulations relating to the Common Reporting Standard have the same meanings as they have in the Common Reporting Standard, unless it is expressly otherwise provided in this Act or the regulations or the context otherwise provides.

(5) The expressions that are used in this Act and regulations relating to Country-by-Country Reporting have the meanings given to them respectively by Article 1 of the OECD Model legislation unless it is expressly otherwise provided in this Act or the regulations relating to Country-by-Country Reporting.

*[Section 2 "Minister" deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011; "agreement" deleted and substituted by 2011 : 20 s. 7 effective 28 June 2011; definition "control" inserted by 2012 : 27 s. 8 effective 13 July 2012; definition "agreement" amended by 2016 : 20 s. 2 effective 9 June 2016; subsections (2) and (3) inserted by 2017 : 1 s. 2 effective 23 February 2017; subsection (1) definitions "Common Reporting Standard", "prescribed" and "self-certification" and subsection (4) inserted by 2017 : 8 s. 2 effective 2 March 2017; subsection (1) definitions "competent authority", "OECD Model Legislation relating to Country-by-Country Reporting" and "OECD Report of 2015" and subsection (5) inserted by 2017 : 19 s. 2 effective 21 April 2017]*

#### Duties of the Minister

3 (1) The Minister is the competent authority for Bermuda under the agreements.

(2) The Minister may provide assistance to any requesting party according to the terms of the agreement with that party.

(3) For the purposes of this section, no person who—

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- (a) receives a request; or
- (b) obtains information directly or indirectly for the purposes of paragraph (a),

shall disclose the request or the information to another person except in accordance with this Act.

(4) Pursuant to section 26A of the Public Access to Information Act 2010, and notwithstanding any other provision of that Act, this section shall have effect.

*[Section 3 subsections (3) and (4) inserted by 2017 : 1 s. 3 effective 23 February 2017]*

Grounds for declining a request for assistance

4 (1) The Minister may decline a request for assistance where there is provision in the applicable agreement for him to do so.

(2) The Minister may also decline a request for assistance if –

- (a) *[repealed]*
- (b) the information relates to a period that is more than six years prior to the tax period in respect of which the request is made;
- (c) the request pertains to information in the possession or control of a person other than the taxpayer that does not relate specifically to the tax affairs of the taxpayer;
- (d) the information is protected from disclosure under the laws of Bermuda on the grounds of legal professional privilege;
- (e) the requesting party would not be able to obtain the information –
  - (i) under its own laws for the purposes of the administration or enforcement of its tax laws; or
  - (ii) in response to a valid request from the Minister under the agreement;
- (f) the disclosure of the information would be contrary to public policy; or
- (g) the Minister is not satisfied that the requesting party will keep the information confidential and will not disclose it to any person other than –
  - (i) a person or authority in its own jurisdiction for the purposes of the administration and enforcement of its tax laws; or
  - (ii) a person employed or authorized by the government of the requesting party to oversee data protection.

*[Section 4(2)(a) repealed by 2009:13 s.2 effective 25 March 2009; subsection (1) amended by 2013 : 42 s. 2 effective 12 December 2013]*

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Automatic exchange of information

4A (1) Pursuant to an agreement for the automatic exchange of information, a person is hereby required to comply with the terms and conditions of that agreement and that person shall comply with the terms and conditions thereof.

(A1) For greater clarity for purposes of subsection (1), where, pursuant to an Agreement for automatic exchange of information, provisions are made or prescribed for implementing OECD model legislation, commentary, guidance or other documentation relating to automatic exchange of information, any person in relation to whom such provisions apply shall comply with such provisions.

(1A) For greater clarity with respect to, and for the purposes of, subsection (1), the Common Reporting Standard applies in relation to automatic exchange of financial account information.

(1B) Pursuant to this section, a Reporting Financial Institution or an entity referred to in the Common Reporting Standard shall collect and report to the Minister the information with respect to each Reportable Account of the Reporting Financial Institution or entity and take measures to ensure compliance with the Common Reporting Standard, including the following—

- (a) establish policies and maintain procedures designed to identify Reportable Accounts and such other information in relation to such accounts as may be prescribed;
- (b) collect, keep and maintain in Bermuda information and records relating to the steps undertaken and any evidence relied upon in the performance of any procedures set out in the Common Reporting Standard and such other records as may be prescribed;
- (c) keep the information and records referred to in paragraph (b) in such form as may be prescribed for five years from the end of the period within which Reportable Accounts and such other information and records in relation to such accounts are required to be reported pursuant to the Common Reporting Standard;
- (d) provide such reports relating to such information to the Minister as may be prescribed;
- (e) obtain self-certification in such manner and for such purposes as may be prescribed; and
- (f) give effect to such other obligations relating to the Common Reporting Standard as may be prescribed.

(1C) If a person enters into any arrangement for which the main purpose, or one of the main purposes, is to avoid any obligation under the Common Reporting Standard, this Act shall have effect as if such arrangement had not been entered into.

(1D) A person who contravenes, or fails to comply with the provisions of subsection (1B) or (1C) commits an offence and shall be subject to such civil penalty as is prescribed.

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(2) Sections 4, 5 and 10 do not apply in relation to the automatic exchange of information.

*[Section 4A inserted by 2015 : 28 s. 2 effective 4 July 2015; subsections (1A) - (1D) inserted by 2017 : 8 s. 3 effective 2 March 2017; subsection (A1) inserted by 2017 : 19 s. 3 effective 21 April 2017]*

Country-by-Country Reports

4B (1) The OECD Model Legislation relating to Country-by-Country Reporting applies, with such exceptions or modifications as are appropriate, for the purpose of Country-by-Country Reporting and shall be deemed to have effect from 1 January 2016 in relation to Country-by-Country Reporting.

(2) An Ultimate Parent Entity, which is resident in Bermuda for tax purposes, of a Multinational Enterprise Group—

- (a) shall provide to the competent authority a Country-by-Country Report in relation to the Multinational Enterprise Group containing information of the description specified in regulations relating to Country-by-Country Reporting—
  - (i) in such manner and form as may be prescribed;
  - (ii) in respect of such period or periods as may be prescribed;
  - (iii) at such interval or intervals and by such date or dates as may be prescribed; and
- (b) shall, for the purposes of complying with requirements specified or prescribed pursuant to paragraph (a), comply with such obligations as may be prescribed (including obligations to obtain information from such persons as may be specified in regulations relating to Country-by-Country Reporting).

(3) A Constituent Entity, which is resident in Bermuda for tax purposes, of a Multinational Enterprise Group—

- (a) may, in such circumstances as may be prescribed, provide to the competent authority a Country-by-Country Report in relation to the Multinational Enterprise Group; and
- (b) shall, in relation to the Country-by-Country Report so provided, comply with the provisions specified or prescribed pursuant to paragraphs (a) and (b) of subsection (2).

*[Section 4B inserted by 2017 : 19 s. 4 effective 21 April 2017]*

Production orders

5 (1) Where the Minister has received a request in respect of which information from a person in Bermuda is required, the Minister may apply to the Supreme Court for a production order to be served upon the person referred to in the request directing him to deliver to the Minister the information referred to in the request.

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(1A) With respect to an application for a production order, the Minister shall be under no duty to make inquiry in relation to any statements made or any information given in respect of a request for which a production order is sought, or to information obtained by him under a previous request.

(2) The Supreme Court may, if on such an application it is satisfied that conditions of the applicable agreement relating to a request are fulfilled or where the court is satisfied with the Minister's decision to honour a request in the interest of Bermuda, make a production order requiring the person referred to in the request—

- (a) to deliver to the Minister the information referred to in the request; or
- (b) to give the Minister access to such information,

within 21 days of the making of the production order.

(3) The period to be specified in a production order shall be 21 days unless it appears to the court, or the Minister satisfies the court, that a longer or shorter period would be appropriate in the particular circumstances of the production order.

(4) Where a request so stipulates and the production order makes such requirement, information sought shall be in the form of—

- (a) depositions of witnesses, disclosed on oath; or
- (b) original documents or copies of original documents, certified or authenticated by a Notary Public.

(5) An application for a production order under this section may be made ex parte to a judge in Chambers and shall be in camera.

(6) A person served with a production order under subsection (1) who is aggrieved by the service of the order may seek review of the order within 21 days of the date of the service of the order.

(6A) A person served with a production order under subsection (1) who wishes to view the documents filed with the court on the application for the production order—

- (a) shall not be entitled as against the Minister to disclosure of such documents until the person has been granted a right of review under subsection (6B) and the court has directed disclosure of such documents as it considers appropriate for the purposes of the review; and
- (b) shall not (notwithstanding anything to the contrary contained in the Supreme Court (Records) Act 1955) be permitted to view such documents on the court file until such right of review has been granted and the court has directed as aforesaid.

(6B) Upon the application under subsection (6) having been filed with the court, the court shall decide whether to grant the person a right of review.

(6C) The costs in relation to an application under subsection (6) shall be awarded as provided in section 11(a).

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(7) Rules of court may make provision—

- (a) for the discharge, variation and review of production orders; and
- (b) for proceedings in relation to such orders.

(8) Regulations shall be made, conferring such functions on such persons as the regulations may specify, so that full effect can be given to subsection (4).

(9) Where an application for a production order is made by a person designated, pursuant to section 2(2), to make such application, the person so designated must produce a minute signed by the Minister of Finance authorizing such delegation.

(10) The person referred to in subsection (1) in respect of whom the Minister has received a request for information shall not include the Government of Bermuda.

(11) *[repealed]*

*[Section 5 amended by 2012 : 27 s. 8 effective 13 July 2012; repealed and substituted by 2013 : 42 s. 3 effective 12 December 2013; subsections (6A), (6B) and (6C) inserted by 2014 : 31 s. 2 effective 8 December 2014; subsection (6A) repealed and substituted and subsections (6B) and (6C) amended by 2015 : 28 s. 3 effective 4 July 2015; subsections (1) and (3) amended, subsection (1A) inserted, subsection (9) repealed and replaced and subsection (11) repealed by 2017 : 1 s. 4 effective 23 February 2017]*

Tipping-off

5A (1) A person is guilty of an offence if—

- (a) he knows or suspects that the Minister is acting, or is proposing to act, in connection with a request under section 5; and
- (b) he discloses to any other person information or any other matter which is likely to prejudice the implementation of that request.

(2) A person is guilty of an offence if—

- (a) he knows or suspects that a request has been made under section 5; and
- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following such request.

(3) Nothing in subsection (1) or (2) makes it an offence for a professional legal adviser to disclose any information or other matter to, or to a representative of, a person who has received a production order who is a client of his, in connection with the giving by the adviser of legal advice to the client, but this subsection (3) does not apply—

- (a) in relation to a person outside Bermuda who is a representative of a person who has received a production order, unless the court has under the circumstances given permission, except that permission shall not be given by the court for a copy of the request from a requesting party, or any of its contents that are not reproduced in the production order, to be provided to such person outside Bermuda; or



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(b) in relation to any information or other matter which is disclosed with a view to furthering the contravention of the provisions of this Act.

(4) In proceedings against a person for an offence under subsection (1) or (2), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial as provided.

(5) No officer of the Ministry of Finance or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in accordance with the enforcement, or intended enforcement, of any provision of this Act.

*[Section 5A inserted by 2013 : 42 s. 4 effective 12 December 2013; subsection (3) repealed and substituted by 2014 : 31 s. 3 effective 8 December 2014]*

Statutory duty to provide information

6 (1) A person on whom a production order has been served under section 5 shall provide the information specified in the production order to the Minister, within the period specified in it.

(2) A person is not required to comply with a request for information if the information is not in the person's possession or control.

(3) *[repealed]*

*[Section 6(2) repealed and replaced by 2009:13 s.3 effective 25 March 2009; subsection (1) amended and subsection (3) repealed by 2013 : 42 s. 5 effective 12 December 2013]*

Power to enter premises to obtain information

6A (1) An officer of the Ministry of Finance may make an application to a judge in accordance with the provisions of this section for the issue of a warrant authorizing entry upon premises.

(2) Where an application for a production order under this section is made, the officer of the Ministry of Finance shall produce a minute signed by the Minister of Finance authorizing the officer to make the application in that particular case.

(3) If on information given on oath by such officer a judge is satisfied that there is reasonable ground for suspecting that an offence against this Act has been, or is being, or is about to be, committed on any premises, being an offence by reason of which the delivery to the Minister of information sought by a request is endangered, then the judge may issue a warrant in writing authorizing an officer of the Ministry of Finance to enter the premises, if necessary by force, at any time within 14 days commencing on the day of the issue of the warrant, and search them.

(4) In issuing a warrant under this section, the judge may impose such restrictions upon the execution of the warrant as he may deem proper in the circumstances.

(5) The officer of the Ministry of Finance entering premises by virtue of a warrant under this section may take such other persons and equipment with him as he thinks necessary; and, on leaving the premises entered by virtue of a warrant under this section, shall, if they are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

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(6) On entering premises by virtue of a warrant under this section, the officer of the Ministry of Finance may seize and remove any thing whatsoever found there which he has reasonable cause to believe may contain information relevant to a request, and shall deliver any thing so seized and removed to the Minister.

(7) Where entry to premises has been made by virtue of a warrant under this section and the officer of the Ministry of Finance making the entry has seized any thing under the authority of the warrant, he shall prepare a list of the things seized and, if so requested by a person showing himself either —

- (a) to be the occupier of the premises; or
- (b) to have had possession or custody of those things immediately before the seizure,

provide that person with a copy of that list.

(8) Where things are seized under the authority of a warrant and it is shown that access to those things is required for the continued conduct of the business or affairs of any person, the Minister shall afford to that person reasonable access to those things.

(9) *[repealed]*

*[Section 6A inserted by 2011 : 20 s. 7 effective 28 June 2011; subsections (1) - (3), (5) - (7) amended and subsection (9) repealed by 2017 : 1 s. 5 effective 23 February 2017]*

#### Statutory defence

7 Compliance with any direction given in a production order served under section 5 on a person or with section 4A, or section 4B is an absolute defence to any claim brought against that person in respect of any act done or any omission made by him in good faith in obedience to that direction or in compliance with section 4A, or section 4B.

*[Section 7 amended by 2013 : 42 s. 6 effective 12 December 2013; amended by 2016 : 20 s. 3 effective 9 June 2016; amended by 2017 : 19 s. 5 effective 21 April 2017]*

#### Forwarding information to requesting party

8 Where the Minister obtains any information pursuant to a production order made under section 5, obtains any information under section 6A or obtains any information under the provisions for the automatic exchange of information in an agreement—

- (a) he shall keep it confidential; and
- (b) he may—
  - (i) in the case of information obtained under such production order, provide it to the requesting party; or
  - (ii) in the case of information obtained by the automatic exchange of information, provide it to the automatic exchange of information party.

*[Section 8 repealed and replaced by 2011 : 20 s. 7 effective 28 June 2011; amended by 2013 : 42 s. 7 effective 12 December 2013; repealed and substituted by 2015 : 28 s. 4 effective 4 July 2015]*

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Judicial review

8A *[Repealed by 2013 : 42 s. 8.]*

*[Section 8A repealed by 2013 : 42 s. 8 effective 12 December 2013]*

Offences and Penalties

9 (1) Where a person—

- (a) is required by a production order under section 5 to produce any information, document or other material to the Minister or give the Minister or an official of the Ministry of Finance access to any information, document or material and the person contravenes the order without reasonable excuse;
- (aa) fails, without reasonable excuse, to comply with section 4A(1) or section 4B;
- (b) makes a disclosure of information to prejudice the implementation of a request or investigations being conducted following a request, contrary to section 5A; or
- (c) wilfully obstructs an officer executing a warrant under section 6A or a person lawfully accompanying him pursuant to subsection (5) of that section,

the person is guilty of an offence under this section.

(2) If any person, in or in connection with delivering information pursuant to section 4A(1) or section 4B or pursuant to a production order or required under section 6A, wilfully tampers with it or alters it so that the information is false when received by the Minister, he is guilty of an offence.

(3) If any person without a reasonable excuse destroys or damages any information which he knows should be delivered pursuant to section 4A(1) or section 4B or to the Minister pursuant to a production order or required under section 6A, he is guilty of an offence.

(3A) If any person knowingly provides false self-certification, he is guilty of an offence.

(4) A person guilty of an offence may be proceeded against summarily, and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months, or to both such imprisonment and such a fine.

*[Section 9 subsection (3) amended by 2011 : 20 s. 7 effective 28 June 2011; repealed and substituted by 2013 : 42 s. 9 effective 12 December 2013; subsections (1), (2) and (3) amended by 2015 : 28 s. 5 effective 4 July 2015; subsection (3A) inserted by 2017 : 8 s. 4 effective 2 March 2017; subsections (2) and (3) amended by 2017 : 19 s. 6 effective 21 April 2017]*

Exceptionally large volume of information requests

10 (1) Where a request for information under section 5(1) is made with respect to an exceptionally large volume of information, the Minister shall consult with the requesting

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party on the possibility of that party bearing the costs of providing such information in the place of the person required to provide the information, but such consultation shall not be accepted as reason for the person from whom the information is requested to delay providing, or to fail to provide, the information requested.

(2) Where the requesting party declines to bear the costs of providing the exceptionally large volume of information requested, the costs shall be borne by the person from whom the information is requested.

(3) In this section “exceptionally large volume of information” means a volume that exceeds 10,000 pages of information.

*[Section 10 inserted by 2014 : 31 s. 4 effective 8 December 2014]*

Costs arising from a person’s compliance with this Act

- 11 (1) For the avoidance of doubt, the Minister shall not bear the costs arising—
- (a) in the case of an application which is made under section 5(6), except where the court—
    - (i) decides to hear the application for review of the production order; and
    - (ii) the outcome of the review of the production order is not in the Minister’s favour;
  - (b) from proceedings resulting in the court determining whether to give permission under section 5A(3)(a); or
  - (c) from a person’s general compliance with the provisions of this Act.

- (2) Notwithstanding the generality of subsection (1), the Minister shall not bear the costs arising in the case of an application which is made under section 5(6) where the court—
- (a) decides not to hear the application for review; or
  - (b) decides to hear the application for review, but the production order is not set aside.

*[Section 11 inserted by 2014 : 31 s. 4 effective 8 December 2014; paragraph (a) amended by 2015 : 28 s. 6 effective 4 July 2015; subsection (2) inserted by 2017 : 1 s. 6 effective 23 February 2017]*

Regulations

12 (1) The Minister may make such regulations as he considers expedient for carrying the purposes and provisions of this Act into effect.

(1A) Without prejudice to the generality of subsection (1), the Minister shall make regulations for the purposes of the automatic exchange of information and such regulations may—

- (a) provide for the manner in which functions and obligations are to be carried out;
- (b) create offences and—

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- (i) prescribe penalties for such offences (including any defence, or if thought fit, imprisonment), but not exceeding the penalties fixed by section 9(4); or
- (ii) prescribe civil penalties;
- (c) provide for objections and appeals; and
- (d) provide for savings and transitional matters.

(2) Regulations made by the Minister under subsection (1) shall be subject to the negative resolution procedure.

*[Section 12 inserted by 2016 : 20 s. 4 effective 9 June 2016; subsection (1A) inserted by 2017 : 8 s. 5 effective 2 March 2017]*

#### Guidance

13 (1) The Minister may issue guidance for complying with the Common Reporting Standard or Country-by-Country Reporting, for using the electronic portal, or both.

(2) Any guidance issued under this section is not a statutory instrument and the Statutory Instruments Act 1977 shall not apply to it.

*[Section 13 inserted by 2017 : 8 s. 6 effective 2 March 2017; subsection (1) amended by 2017 : 19 s. 7 effective 21 April 2017]*

[Assent Date: 30 December 2005]

[Operative Date: 30 December 2005]

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*[Amended by:*

2009 : 13  
BR 5 / 2011  
2011 : 20  
2012 : 27  
2013 : 42  
2014 : 31  
2015 : 28  
2016 : 20  
2017 : 1  
2017 : 8  
2017 : 19]