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AUTOMATIC EXCHANGE OF INFORMATION IN TAX MATTERS: THE GLOBAL TRANSPARENCY ERA HAS STARTED

May 2017

The British Chamber of Commerce for Luxembourg

TODAY’S SPEAKERS

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AGENDA

JOURNEY TO TRANSPARENCY

JOURNEY TO TRANSPARENCY

The history of the international exchange of tax information is, until the onset of the 21st century, a history of opacity. Growing awareness that taxation is a global phenomenon has resulted in a political effort to impose transparency as a way of combatting tax evasion.

DRIVING FORCES

- Growing awareness that tax is a global phenomenon
- Higher level of mistrust among countries and/or blocs
- Increase in public deficits
- Expansion of multinationals and liberalization of capital movements
- Technological advances

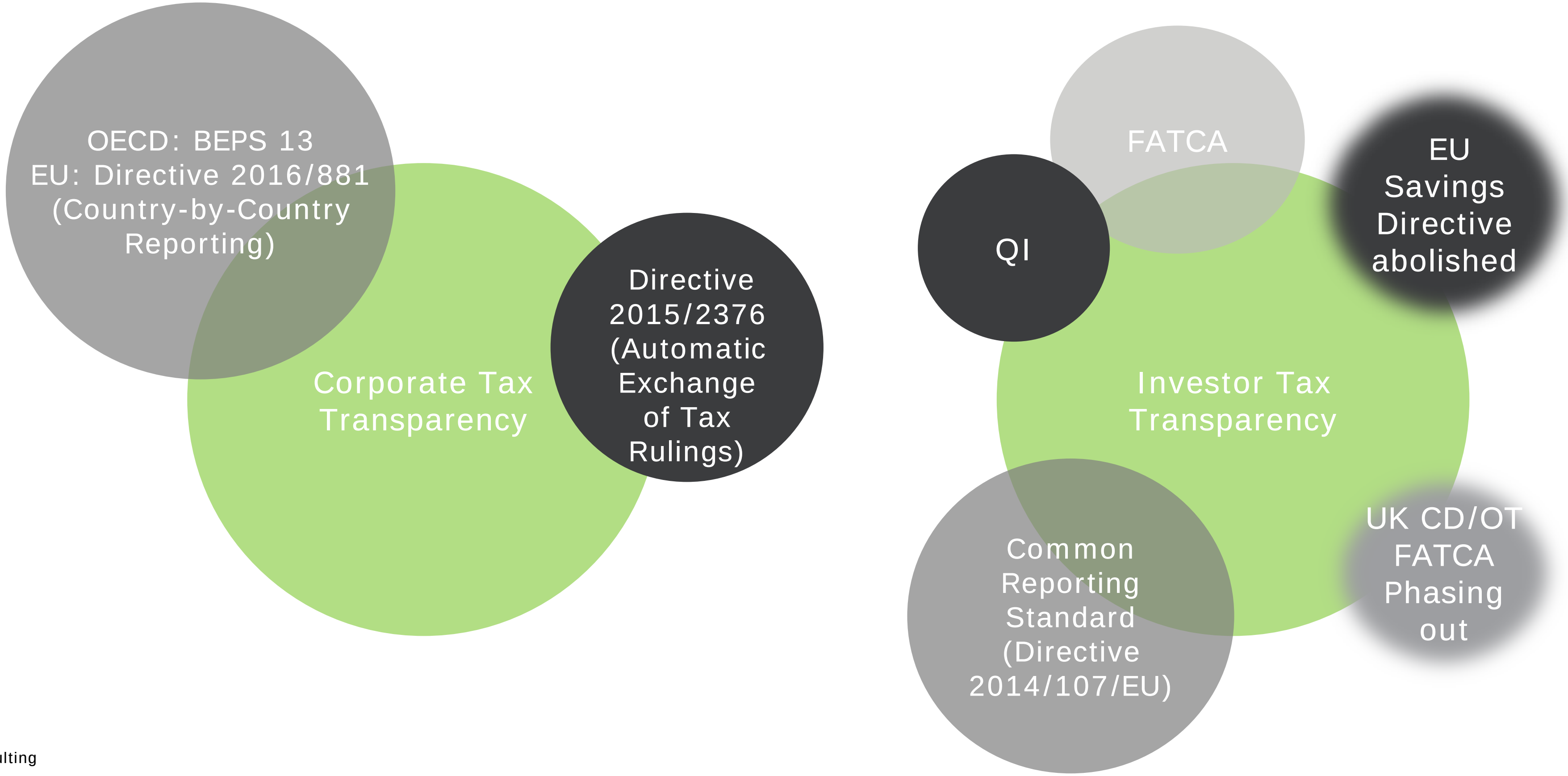
POLITICAL RESPONSE

- **1989**: Failed EU Savings Directive
- **1993**: EU common system of VAT
- **1998**: OECD study of harmful tax competition
- **1999**: Code of Conduct for business taxation
- **2001**: Introduction of the QI regime
- **2003**: Approval of the EU Savings Directive
- **2009**: Exchange of information on request
- **2010**: Introduction of FATCA
- **2014**: Automatic exchange of information
- **2016**: CbC Reporting

JOURNEY TO TRANSPARENCY

Current state of play

Two types of tax transparency



CORPORATE TAX TRANSPARENCY: COUNTRY-BY-COUNTRY REPORTING

CORPORATE TAX TRANSPARENCY

Country-by-Country Reporting (CBCR): Would give the tax authorities a global picture of MNE groups – showing where they operate, where they make profits and pay taxes, where they invest, the number of employees, etc. Will enable tax administrations to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries.

Main obligations

- Requires large MNE groups to file a CBC Report that will provide a breakdown of the amount of revenue, profits, taxes and other indicators of economic activities for each tax jurisdiction in which the MNE group does business.
- Only applies to MNE groups with annual consolidated group revenue of €750m or more in the preceding fiscal year.

Objective

- Tax authorities can then use this information to perform high-level transfer pricing risk assessments and to evaluate other BEPS-related risks.

CORPORATE TAX TRANSPARENCY

CBCR mechanism

MNE Group

2016 - early 2017: Designates a Reporting Entity

Reporting Entity

2017: Collects information on Constituent Entities, notifies the Luxembourg tax authorities regarding its CBC reporting status

Reporting Entity

31.12.2017: First CBC Report to be filed with the Luxembourg tax authorities

Luxembourg tax authorities

2018: CBC Report electronically exchanged with the tax authorities where Constituent Entities are located

CORPORATE TAX TRANSPARENCY

Content of the CbC Report

Tax jurisdiction	Revenues (related & unrelated)	Pre-tax profit
Income tax (cash basis)	Income tax (accrued)	Stated capital
Accumulated earnings	Number of employees	Tangible assets

Overview of allocation of income, taxes and business activities by tax jurisdiction

CORPORATE TAX TRANSPARENCY

Content of the CbC Report

Tax jurisdiction	Constituent entities	Tax jurisdiction of incorporation or organisation

Main business activities:

- Research and Development
- Holding or Managing Intellectual Property
- Purchasing or Procurement
- Manufacturing or Production
- Sales, Marketing or Distribution
- Administrative, Management or Support Services
- Provision of Services to Unrelated Parties
- Internal Group Finance
- Regulated Financial Services
- Insurance
- Holding Shares or Other
- Equity instruments
- Dormant
- Other

List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

CORPORATE TAX TRANSPARENCY

CBCR implementation status

AMERICAS

- Argentina
- Bermuda
- Brazil
- Canada
- Chile
- Colombia
- Costa Rica
- Curacao
- Mexico
- Peru
- United States
- Uruguay

EMEA

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Gabon
- Georgia
- Germany
- Greece
- Guernsey
- Hungary
- Iceland
- Ireland
- Isle of Man
- Israel
- Italy
- Jersey
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Mauritius
- Netherlands
- Nigeria
- Norway
- Poland
- Portugal
- Russia
- Senegal
- Slovak Republic
- Slovenia
- South Africa
- Spain
- Sweden
- Switzerland
- Turkey
- Ukraine
- United Kingdom

ASIA PACIFIC

- Australia
- China
- Hong Kong
- India
- Indonesia
- Japan
- ~~Korea~~
- Malaysia
- New Zealand
- Singapore
- Taiwan
- Vietnam

Signatories of the Multilateral Competent Authority Agreement

Bilateral agreements or unknown legal instrument

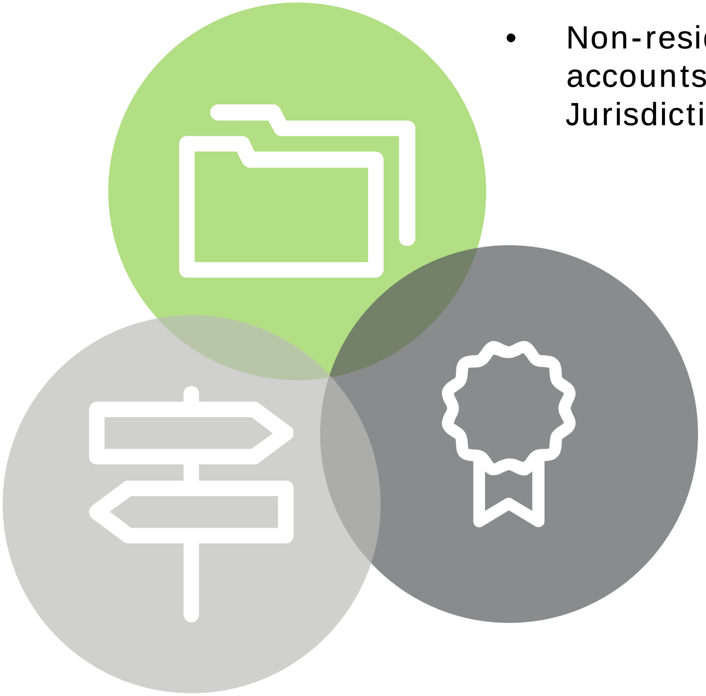
INVESTOR TAX TRANSPARENCY: COMMON REPORTING STANDARD

INVESTOR TAX TRANSPARENCY

The CRS in a few words

For whom?

- Non-resident individual or entities holding accounts or insurance contracts in a Partner Jurisdiction that became a Reportable Jurisdiction.



Why?

- Fight tax evasion by allowing Partner Jurisdictions to be informed on financial assets held abroad by their tax residents, as well as income realised on these assets.

How?

- Automatic exchange of information between Partner Jurisdictions through local tax authorities, provided legal instrument in place to launch exchange
- Early adopters:
  - Entry into force in 2016
  - First reporting in 2017
- Other Partner Jurisdictions:
  - Entry into force in 2017
  - First reporting in 2018

INVESTOR TAX TRANSPARENCY

CRS commitments snapshot

AMERICAS

Anguilla
Antigua and Barbuda
Argentina
Aruba
Bahamas
Barbados
Belize
Bermuda
Brazil
British Virgin Islands
Canada
Cayman Islands
Chile
Colombia
Costa Rica
Curacao
Dominica
Grenada
Mexico
Montserrat
Panama
Saint Kitts and Nevis
Saint Lucia
Saint Martin
Saint Vincent and the Grenadines
Trinidad & Tobago
Turks and Caicos Islands
United States of America*
Uruguay

EMEA

Albania
Andorra
Austria
Bahrain
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Faroe Islands
Finland
France
Germany
Ghana
Gibraltar
Greece
Greenland
Guernsey
Hungary
Iceland
Ireland
Isle of Man
Israel
Italy
Jersey
Kuwait
Latvia
Lebanon
Liechtenstein
Lithuania
Luxembourg
Malta
Mauritius
Monaco
Netherlands
Norway
Poland
Portugal
Qatar
Romania
Russia
San Marino
Saudi Arabia
Seychelles
Slovak Republic
Slovenia
South Africa
Spain
Sweden
Switzerland
Turkey
United Kingdom
UAE

ASIA PACIFIC

Australia
Brunei Darussalam
China
Cook Islands
Hong-Kong
India
Indonesia
Japan
Macao
Malaysia
Marshall Islands
Nauru
New Zealand
Niue
Samoa
Singapore
South Korea
Vanuatu

”Early adopters” – First exchanges by 2017 on calendar year 2016

Jurisdictions undertaking first exchanges by 2018 on calendar year 2017

INVESTOR TAX TRANSPARENCY

Main obligations of Reporting FIs and other entities.

Obligation of Luxembourg Reporting FIs

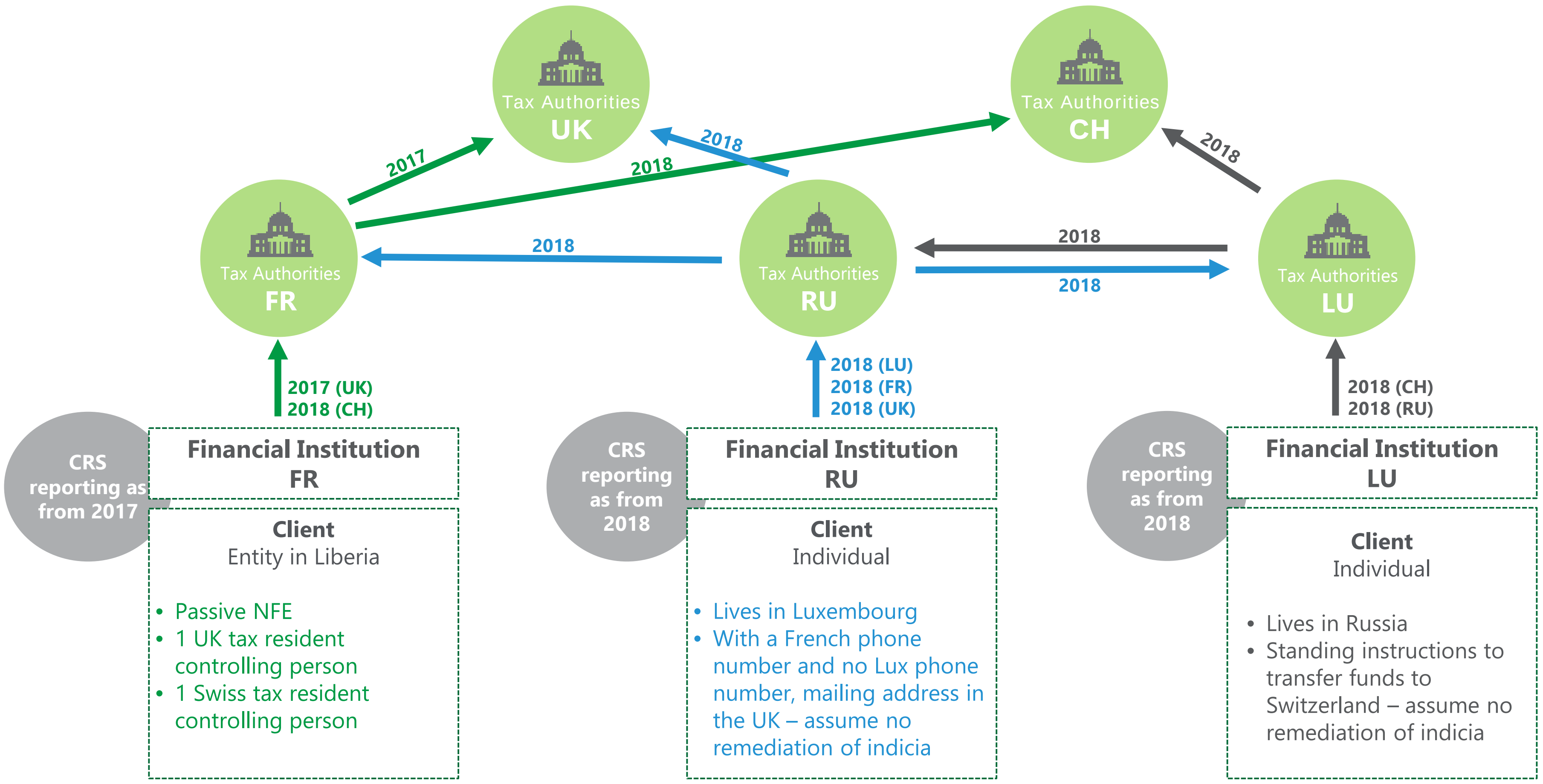
- Client due diligence and classification
- Reporting of reportable persons
- Specific requirements with respect to data protection notifications regarding individuals

Obligations of Luxembourg entities that are not FIs

- Determination and self-certification of its CRS status.
- Passive NFE additionally need to identify the controlling persons and notify them to the banks / other FIs as part of their self-certification.

INVESTOR TAX TRANSPARENCY

Reporting complexity



Complexity resulting from…

- Requirement to look through passive non-financial entities regardless of their residence to identify the controlling persons
- Several implementation dates of CRS in multiple jurisdictions, that need to be managed within a same group
- Multiple reporting in context of CRS in case of non-remediated indicia for the same client
- Different CRS due diligence cut-off dates between various legal instruments imposing CRS reporting, possibly resulting in repeated due diligence in the same jurisdiction
- CRS reporting volume expected to be substantially increased compared to FATCA

LOOKING AHEAD: UPCOMING DEVELOPMENTS

LOOKING AHEAD

A glimpse into the future

Tax transparency is here to stay and will become business as usual for multinational groups.

CRS/CBCR SCOPE EXTENSION

- **Increasing number of countries** starting to apply (and signing up) for CRS and CBCR

INCREASED SCRUTINY ON TAX AVOIDANCE ENABLERS

- Intermediaries that are involved in **creating, marketing and facilitating** illegal tax-avoidance schemes may be subject to increased scrutiny by domestic and foreign tax authorities
- E.g. Under the UK's Promoters of Tax Avoidance Schemes (POTAS) legislation, lawyers, banks and accountants face a penalty of up to 100% of tax they helped illegally avoid

PUBLIC CBCR?

- A further step in tax transparency would be to broaden it by providing the **public** with a global picture of the taxes MNEs pay on their corporate income.
- EU level: Proposal for an amendment to the Accounting Directive 2013/34 to require MNE groups **to make tax information available to the public**
- National initiatives (e.g. France)

IMPACTS OF BREXIT

IMPACTS OF BREXIT

The UK has announced their intention to transpose the entire body of EU legislation into UK law at the moment the European Communities Act is repealed. As a consequence, the same laws and rules, including those related to tax transparency at the EU level, will apply immediately before and immediately after the departure. Subsequent “corrections” may be made to the converted EU legislation that is not considered as operating correctly.

Article 50

Great Repeal Act

Transposition of the *Acquis* into UK law

EU Directives

Global vs EU tax transparency measures

CJEU case law

CLOSING REMARKS