



April 2015

Progress Towards Tax Transparency

OECD Developments

The Swiss Strategy – Latest Steps

Impact - What's Next

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OECD Developments - Reminder

- **13 February 2014** : the OECD has unveiled a new single global standard for the automatic exchange of information between tax authorities worldwide. The main success factors for effective automatic exchange of financial information are:
 - a common standard on information reporting, due diligence and exchange of information (the “CRS”);
 - a legal and operational basis for the exchange of information; and
 - common or compatible technical solutions.

- **21 July 2014** : the OECD publishes a full package for the automatic exchange of information in tax matters which consists of two components:
 - The CRS – Common Reporting Standard
 - A model of Competent Authority Agreement (“CAA”).

- **29 October 2014** : fifty-one jurisdictions signed the Multilateral Competent Authority Agreement (MCAA) at the Global Forum in Berlin

- **19 November 2014** : Switzerland joined the MCAA

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OECD Developments - Reminder

- The Common Reporting Standard (CRS) contains :
 - the **scope of financial institutions required to report** (bank and custodial institutions, depository institutions, collective investment entities, brokers and specified insurance companies)
 - the **scope of reportable accounts**, that is account holders subject to reporting (accounts held by individuals and entities, including trusts and foundations – look through principle on passive entities and reporting on the relevant controlling person/s)
 - the **scope of financial information to be reported** (that is investment income – typically interest and dividends, income from certain insurance contracts and also total gross amount of other income generated with respect to assets held in the account or payments made with respect to the account as well as balances, sales proceeds from financial assets),
 - The **reporting duties and due diligence rules** that must be followed to identify reportable accounts.

- Jurisdictions may choose to exchange information beyond the minimum standard set out in the OECD report.

- The Model CAA contains the detailed rules on the exchange of information and actually links the CRS and the legal basis for the exchange (such as the OECD Convention or a bilateral treaty) allowing the financial account information to be exchanged.

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OECD Developments - Reminder

■ For the participating jurisdictions, implementation of the standard would require

1. to adopt a proper legal basis for exchange of information

- In order to avoid a proliferation of different and inconsistent models, it is more efficient to establish automatic exchange relationships on the basis of a multilateral instrument
 - the Multilateral Convention on Mutual Administrative Assistance in Tax Matters dd 1988, as amended in 2010, or
 - EU legislation.
- Switzerland signed this Convention on 15 October 2013 (still to be approved and ratified by the Parliament)

2. to sign a separate agreement – known as the Multilateral Competent Authority Agreement – allowing for a single agreement with multiple parties to activate and make “operational” automatic exchange between participants (with actual automatic exchange always taking place on a bilateral basis).

3. to translate the common reporting and due diligence standards into domestic law and adopt proper domestic rules to create legal authority to collect and report relevant information

■ Pre-requisites before activation of the mechanism of exchange of information on an automatic basis with another jurisdiction

- Receiving jurisdiction must have the legal framework and administrative capacity and processes in place to ensure the confidentiality of the information received; and
- That such information received is used only for the purposes specified in the Convention and the CAA.
- Common or compatible technical solutions for reporting and exchanging information will be a critical element.

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EU Developments - Reminder

- 24 March 2014 : Adoption by the EU Council of a directive (2014/48/EC) strengthening EU rules of the current Directive 2003/48/EC on the exchange of information on savings income.
 - Directive 2003/48/EC requires the member states to exchange information automatically so as to enable interest payments made by paying agents in one member state to individuals resident in another member state to be taxed in accordance with the laws of the state of residence.
 - The new text enlarges the scope of directive 2003/48/EC, reflecting changes to savings products and developments in investor behaviour since it came into force on 1 st July 2005.
 - The member states will have until 1 January 2016 to adopt the national legislation necessary to comply with the directive 2014/48/EC.

- Caution: Directive 2014/107/EU will prevail over any other EU legal instrument, including Directive 2014/48/EC

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EU Developments - Reminder

- 9 December 2014 : Adoption by the EU Council of a new directive (2014/107/EU) amending the Mutual Assistance Directive on Administrative Cooperation in the Field of Taxation (2011/16/EU)
 - Directive 2011/16/EU already provides for the mandatory automatic exchange of information between Member States on certain categories of income and capital, mainly of a non-financial nature + establishes a step by step approach to reinforcing automatic exchange of information by its progressive extension to new categories of income and capital.
 - EU Member States concluded agreements with the U.S.A. meaning that wider cooperation will be provided.
 - The conclusion of parallel and uncoordinated agreements by Member States could lead to distortions that would be detrimental to the smooth functioning of the internal market.
 - In order to minimize costs and administrative burdens both for tax administrations and for economic operators, it is crucial that the expanded scope of automatic exchange of information within the EU is in line with the international developments.
 - Member States should require their Financial Institutions to implement reporting and due diligence rules which are fully consistent with those set out in the CRS developed by the OECD.
 - Deadlines:
 - Member States shall adopt and publish, by 31 December 2015, the laws and regulations necessary to comply with the Directive
 - They shall apply those measures from 1 January 2016 with respect to taxable periods as from that date
 - Austria: as from 1 January 2017 with respect to taxable periods as from that date.
 - Due diligence rules differ between individual accounts and entity accounts and make a distinction between pre-existing and new accounts.

CRS and IGA status across Jurisdictions - as of January 2015

	CRS Early Adopters ➢ New Procedures 2016 ➢ Reporting 2017	CRS Committed ➢ New Procedures 2017 ➢ Reporting 2018	CRS Committed ➢ Timeline TBD	Non-CRS
Signed IGA	<ul style="list-style-type: none"> Barbados Belgium Bermuda British Virgin Islands Bulgaria Cayman Islands Chile Cyprus Czech Republic Denmark Estonia Finland France Germany Gibraltar Guernsey Hungary Ireland Isle of Man Italy Jersey Latvia Liechtenstein Lithuania Luxembourg Malta Mauritius Mexico Netherlands Norway Poland Slovenia South Africa Spain Sweden Turks and Caicos Islands United Kingdom 	<ul style="list-style-type: none"> Austria Australia Bahamas Brazil Canada Costa Rica Japan Hong Kong (China) Israel New Zealand Singapore Switzerland 	(none)	<ul style="list-style-type: none"> Honduras Jamaica Moldova
Agreed in Substance IGA	<ul style="list-style-type: none"> Anguilla Colombia Croatia Curaçao Dominica Greece Greenland Iceland India Montserrat Portugal Romania San Marino Seychelles Slovak Republic South Korea Trinidad and Tobago 	<ul style="list-style-type: none"> Antigua and Barbuda China Grenada Indonesia Macao Malaysia Qatar Saint Kitts and Nevis Saint Lucia Saint Vincent and Grenadines Saudi Arabia Turkey United Arab Emirates 	<ul style="list-style-type: none"> Bahrain Panama 	<ul style="list-style-type: none"> Algeria Angola Armenia Azerbaijan Belarus Cabo Verde Cambodia Dominican Republic Georgia Guyana Haiti Holy See Iraq Kazakhstan Kosovo Kuwait Montenegro Nicaragua Paraguay Peru Philippines Serbia Taiwan Thailand Tunisia Turkmenistan Ukraine Uzbekistan
Non-IGA	<ul style="list-style-type: none"> Argentina Faroe Islands Niue Uruguay 	<ul style="list-style-type: none"> Albania Andorra Aruba Belize Brunei Marshall Islands Monaco Russia Samoa Sint Maarten 	<ul style="list-style-type: none"> Cook Islands Nauru Vanuatu 	(all other jurisdictions)

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What's Next

- Signing a CAA – competent authority agreement based on the model provided by the OECD allows jurisdictions to put in place the information exchange based on the existing legal basis (the OECD Convention) or on any appropriate bilateral income tax convention as the case may be.
- The signing of the Multilateral Agreement (CAA) between fifty-one jurisdictions means that the participating jurisdictions commit themselves to implement the CRS, to adopt any domestic measures as required to apply the new standard and to enforce Automatic Exchange of Information by 2017 (the early adopters) or 2018 (see above list).
- In 2015, the participating jurisdictions will adopt implementation plans. For the early adopters, exchange of information shall start as from 2017 (on the basis of financial information collected as from 1st January 2016). For all other participating jurisdictions, exchange of information shall start as from 2018 (on the basis of financial information collected as from 1st January 2017).
- A group of jurisdictions, collectively known as the Early Adopters Group, have committed themselves to early adoption of the new standard and have provided specific timelines for implementation in the form of a Joint Statement, with the first exchange of information in relation to new accounts and pre-existing individual high value accounts to take place by the end of September 2017. Information about pre-existing individual low value accounts and entity accounts will either first be exchanged by the end of September 2017 or September 2018 depending on when financial institutions identify them as reportable accounts.

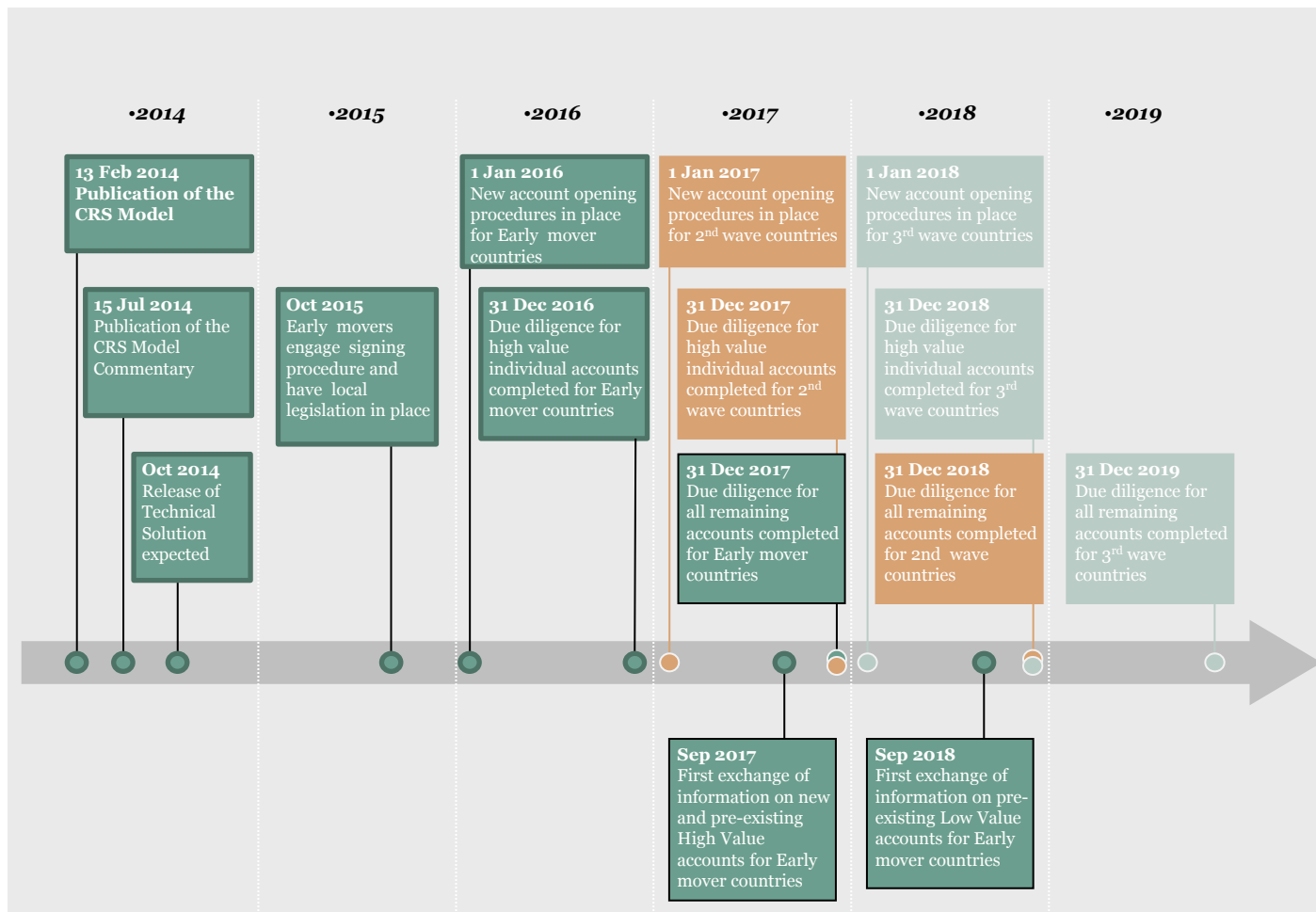
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The United States of America Position

- The U.S.A. has indicated that it will be undertaking automatic information exchanges pursuant to FATCA from 2015 and has entered into IGAs with other jurisdictions to do so.
- The Model 1A IGAs acknowledge the need for the U.S.A. to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions.
- The U.S.A made a **political commitment** to pursue the adoption of regulations and to advocate and support relevant legislation **to achieve such equivalent levels of reciprocal automatic exchange**.
- On 30 July 2014, the Financial Crimes Enforcement Network (FinCEN) issued a notice of **proposed rulemaking regarding customer due diligence procedures** that includes a new obligation for U.S. Financial Institutions to identify the beneficial owners of accounts.
- Under the proposed rulemaking the definition of beneficial owner contains an ownership test and a control test.
 - Under the ownership test, any individual who, directly or indirectly, has a 25% interest in the equity interest of a legal entity is a BO.
 - Under the control test, a single individual who has “significant responsibility to control, manage, or direct a legal entity is a BO.
- Exceptions and exemptions
 - Trusts are excluded from the legal entity definition, so no beneficial owner information must be collected for them.
 - **Only legal entity opening new accounts after the rules go into effect will be subject to the BO requirements.**
 - U.S. Financial Institutions will not have to retroactively collect beneficial owner information for existing accounts
 - The proposed BO identification will rely on self-certification by the entity opening the a/c, with the U.S. FI simply verifying the identity of the individual listed

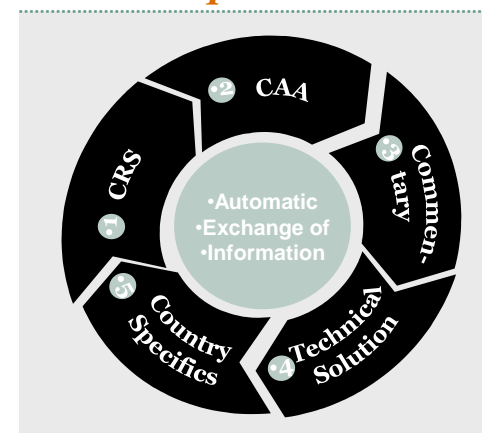
Timeline

OECD Timeline



• Regulatory components • Early movers • 2nd wave countries • 3rd wave countries

Relevant Regulatory Components



Impact

- CRS will fundamentally change a bank's way to do offshore business both from a strategic and an operational point of view.
- Business Challenge: minimize client attrition and provide value added services

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Next Challenges

- CRS is only a piece within a much broader set of rules and developments
 - New Predicate Offences (such as Qualified Tax Evasion) to Money Laundering
 - Qualified tax evasion requires a false document + an amount of taxes evaded equal or higher than Chf 300'000 p.a.
 - Risk Based Approach : in case of founded suspicions, duty to announce to the competent authority.
 - New Beneficial Ownership Identification Rules at Companies Level
 - Shareholders of unquoted companies to be identified
 - Beneficial Owners identification required in case of voting rights or shareholding equal or higher than 25%
 - Extended Beneficial Ownership Identification Requirements for Financial intermediaries (incl. Banks)
 - Financial intermediaries need to identify the BO not only in case of Domiciliary Companies but also in case of Operational Legal Entities
 - Duty to check risk of non tax compliance before acceptance of assets
 - In particular when clients come from States without any systematic exchange of information in tax matters mechanism.

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Latest Steps in Switzerland

- Switzerland will – in 2015 - release a set of new rules and regulations
 - Act implementing in Swiss legislation the FATF principles – Adopted on 12 December 2014
 - Qualified Tax Evasion as a New Predicate Offence to Money Laundering
 - New Code of Conduct
 - New Beneficial Ownership Identification Rules
 - Implementing rules of the CRS released on 14th January 2015 – Consultation phase ends on 21st April 2015
 - Swiss law does not allow (yet) for automatic exchange of information with foreign countries and therefore Switzerland need to enact implementing legislation.
 - OECD / Council of Europe Convention on Mutual Administrative Assistance in Tax Matters
 - MCAA – Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information
 - Amendments to domestic laws allowing the exchange of information with foreign countries
 - Plans to enact national legislation that will enable Switzerland to implement the global standard on automatic information exchange are on the way.
 - Bill to be sent to the Swiss Parliament in Fall 2015

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Latest Steps in Switzerland

- March 2015 - First Bilateral Agreement on Automatic Exchange of Information in Tax Matters
 - Agreement between Switzerland and the EU initialled on 19 March 2015 regarding the introduction of the global standard for the automatic exchange of information in tax matters.
 - The agreement on the automatic exchange of information (AEOI) in tax matters will replace the taxation of savings agreement with the EU that has been in force since 2005 and will apply for all 28 EU member states. The OECD's global AEOI standard has been included in full in the new agreement. The AEOI agreement is reciprocal, which means that the EU member states and Switzerland have the same undertakings towards one another with regard to the exchange of account information.
 - Swiss government intends to introduce the automatic exchange of information in 2017 and exchange data for the first time in 2018. To date, approximately 100 countries, including all major financial centres, have committed themselves to introducing this global standard.
 - The European Commission has stressed to its members the importance of regularisation of the past before the automatic exchange of information is introduced. Various EU member states have launched regularisation programmes or stepped them up in recent years.
 - The agreement initialed with the EU should be signed formally by both treaty partners in the coming weeks. In Switzerland, the agreement will then be submitted to Parliament for approval. It is subject to an optional referendum. The agreement's entry into force in 2017 is conditional on completion of the approval processes in Switzerland and the EU by then.
 - Aside from the EU, Switzerland is seeking to achieve the automatic exchange of information with the United States and other countries in accordance with the Federal Council negotiation mandate.

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Next Steps in Switzerland

- Multiple and numerous questions still unanswered
 - How Switzerland will negotiate with selected countries - to be considered on the basis of close economic and political ties and which, if appropriate, provide with sufficient scope for regularisation and which are deemed promising in terms of their market potential for Switzerland's finance industry ?
 - How Switzerland will make sure that the following prerequisites are met
 - Only one global standard
 - Exchanged information should be used solely for the agreed purpose
 - Information should be reciprocal
 - Data protection shall be ensured
 - Beneficial owners of trusts and other legal arrangements shall also be identified
 - What about search of information by way of a Group request covering potentially any behaviour, conduct and fact occurred during any period as from 1st February 2013 ?
 - What about other competing jurisdictions ?

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What to do

■ Screening + Risk Analysis

- Family and professional circumstances - Patrimonial fact pattern – Clients objectives and needs
- Discuss the impact – if any - of the global trends and specific initiatives leading to more transparency

■ Option Panel

■ Tax Suitability

- Selection of tax suitable investments and tax efficient structuring if and when appropriate
- Complete and reliable flow of financial information relevant for tax purposes

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Conclusion

- Automatic exchange of information is on its way – worldwide - but requires a thorough analysis in terms of risks incurred.
- Tax transparency increases the need for tax suitable investments, tax efficient structuring and complete and reliable financial information for tax purposes.
- Clients need urgently to consider and review legitimate ways and means to get their tax affairs right
 - Change of Mind-set to the new paradigm
 - Clients need to find proper answers and sustainable solutions
- **Time has come to address the current challenges and issues.**



THANK YOU