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- a) as a complete document on any given subject nor;
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Common Reporting Standard(CRS): Banks' Application and Challenges

LACPA – CCIB
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The logo for Bank Audi, featuring a large blue circle with the text "Bank Audi" in white. The circle is partially overlaid by several blue diagonal stripes of varying thicknesses, creating a dynamic, abstract design.

Bank Audi

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Introduction

Tax evasion was one of the **major causes for the 2008 financial crisis.**

Definition of Tax Evasion

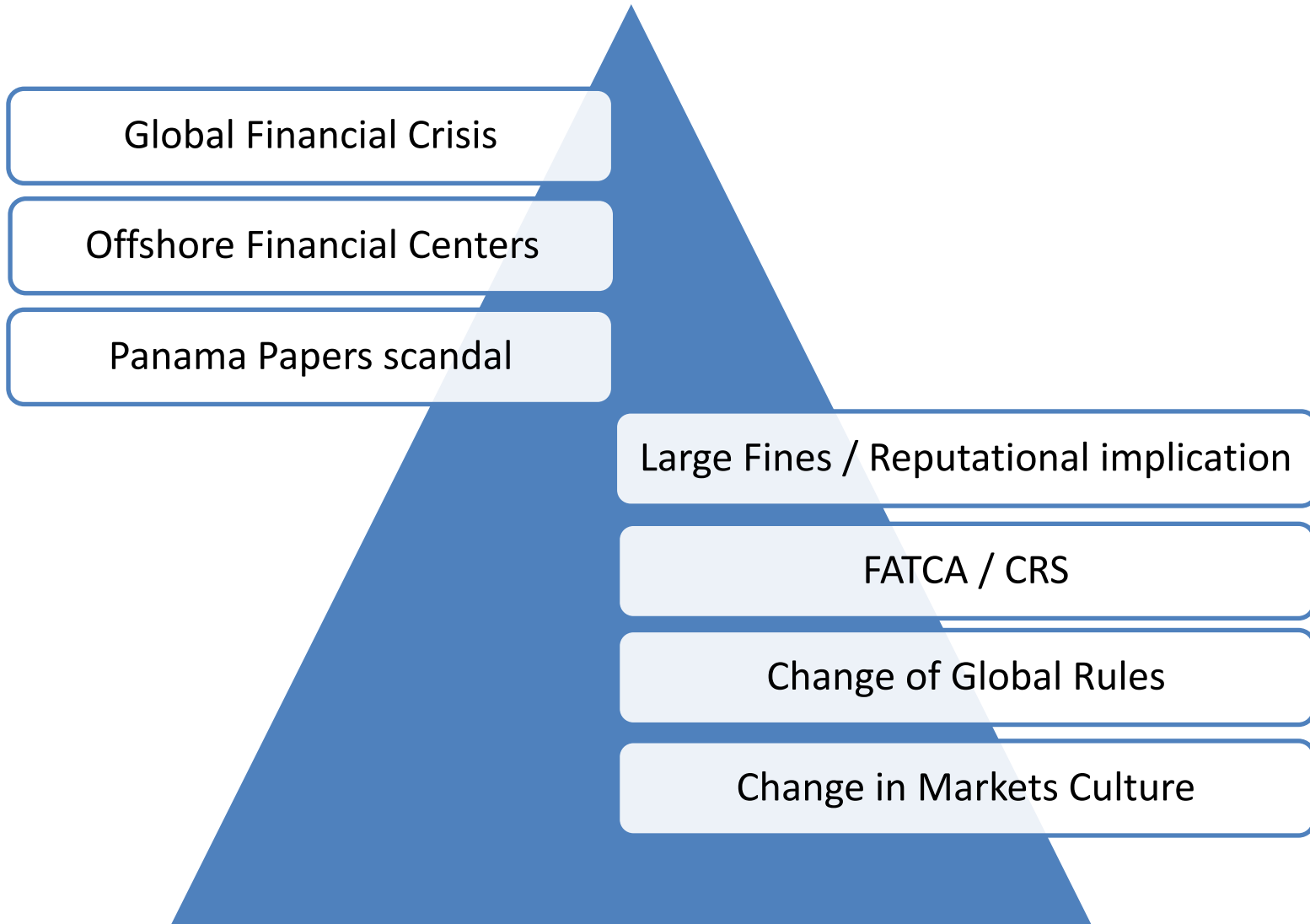
US - Internal Revenue Source:

Intentional wrongdoing, on the part of a taxpayer, with the specific purpose of evading a tax known or believed to be owing.

OECD – Glossary of tax terms:

Illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays **less tax than he is legally obligated to pay** by hiding income or information from the tax authorities

From Evasion to Compliance



Fighting Tax Evasion

- The Foreign Account Tax Compliance Act “**FATCA**” was adopted by the United States in 18 March 2010, for the cause of fighting tax evasion, **setting a system of exchange of information for tax purposes.**
- FATF directives 2012 : **tax evasion as predicate offense**
- In February 2014, the G20 **approved OECD’s Automatic Exchange of Financial Account Information “AEOI”.**

→ **More than 100 countries** (which include the bulk of the relevant countries) **already adopted** the AEOI, where some countries have committed **to report in 2017** and the majority in **2018.**

Complying with Lebanese Laws

Lebanon has committed to the Automatic Exchange of Tax Information (first exchanges in 2018) and has joined the Global Forum

- **Law No. 55** (2016): **Exchange of information for Tax Purposes**
Procedures and responsible authorities: On-demand and automatic
- **Law No. 60** (2016): Defined “**residency**” for entities and individuals
 - **Individual:** having a place of business, or presence test: 183 day rule, or permanent place of residence
 - **Entity:** Incorporated / registered / having a place of business in Lebanon
- **Law No. 74** (2016): **Tax obligations** of people performing **Trustee activities**
- **Law No. 75** (2016): **Prohibition/Cancelling bearer shares**
- **Law No. 44** (2015): Tax Evasion is a **predicate offense under Money Laundering and Terrorism Financing Crimes**

Liability

CRS is part of a local legislation

Financial Institutions Liability

- Establish a full fledged **compliance program**
- Program to include: **policies and procedures, KYC, systems, controls...**

Relationship Manager Liability

- **Reason to know**
- **Change in circumstances**

Taxpayer Liability

- **Provide accurate and complete documentation**

Consequences & Implications

Consequences of not committing to the Standard

Legal: Foreign & Local

Reputational

Implications of a Breach of the Standard

- **Violation of local laws**
- **Tax investigation** from foreign jurisdiction
- Country getting **blacklisted** → **De-risking**
- **Reputational**

Automatic Exchange of Information

Key Features of a Global Model of Automatic Exchange of Financial Account Information

Common standard on reporting, due diligence and exchange of information

Legal and operational basis for exchange of information

Common or compatible technical solutions

Manner of Exchange

Participating jurisdictions obtain financial information from their local financial institutions

Reciprocal and automatic exchange that information with other jurisdictions on an annual basis

Reporting of information from the country where the account is held to the account holder's country of residence

What is Common Reporting Standard ?

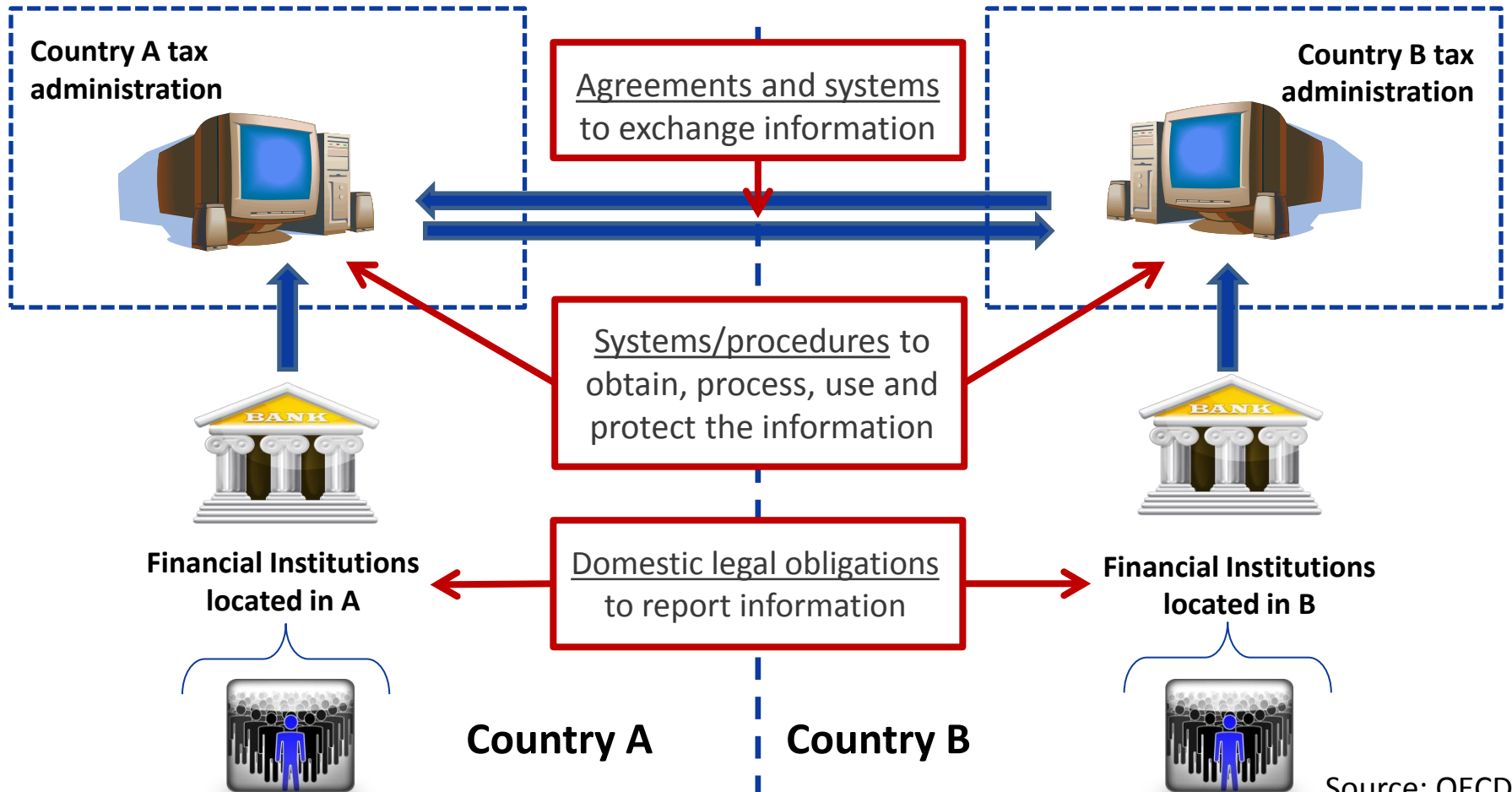
- Standard for automatic exchange of financial account information in tax matters, **issued by the OECD** and signed by 54 countries.
- **Signed by all EU Member states** (and other countries) on 29th of October, 2014.
- **EU wide implementation** through a council directive
- **Imposes customer identification and reporting procedures** with respect to accounts held by **clients that are tax residents of the countries** that have adopted the CRS
- **Based on FATCA, but with some notable differences**

What is required?

- **Financial institutions must** undertake a comprehensive review of their existing financial account holders to **identify clients that are tax residents of the CRS zone countries and who hold financial accounts**, either directly or indirectly.
- Going forward, financial institutions must also **identify any account holders that are tax residents of the CRS zone countries** and that are opening new financial accounts
- All reportable account holders must be **reported to the local tax authority** on an annual basis

What is Common Reporting Standard ?

Cooperation between tax administrations for the purpose of **fighting tax evasion** and protecting the integrity of tax systems



What is Common Reporting Standard?

OECD / CRS

- Domestic **law**
- Mandatory **reciprocal** exchange of information
- Due diligence **based on tax residency**
- **No de minimis** for Individuals
- No withholding, no NPFFI & **no recalcitrant accounts**
- **RM certification** yearly renewal

FATCA

- FFI agreement or IGA: “Responsible officer” concept / IRS Certification
- Possibility of unilateral exchange of information
- Due diligence based on citizenship
- De minimis limits
- Withholding, NPFFI & recalcitrant classification

The Standard respects the sovereignty of countries and their laws

CRS Status of Commitment

OECD

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2017 (54)

Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks and Caicos Islands, United Kingdom

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018 (47)

Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Bahrain, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Dominica, Ghana, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Kuwait, Lebanon, Marshall Islands, Macao (China), Malaysia, Mauritius, Monaco, Nauru, New Zealand, Panama, Qatar, Russia, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Turkey, United Arab Emirates, Uruguay, Vanuatu

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CRS Timeline for Exchange

Timing for 2018 first exchanges (Lebanon)

Effective date of CRS	New accounts 1 January 2017 (subject to new on boarding procedures)
	Pre-existing accounts: 31 December 2016
Due diligence	Pre-existing high value individual accounts: by 31 December 2017 (1 year after effective date)
	Pre-existing entity and pre-existing low value individual: by 31 December 2018 (2 years after effective date)
First exchange (all reportable new accounts and all reportable pre-existing high value individual)	September 2018 , covering year 2017
Second exchange (all reportable new accounts and all reportable pre-existing accounts)	September 2019 , covering year 2018

Who will be Impacted?

Reporting Financial Institutions: Banks, brokers, custodians, trusts, certain insurance companies, certain collective investment vehicles/funds

Who is in scope?

- Depository institutions
- Custodial institutions
- Investment entities
- Insurance companies (Certain insurance products)

Reportable Accounts:

- Reportable individuals
- **Active Entities:** Place of Residency/Incorporation
- Accounts held by a **passive entity** where that entity has one or more controlling persons that are individual Reportable persons
- **Controlling person** is the individual(s) who have a **controlling ownership interest** or who exercise ultimate effective control over a trust – Said term should be interpreted in a manner **consistent with FATF (25% threshold)**
- **Certain insurance products** : Cash Value Insurance Contract, Annuity Contract

Banks and Governmental Authorities: Complementary Roles

Governments' Role

Banks' Role

Banks play a major role as gatekeepers between customers and governments

- Sign the **Competent Authority Agreement "CAA"**
 - **Bilateral Agreements**
 - Create **local rules** to support the Automatic Exchange of Information
 - Set the **standard and operational basis** for implementation
 - Automatic **exchange** of information
 - Ensure **confidentiality and data safeguard**
- Perform required **due diligence** on their accounts
 - Implement **operational requirements** for reporting
 - **Report** to local authorities in line with the standard set
 - Ensure **confidentiality and data safeguard**
 - **No illegal assistance** → assistance on Compliance with laws

CRS Compliance Program

1) BoD and Management actions:

- Update the BoD on CRS requirements and implications
- Tone from the top: RM should not provide assistance in evasion, structuring, advising, and must stay alert to red flags
- **Assign an owner** to implement the CRS program (similar to FATCA RO) and report to BoD on progress and deficiencies

2) Develop a Tax policy and implementation processes

Amend KYC to include “Tax Residency country, TIN, Active / Passive test”

Develop a Self Certification

3) Leverage on FATCA tool / processes:

- Due diligence / KYC (additional fields) to reflect country of tax residency
- Monitoring
- Reporting

4) Training program to raise awareness among staff (**Relationship Managers and Front Line**)

5) Clients:

- Change in culture
- Raise awareness

6) Role of Internal Audit: **Independent testing on Compliance**

7) **Record retention** to keep the audit trail

Due Diligence

Client On-boarding: New account (Individuals and entities)

Obtain Self-Certification upon account opening including TIN and DOB of account holder (in case of individual) and country of tax residency

Pre-existing Individual Accounts:

- Account Balance **>\$1million** (High Value – Electronic, paper search, RM inquiry)
- Account Balance **≤ \$1million** (Low value – No de minimis threshold)

Pre-existing Entity Accounts:

- Account Balance **>\$250K**
 - Account Balance **≤\$250K** (Optional)
-
- In case of a **change in circumstance or reason-to-know, renew certification**
 - **Determine if Entities** (Active or Passive) **are reportable persons**
 - In case of **Passive entity, determine if controlling persons are reportable**
 - **Closed accounts are also reportable** (no balances required for closed accounts)

Due Diligence

Residency

OECD defines “**RESIDENCE**” as a **basis for the imposition of taxation**. Usually a resident taxpayer is taxed on a wider range of income or other taxable items than a non-resident.

RESIDENCE PRINCIPLE OF TAXATION

-- Principle according to which residents of a country are subject to tax on their worldwide income and non-residents are only subject to tax on domestic-source income

RESIDENT -- A person who is liable for tax in a country or state because of domicile, residence, place of management, or other similar criterion.

Indicia (of tax residency)

- Identification of the Account Holder as a resident of a Reportable Jurisdiction
- Current mailing or residence address (including a post office box) in a Reportable Jurisdiction
- One or more telephone numbers in a Reportable Jurisdiction
- Standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction
- Currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction
- A “hold mail” instruction or “in-care-of” address in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder

In case of contradictory information, FI should inquire further and client should sign a **Self-certification form**

Due Diligence

High Value Account → Financial institution is required to perform enhanced review process:

1. Electronic record search
2. Paper record search
3. Relationship manager inquiry

Relationship Manager Inquiry



- Whether relationship manager associated with an account (including aggregated accounts) has **actual knowledge that the account holder is a reportable person**
- Obtained on a **yearly basis**
- Implement procedures to ensure that a relationship manager **identifies any change in circumstance on an account**

Due Diligence

Self-Certification



- Financial Institutions to **collect data from customers** (entities and individuals) in relation to CRS
- Required information include: Account Holder's **name, address, jurisdiction(s) of residence for tax purposes**, and **tax identifying number** for each Reportable Jurisdiction
- A financial institution has **reason to know that a self-certification is unreliable / incorrect if:**
 - Self-certification is **incomplete**
 - Contains information that is **inconsistent with the person's claims**
 - **Has other information inconsistent** with the person's claim (including **knowledge of the relationship manager**)

Due Diligence

If a financial institution has reason to know that a self-certification is incorrect, it should obtain:

- **A valid self-certification**
- Reasonable explanation and **documentation supporting the evidence**

Documentary Evidence



Documents issued by an authorized government body:

- Certificate of residence
- Valid identification (individuals)
- Official documentation (entities)
- Audited financial statements, third-party credit report, bankruptcy filing, etc.

Reporting

Reportable information of accounts:



Individual reporting information:

- Name
- Address
- Jurisdiction of residence
- TIN
- Place of birth (country)
- Account number
- Name & ID of reporting FI
- Balance or value

Entity reporting information:

- Name
- Address
- Jurisdiction of residence
- TIN
- Account number
- Name & ID of reporting FI
- Balance or value

Entity with controlling persons:

- Name
- Address
- Jurisdiction of residence
- TIN
- Place of birth for each controlling person
- Account number
- Name & ID of reporting FI
- Balance or value

What to report at an account level?

- Balance or value
- Depository: gross interest
- Custody: gross interest, gross dividends, gross total income, gross proceeds
- Other: gross payments (including redemptions)

Challenges

- Need to have a **legal framework** as basis for implementation
- **Information exchanged** is subject to **confidentiality rules and data protection**
- **Complexity, cost and short timeframe** for implementation

Commitment does not equal Readiness

Conclusion

- **Impact** of CRS on the Financial Institution
- How can we **leverage on FATCA processes?**
- **Adequate resources** to implement and maintain compliant processes, systems and controls
- **Training** to front staff / Relationship Managers
- Accurate and timely **reporting**

Thank you