



IFA/OECD Seminar

Tax Transparency



IFA/OECD Seminar: The Panel

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Introductory Statement

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In July 2016, the first meeting of the new „Inclusive Framework on BEPS“ was held in Kyoto. This „Inclusive Framework“ has been set up to foster cooperation and to find common ground for the implementation of BEPS beyond the Members of OECD (CFA).

As of September 2016, 85 countries and jurisdictions have joined the „Inclusive Framework“.

Question 1: What is the institutional format of the „Inclusive Framework“? Are there clear rules for decision-making or is this only a body for informal coordination and cooperation?

Question 2: Do you see topics emerging where a coherent outcome for OECD Members and Non-Members is at risk – in particular from the perspective of developing countries?

The „Inclusive Framework“ is currently dedicated to the implementation of the BEPS Action Plan beyond the group of OECD Member States.

Question 3: Do you see the possibility to transform the „Inclusive Framework“ into a permanent forum for international tax policy?

Question 4: Do you see issues of international taxation outside BEPS which lend themselves to coordination in the context of the „Inclusive Framework“?

In July 2016, the first „G20 Tax Policy Symposium“ was held in Chengdu (organised by the PRC and Germany). It addressed the use of tax policy for „strong sustainable and balanced growth“ as a starting point for further substantial work.

Question 5: This is the first foray of the G20 in the area of tax policy outside BEPS, tax transparency and taxation and development. What outcome do you expect and how do you see the future role of the G20 in general matters of tax policy?



At the G20 Tax Policy Symposium, „tax uncertainty“ was identified as a major obstacle to international trade and investment.

Question 6: Do you see any policies to be advanced by the G20 in order to reduce the level of „tax uncertainty“ (particularly in times of BEPS)?



In 2016, the G20 endorsed the „Platform for Collaboration on Tax“, combining the forces of OECD, UN, IMF and World Bank and trying to formalise and strengthen „the interactions between standard-setting, capacity building and technical assistance through a more systematic approach“.

Question 7: What practical progress do you expect from the existence of this new „Platform“?



Question 8: Shall we establish a new seminar at future Annual IFA Congresses under the name of „IFA/G20 Seminar“?



The OECD Global Forum on Transparency and Exchange of Information

- Growing out of the FHTP and founded in the early 2000s, restructured in 2009
- Currently 135 Member States

Activities:

- Peer Review on Exchange of Information (both EIOR and AEOI)
 - Phase 1: Legal and regulatory framework (so far 123 jurisdictions)
 - Phase 2: Practical Implementation (so far 101 jurisdictions)
 - 2nd Round begins in the third quarter of 2016
- Terms of Reference for EOIR and AEOI drawing on a number of internationally accepted sources (Art.26 OECD Model Treaty, TIEAs, Manuals etc.)
- Technical Assistance



The year 2016 witnesses the completion of the first round of „peer review“ applying the standards of the Global Forum to more than 100 jurisdictions around the world. The second round is to start in the third quarter of 2016.

Question 9: How do representatives of OECD and Tax Administrations assess the outcome of this peer review. Are the Global Forum’s standards on Exchange of Information on Request (EOIR) largely fulfilled – both with regard to the legal framework and the practical implementation in the examined jurisdictions?

Question 10: Do you see major conclusions for amendments to the existing framework coming out of the peer review process performed under the auspices of the Global Forum?



Legal Instrument	Content
Art. 26 OECD Model Tax Convention	EOIR
Tax Information Exchange Agreements (2002)	EOIR + AEOI (since 2015)
Multilateral Convention on Mutual Assistance in Tax Matters (1988/2010) (104 Signatories)	EOIR + AEOI (cases to be determined under Art. 6)
Common Reporting Standard (2014)	AEOI on Financial Accounts (see also FATCA and IGAs)
BEPS Action 5 on Harmful Tax Competition	Exchange of Information on Rulings
BEPS Action 13 on Country-by-Country Reporting Financial Action Task Force	AEOI of CbC Reports Beneficial Ownership



IFA/OECD: Tax Transparency: The Fundamentals

The „**Common Reporting Standard for Automatic Exchange of Financial Account Information in Tax Matters**“ has been approved by the CFA of OECD in 2014.

Implementation of CRS consists of:

- A commitment to the „**Common Reporting Standard**“ (currently more than 100 jurisdictions).
- Signing of the „**Multilateral Competent Authorities Agreement**“ (MCAA) on Financial Account Information (currently 84 signatories), followed by matching notifications.
- which itself is founded on Art. 6 of the **Multilateral Convention on Administrative Assistance in Tax Matters** or (in rare cases) on bilateral agreements.
- **Legislation under Domestic Law** (in the European Union via an amendment to the Mutual Assistance Directive and ensuing domestic legislation).
- The establishment of an appropriate **technical infrastructure**.



„Automatic Exchange of Information“ under the „Common Reporting Standard“ is meant to start in **2017**.

Question 11: Are tax authorities around the world well prepared for this experience?

Are the technical infrastructures in place? Has a „common transmission standard“ been established?

Question 12: Is data protection provided for to the largest possible extent (including protection against „hacking“)?

What is the framework for the protection of taxpayer’s rights?



COUNTRY-BY- COUNTRY REPORTING

Increasing Tax Transparency through
Consistent Information Exchanges

BEPS Actions

Coherence

Action 2
Hybrid Mismatches

Action 3
CFC Rules

Action 4
Interest

Substance

Action 5
Harmful tax

Action 6
Treaty Abuse

Action 7
Avoiding PE status

Action 8 - 10
Intangibles & risk

Transparency

Action 11
Data Analysis

Action 12
Disclosure

Action 13
CbC Reporting

Action 14
Dispute resolution

Action 1 – Digital Economy

Action 15 – Multilateral Instrument

Package for TP documentation



Master file

Standardised
background information
MNE group

Local file

Analysing specific transfer
pricing compliance for
material transactions of
the local taxpayer

Country-by-Country (CbC) Report

Containing specific
information on the MNE
group

Not part of the minimum standard

CbC Reporting

- Required annually, details per jurisdiction
- MNEs with annual consolidated group revenue equal or greater than EUR 750 million
- Template includes
 - Amount of revenue
 - Profit or loss before income tax
 - Income tax paid and accrued
 - Number of employees
 - Stated capital
 - Retained earnings
 - Tangible assets

Country-by-Country (CbC) Report

Containing specific information on the MNE group

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Incorporation or Residence (if Different from Tax Jurisdiction of Residence)	Main Business Activity(ies)														
			Research and Development	Trading or Marketing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Warehousing or Distribution	Administrative, Management or Support Services	Provision of Services to Customers or Users	Internal Group Finance	Regional/Local Finance	Insurance	Leasing/Finance or Other	Other	Other		
1																	
2																	
3																	
4																	
5																	

1. Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

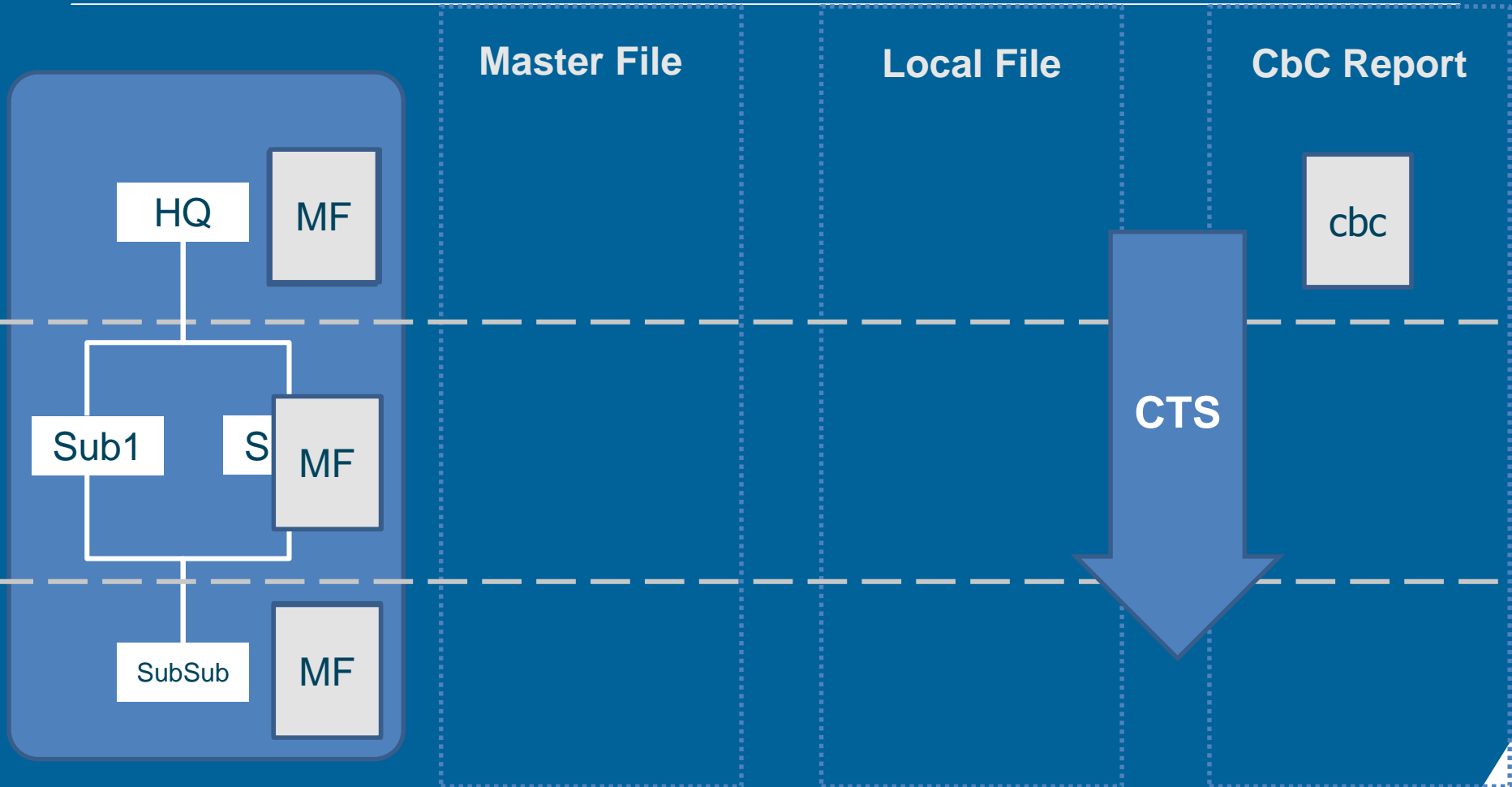
Table 3. Additional Information

Name of the MNE group
Fiscal year concerned

Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country-by-Country Report.



Filing Procedure



Large MNC Group

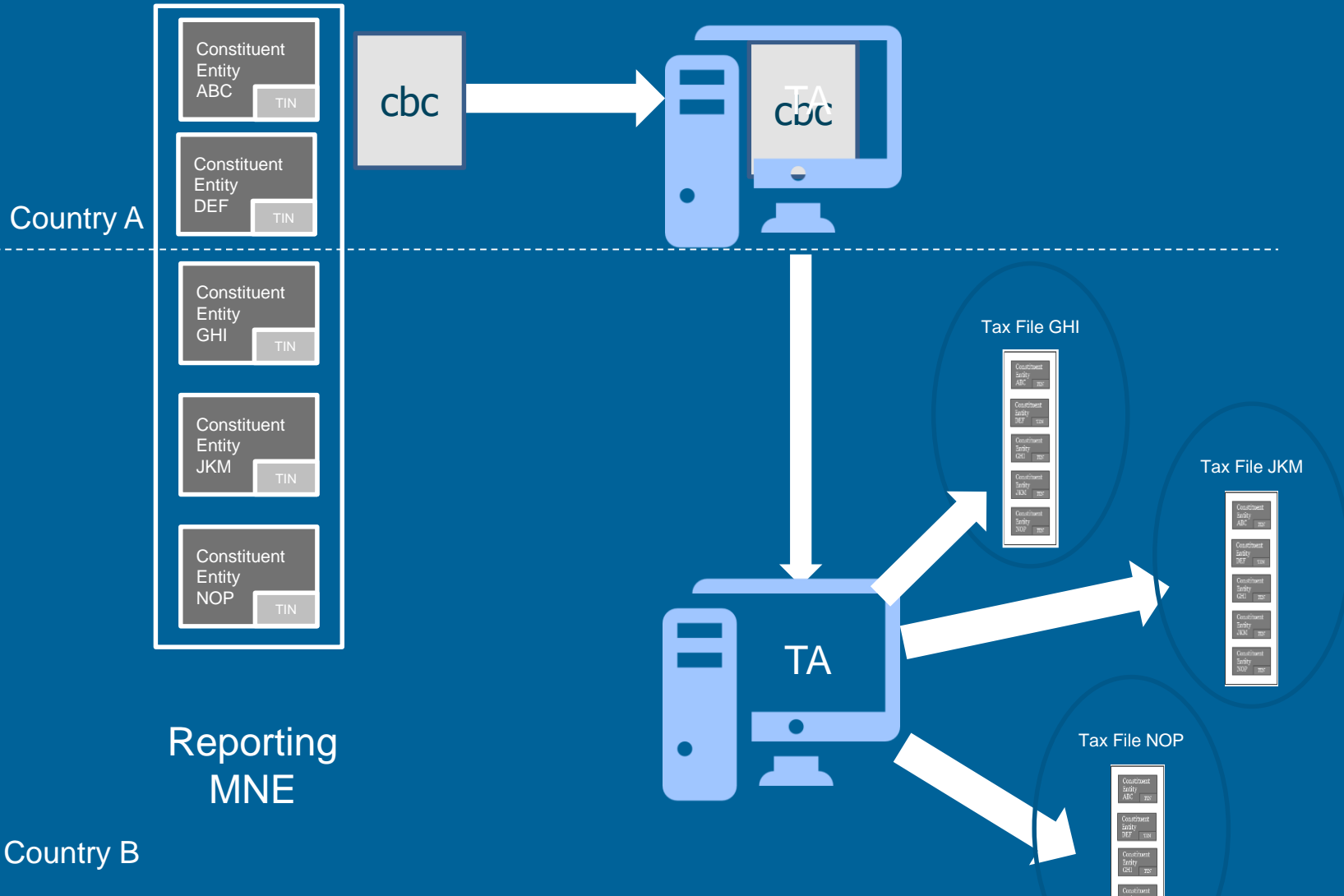


2. GbC report sent to tax authority

3. Tax authority provides data to constituent entities

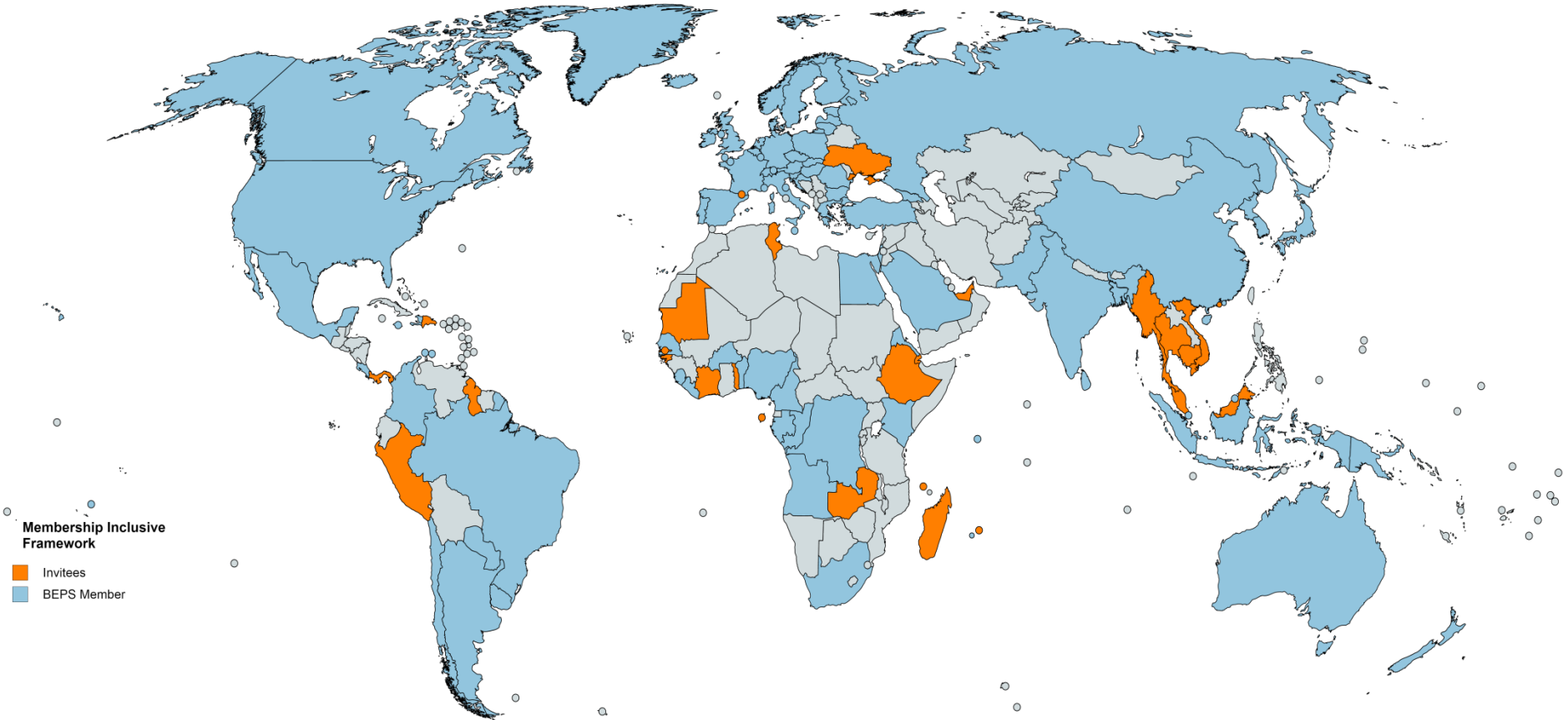
4. Tax authority provides data to tax authorities in other jurisdictions

5. Tax authority provides data to tax authorities in other jurisdictions





To be implemented by all Members of the Inclusive Framework



Created with mapchart.net ©



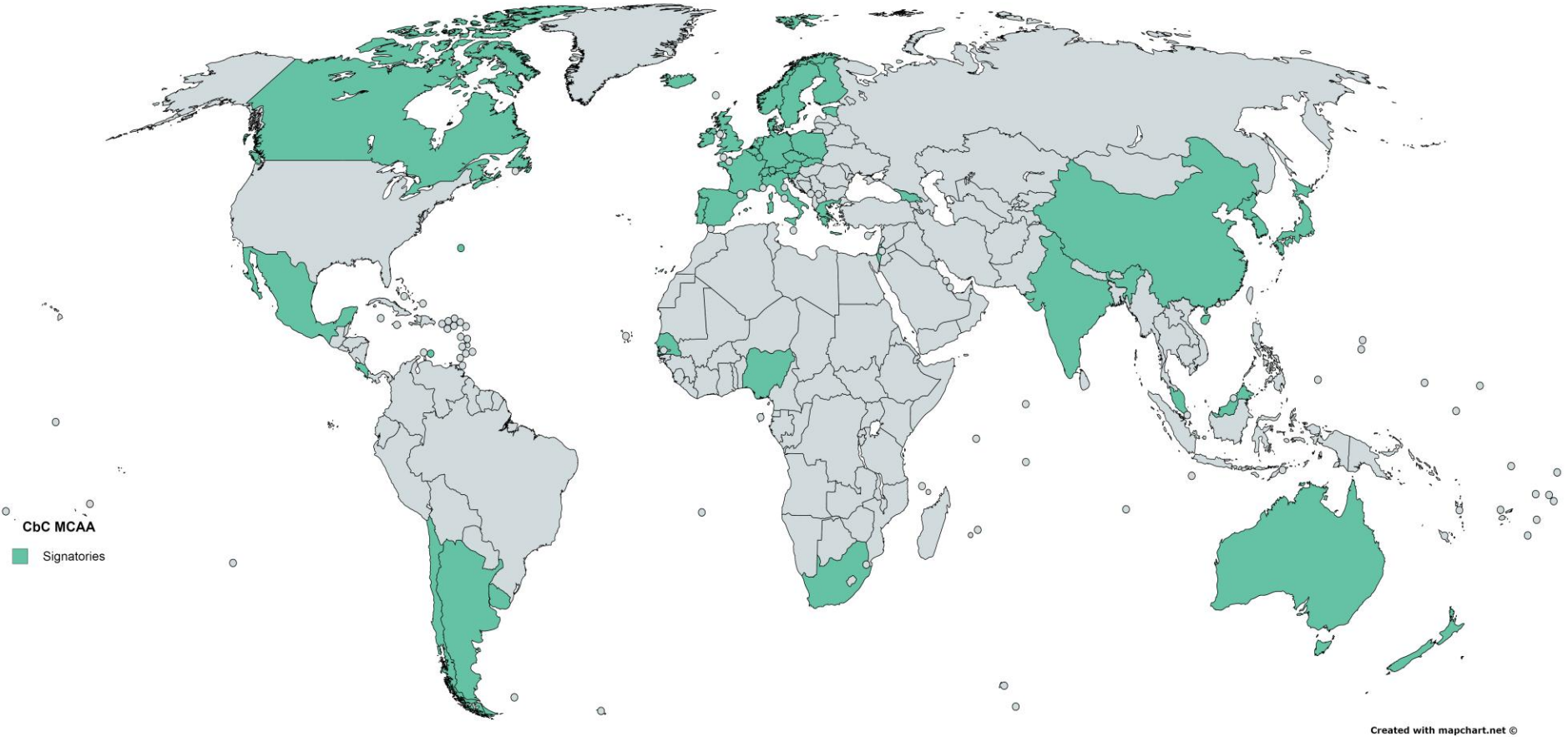
85 BEPS Members



26 Invitees



CbC MCAA Signatories



44 Signatories

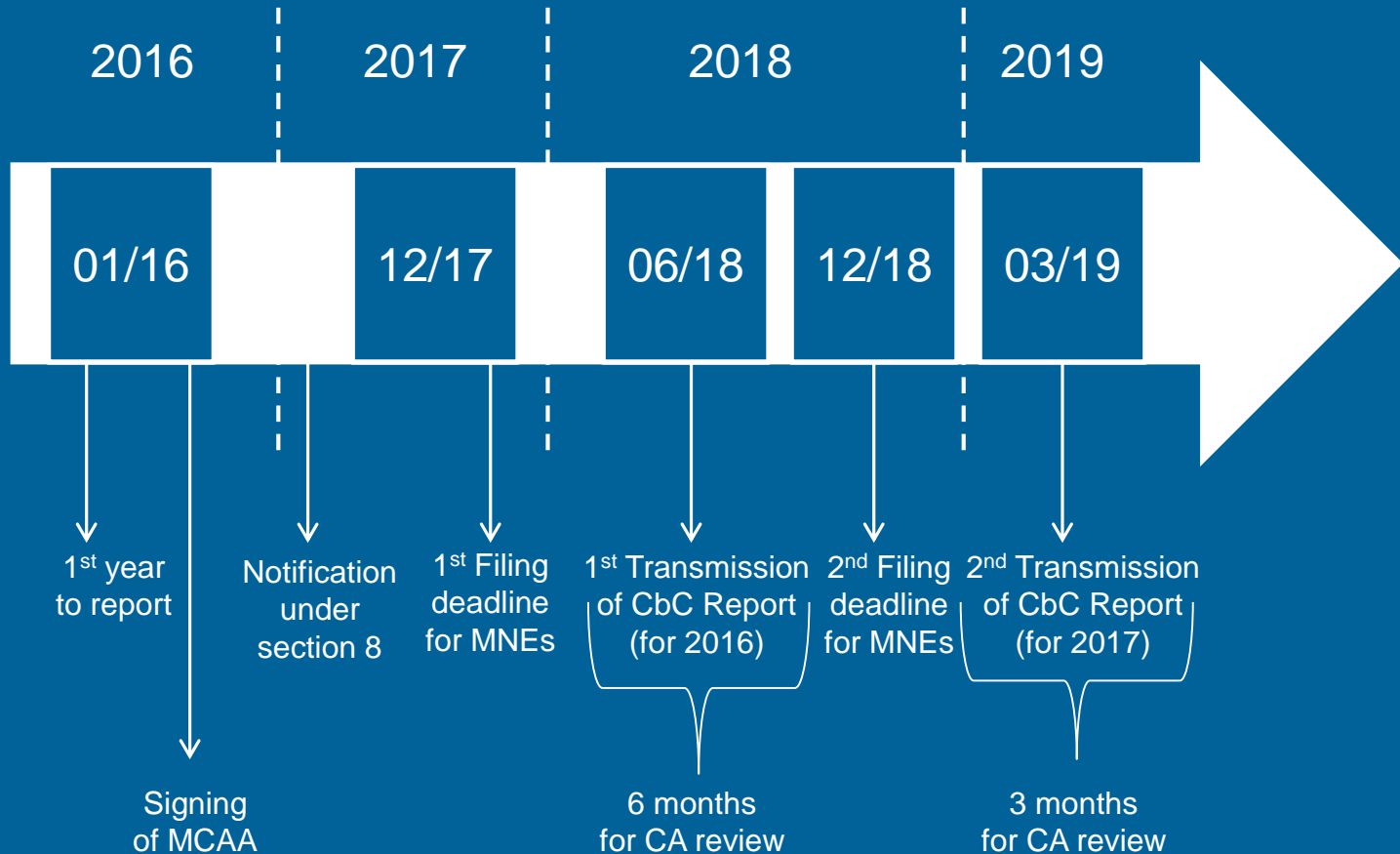


Follow BEPS Implementation on the New Website





Example timeline for reporting





Timeline for CbC monitoring

Establishment of the
CbC Ad Hoc Group
September 2016

Drafting ToR &
Review
Methodology
Autumn 2016

Adoption ToR
&
Methodology
January 2017

Start of the
reviews
**To be
determined**

Focus



Legislation



Safeguards

confidentiality
and
appropriate use



Five layers of safeguards

Confidentiality

- Treaty obligations
- CAA requirements

Appropriate use

- Obligation contained in model legislation, CAA, Action 13 report

MAP

- Mini-MAP in CAA
- Regular MAP in DTA

CbC Peer Review

- Deviations from local reporting conditions, confidentiality and appropriate use

2020 Review



Forum on Tax Administration

46 tax
administrations



State Administration of Taxation of
The People's Republic of China
Belastingdienst

Knowledge

Experience

Best Practices



Detailed
report on
effective
use of CbC
reports



Australian Government
Australian Taxation Office

Canada

Canada Revenue
Agency



Country-by-Country Reporting is mandatory as of fiscal year 2016.
Filing of Reports regarding fiscal year 2016 is due November 2017.

ARE WE READY?

Legislation

Administration

Business



So far, more than 40 jurisdictions have signed up to the Multilateral Competent Authority Agreement on Exchange of Information (built on Art.6 of the Multilateral Convention)

Domestic Legislation has been passed by most signatory countries in 2015 or 2016. OECD had provided an « implementation package » including model legislation.

Question 13: Do you perceive or expect substantial differences between countries with regard to the legislative implementation of transfer pricing documentation and CbC Reporting?



In order to assist tax administrations with the practical implementation of CbC Reporting, OECD has issued

- « Guidance on the Implementation of Country-by-Country Reporting »
- and a «Country-by-Country Reporting XML Schema » accompanied by a « User Guide for Tax Administrations and Taxpayers »

to ensure uniform standards and a homogeneous digital format for the report. Moreover, a « Common Transmission Standard » shall support automatic exchange of information.

Question 14: Are tax administrations well prepared for the practical implementation of CbC Reporting

- with regard to interaction with business?
- with regard to cross-border interaction with other tax administrations?
- with regard to the effective use of information?



CbC Reports under Action Plan 13 have to be filed by multinational groups exceeding an annual turnover of 750 Million €.

As we speak, corporate groups have to prepare for filing in 2017.

Question 15: When comparing Action 13 with existing requirements on the filing of tax returns, on transfer pricing documentation and on financial accounting, where does business see substantial additional « compliance costs » driven by CbC Reporting?

Question 16: Do you expect a substantial rearrangement of intra-group relations under the pressure of CbC Reporting?



Under the Multilateral Competent Authority Agreement on CbC Reporting, confidentiality of information is high on the agenda:

Sec.5 par.1 MCAA: « All information exchanged is subject to the confidentiality rules and other safeguards provided for in the Convention, including the provisions limiting the use of the information exchanged. «

Sec.8 par.5 mCAA: « A Competent Authority may temporarily suspend the exchange of information under this Agreement by giving notice in writing to another Competent Authority that it has determined that there is or has been significant non-compliance by the second-mentioned Competent Authority with this Agreement.

Question 17: To what extent can we expect severe issues regarding the confidentiality of CbC Reports for tax administrations, tax advisors and business?



Country-by-Country Reports contain specific information on local

Revenue

Earnings before Taxes

Cash Taxes

Current Year Tax Accruals

State Capital and Accumulated Earnings

Number of Employees

Tangible Assets

CbC Reports will therefore have a strong link to « sales » (revenue), « payroll » (number of employees) and « capital » (tangible assets).

CbC Reports will not have a strong link to the location of financial capital, intangibles and risk bearing.



CbC Reporting might therefore induce jurisdictions to apply « formulary apportionment » based on factors like sales/payroll/tangible assets.

To avoid this outcome, Art.5 par.2 MCAA provides:

« In particular, information received by means of the CbC Report will be used for assessing high-level transfer pricing, base erosion and profit shifting related risks, and, where appropriate, for economic and statistical analysis. The information will not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. It is acknowledged that information in the CbC Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and, consequently, transfer pricing adjustments will not be based on the CbC Report. »

Question 18: Do you expect countries to move towards « formulary apportionment » in particular with regard to the « sales factor » under the impact of CbC Reporting?



Tax administrations using CbC Reports as a tool « for assessing high-level transfer pricing, base erosion and profit shifting related risks » have to consider how to move forward based on the information found in the reports.

They will have in their hands:

- Tax returns of local entities (including a full income statement)
- Individual financial accounts of local entities and consolidated financial accounts of MNEs (when applicable)
 - Traditional transfer pricing documentation
- Master Files (showing in particular the overall group structure and the « business model » of the group)
- Local Files (showing in particular the contractual arrangements between the local entity and affiliated entities outside the jurisdiction)
 - CbC Reports



Tax administrations therefore have to examine further options to gather additional information as allowed under the MCAA:

Art.5 par.2 MCAA:

« Notwithstanding the above, there is no prohibition on using the CbC Report data as a basis for making further enquiries into the MNE Group's transfer pricing arrangements or into other tax matters in the course of a tax audit and, as a result, appropriate adjustments to the taxable income of a Constituent Entity may be made. »

Question 19: Do you expect the following tools to be used more extensively in the future under the impact of CbC Reports:

- Requiring the local taxpayer to provide additional documentation?
- Requesting taxpayer information from other jurisdictions under Art. 26 OECD Model Treaty?
- Relying on information from tax rulings from other jurisdictions (Action 5)?
- Joint audits and simultaneous examinations performed by two or more tax administrations?



In April 2016, the European Commission published the proposal of a Directive on public disclosure of CbC Reports. This move is supported by the European Parliament and a large group of Member States. It is debated whether it can be enacted by qualified majority (below unanimity).

In September 2016, the UK Parliament passed legislation enabling the UK Government to require companies to disclose CbC Reports to the general public (along with disclosure of the « tax strategy » of the group).

Question 20: To what extent do these developments undermine the OECD policy on confidentiality of CbC reports?

Question 21: To what extent does business expect competitive disadvantages from the publication of CbC reports?

Question 22: To what extent do tax administrations expect public pressure on their behavior towards corporate taxpayers?



MANDATORY DISCLOSURE RULES

Increasing Tax Transparency through
Mandatory Disclosure Rules



Mandatory Disclosure Rules

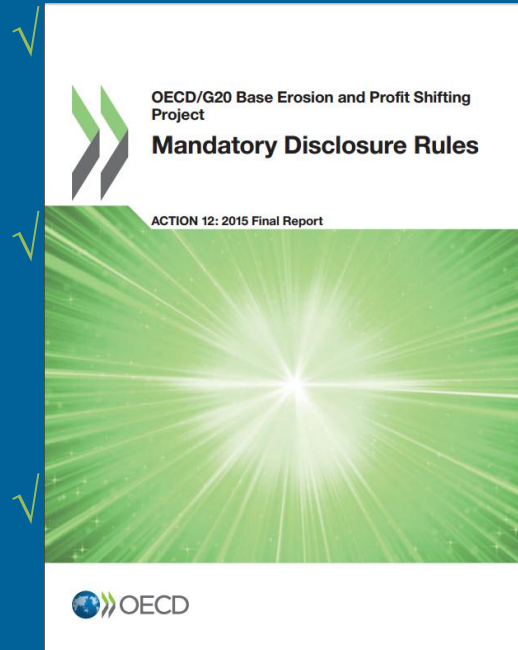
Obligation to
Disclose
Transactions

Mixture of
Hallmarks

Tracking
Mechanism

Timeframe
Disclosure

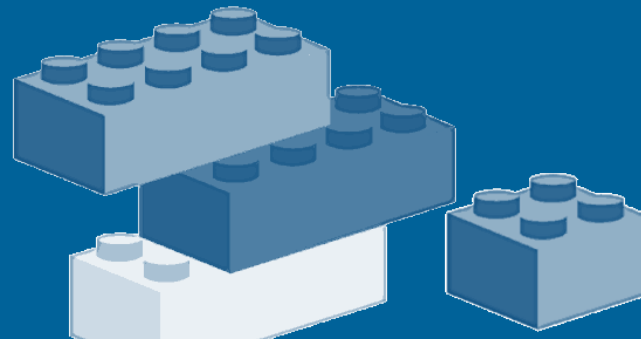
Introduce
Penalties



...ory but no ruling on

...ad range of taxpayers
...s of schemes as well as

...risks / transactions of
...via “hallmarks”)





Three Outputs for MDR adoption

Framework for the design of rules that are flexible to country specific risks and needs

Special recommendations for rules focussing on international tax schemes

Enhanced models of information sharing using the JITSIC network as a platform



JITSIC | Joint International Tax Shelter
Information & Collaboration



Mandatory Disclosure Using its full potential

- Applicability beyond BEPS
 - Disclosure of schemes that seek to avoid other standards, including EOIR and AEOI



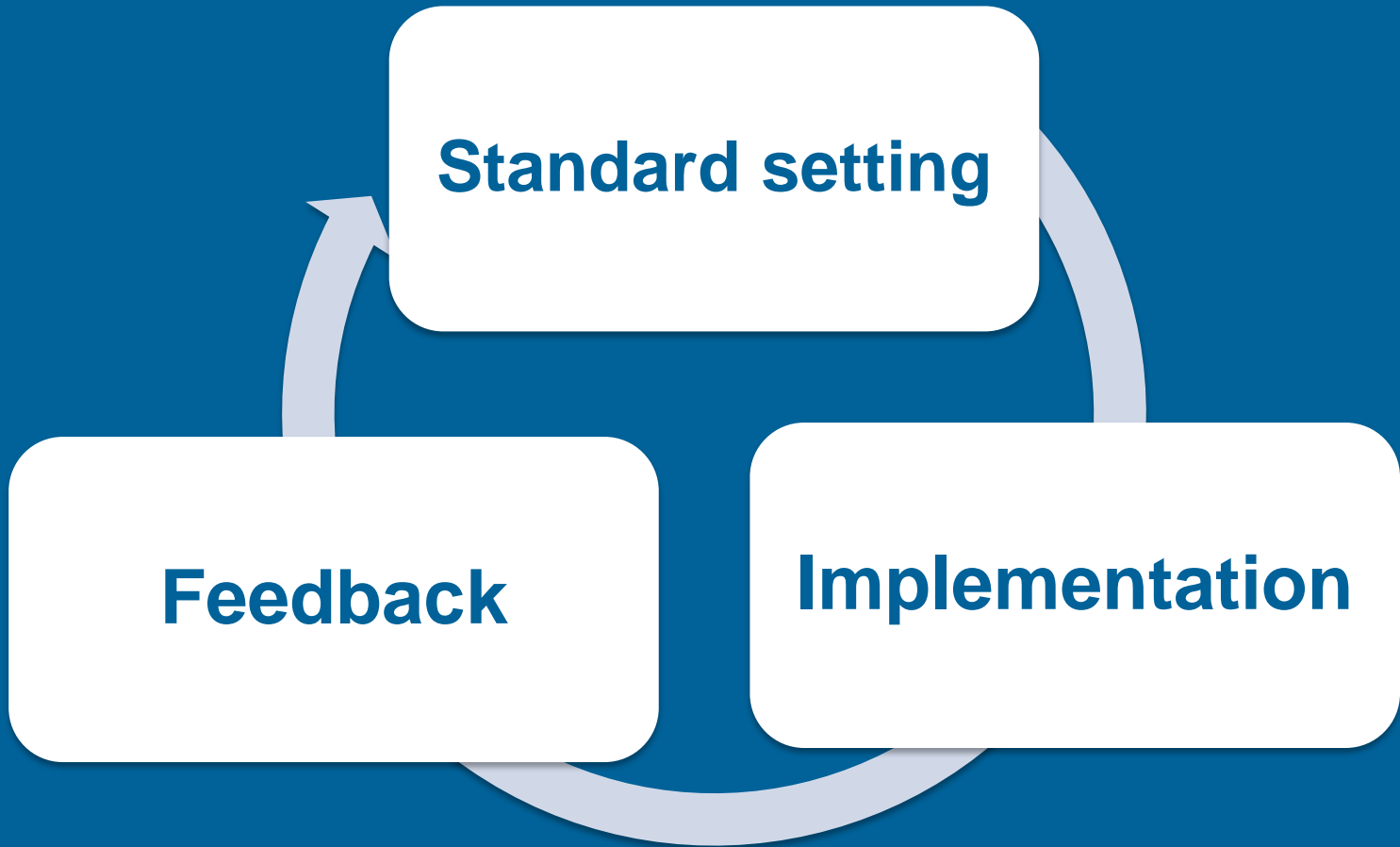
- Tax administrations share knowledge and experience



ATP Database



Feedback Loop





Prior to Action 12, the following G20/OECD Member States had already enacted mandatory disclosure obligations:

*Canada, Ireland, Israel, Korea, Portugal,
South Africa, United Kingdom, United States,*

In July 2016, the European Commission issued a Communication supporting a proposal for a European Directive on mandatory disclosure.

In September 2016, Slovakia, the current holder of the European Union presidency, published a proposal to force tax advisors and financial institutions to automatically disclose offshore schemes designed to circumvent anti-avoidance measures or the OECD Common Reporting Standard rules for automatic tax information exchange.

In October 2016, the European Commission will initiate a public consultation on this issue.



Establishing mandatory disclosure rules for tax avoidance schemes can have different goals:

- Backward looking: Supporting tax assessments, including field audits of multinational companies.
- Forward looking: Enabling domestic tax legislation in order to close down « loopholes ».
- Last but not least: Deterring taxpayers from entering into tax avoidance schemes in the first place.

Question 23: Does your country plan to enact legislation under Action 12? If yes, what will be the principal purpose of this legislation?

Question 24: Which « hallmarks » should be employed to identify reportable transactions?



Under the impact of the « Panama Papers », the discussion on disclosure of tax avoidance schemes has moved into the area of outright « tax evasion » by offshore companies.

Question 25: Do you think that with regard to disclosure duties, tax avoidance and tax evasion should be treated along the same lines?



BENEFICIAL OWNERSHIP



The Beneficial Ownership Standard

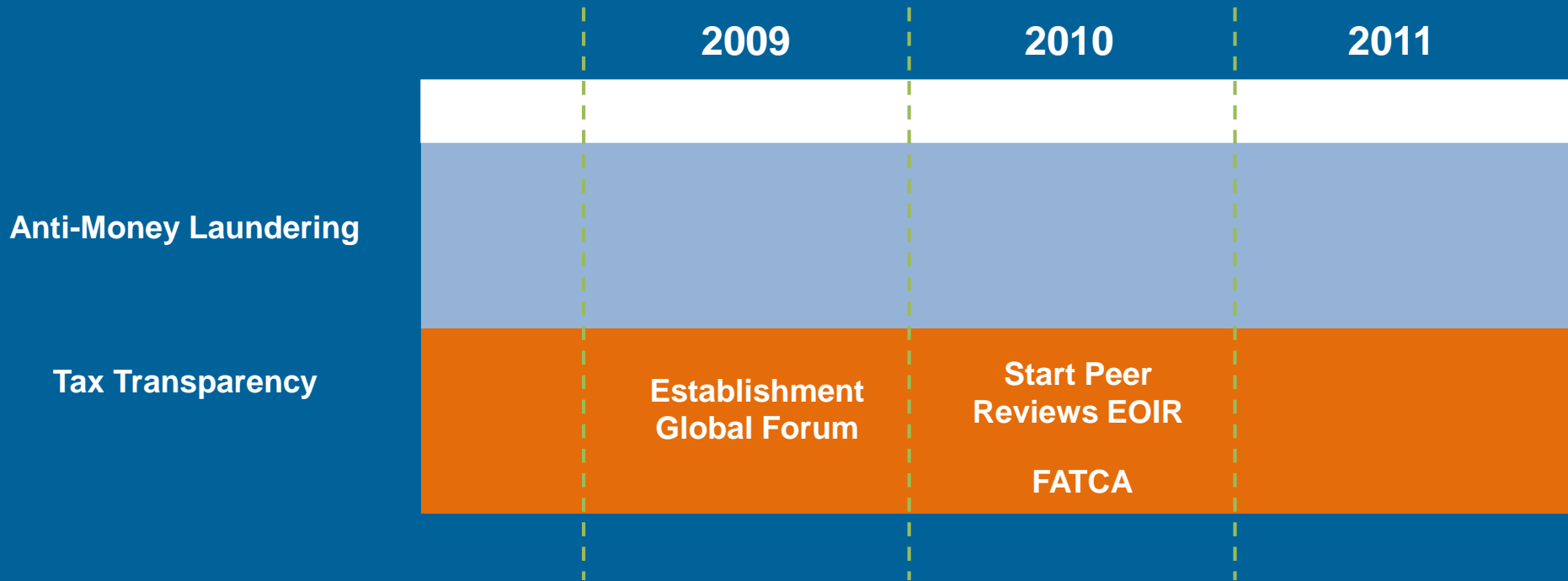


Core Requirements
“the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement”

accurate
adequate
timely availability to Competent Authorities

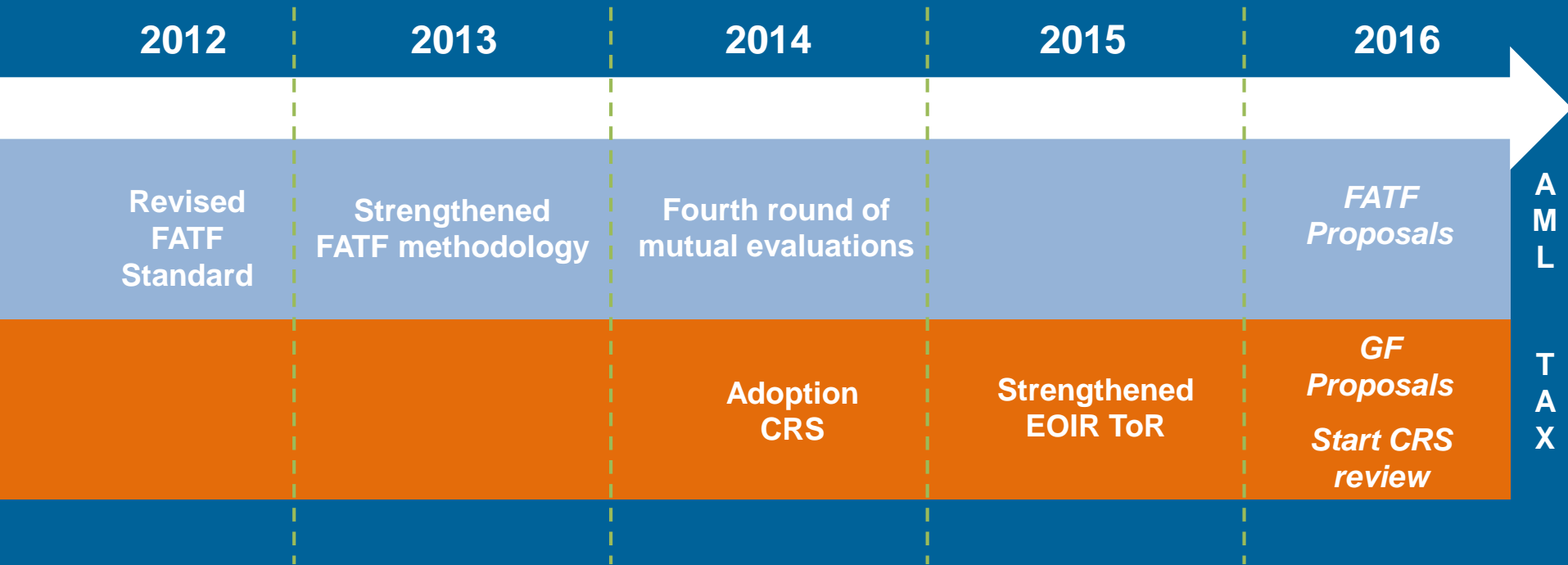


Timeline





Timeline



A
M
L

T
A
X



Impact for Stakeholders

Plan on the basis of full disclosure

Anything else



Beneficial Ownership

Financial Action Task Force (FATF):

INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE
FINANCING OF TERRORISM & PROLIFERATION

(The FATF Recommendations)

No.10: Customer Due Diligence: Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.

No.25: Transparency and Beneficial Ownership of Legal Persons: Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial ins

Beneficial Ownership

4th Anti-Money-Laundering Directive 2015

5th Anti-Money-Laundering Draft Directive 2016

Art.13: Customer Due Diligence

(Domestic financial institutions with regard to domestic and foreign customers)

Art.30: Beneficial Ownership Information

(Domestic corporate and other legal entities)

Member States shall « ensure that the information (...) is held in a central register”.

Member States shall “ensure that the information on the beneficial ownership is accessible in all cases to:

- a) Competent authorities and Financial Intelligence Units
- b) Obligated Entities
- c) Any person or organisation that can demonstrate a legitimate interest



Four different issues must be held apart in order to assess the information on « beneficial ownership »:

- a) FATF work is in principle addressed at money laundering and terrorist financing. Yet in recent years the provisions have been extended to serve the information purposes of tax authorities.

Question 26: Do you think the « beneficial ownership » framework originating from the FATF meets the needs of tax authorities for relevant beneficial ownership information?



b) For domestic use, it is important whether beneficial ownership information shall simply be made available (e.g. by companies themselves) or be filed with a central registry (This is the European, but not the U.S. solution).

Question 27: Do you think that a central registry of beneficial ownership is required for tax purposes?



c) For international use it is important whether there shall be (automatic) exchange of information on beneficial ownership or not. This has been established under the heading of « interlinked registries ».

Question 28: What are your views on « interlinked registries » on beneficial ownership?



d) Finally one has to decide whether public access to beneficial ownership is granted. This move has been introduced or announced in 2016 by the United Kingdom, the Netherlands and France.

Question 29: Do you think that public registries on beneficial ownership go beyond what is necessary (and beyond what data protection allows) for tax purposes?