



Exchange of information in Luxembourg

4 April 2017



Agenda

1. Introduction
2. Multinational Enterprises (MNEs)
3. Individuals





1. Introduction

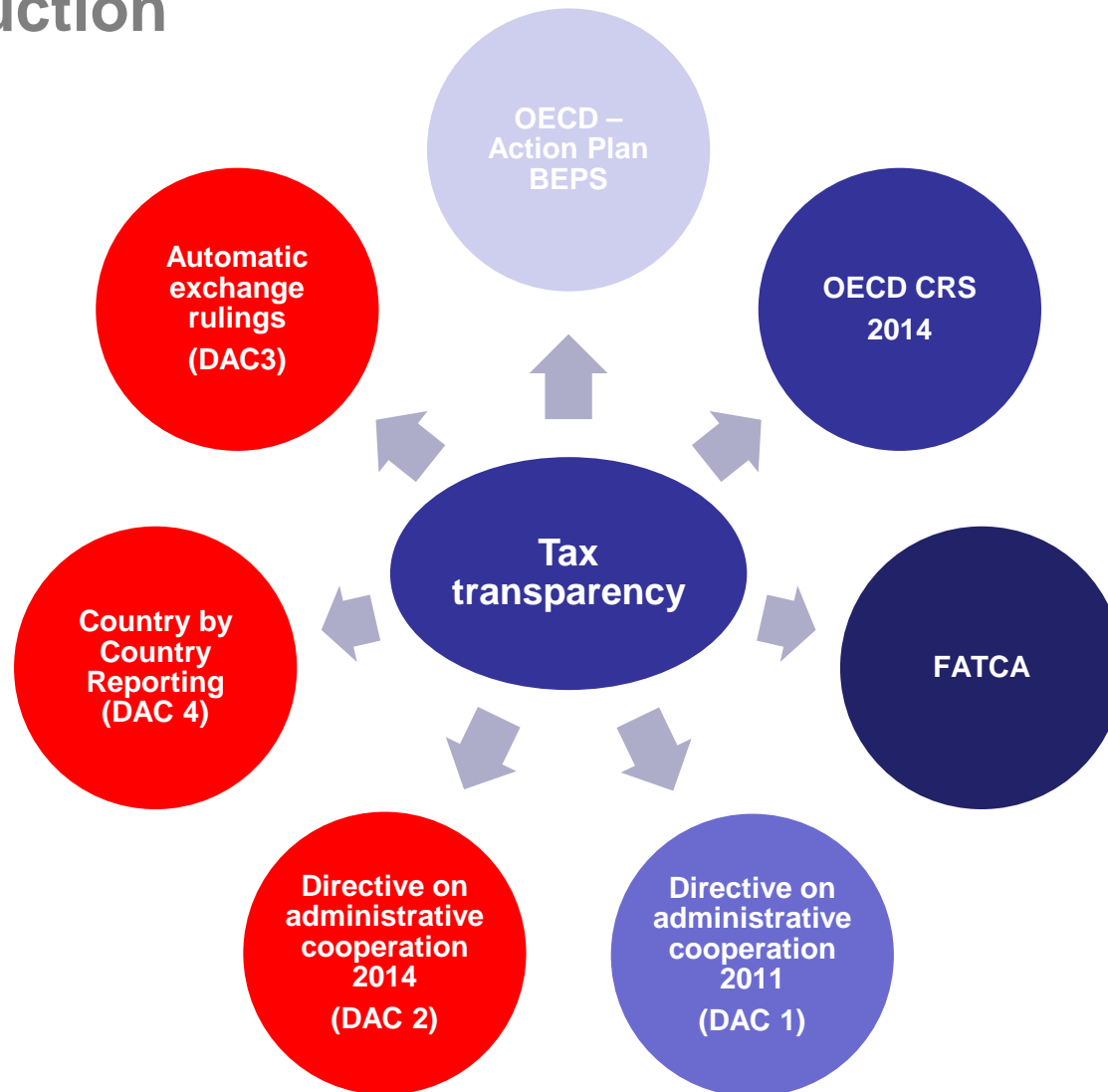
Introduction

Scope and legal basis for the exchange of information

- The Convention on Mutual Administrative Assistance in Tax Matters (Convention) was developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010. The Convention provides for (i) exchange of information on request; (ii) automatic exchange of information; and (iii) spontaneous exchange of information.
- In response to the call of the G20 Leaders, OECD members and G20 countries have developed an **inclusive framework on BEPS**. The **BEPS package** provides **15 Actions** that equip governments with the **domestic and international instruments** needed to tackle BEPS.
- Luxembourg and Russia are both signatories and participants to the relevant multilateral agreements developed by OECD. In addition Luxembourg as a Member State of the EU has implemented the EU legislation which covers a broader scope of the mandatory exchange of information.

Exchange of information addressing Multinational Enterprises (MNEs)	Exchange of information addressing Individuals and other entities
<ul style="list-style-type: none"> • Exchange of information on tax rulings • Country-by-country reporting 	<ul style="list-style-type: none"> • CRS • FATCA

Introduction



Introduction

Exchange of Information on tax rulings – Evolution EU Level

1977

- Directive 77/799/EEC on mutual assistance by the competent authorities in the field of direct taxation

2011

- Directive 2011/16/EU on administrative cooperation in the field of taxation and repeal of the directive 77/799/EEC (**DAC 1**)

2014

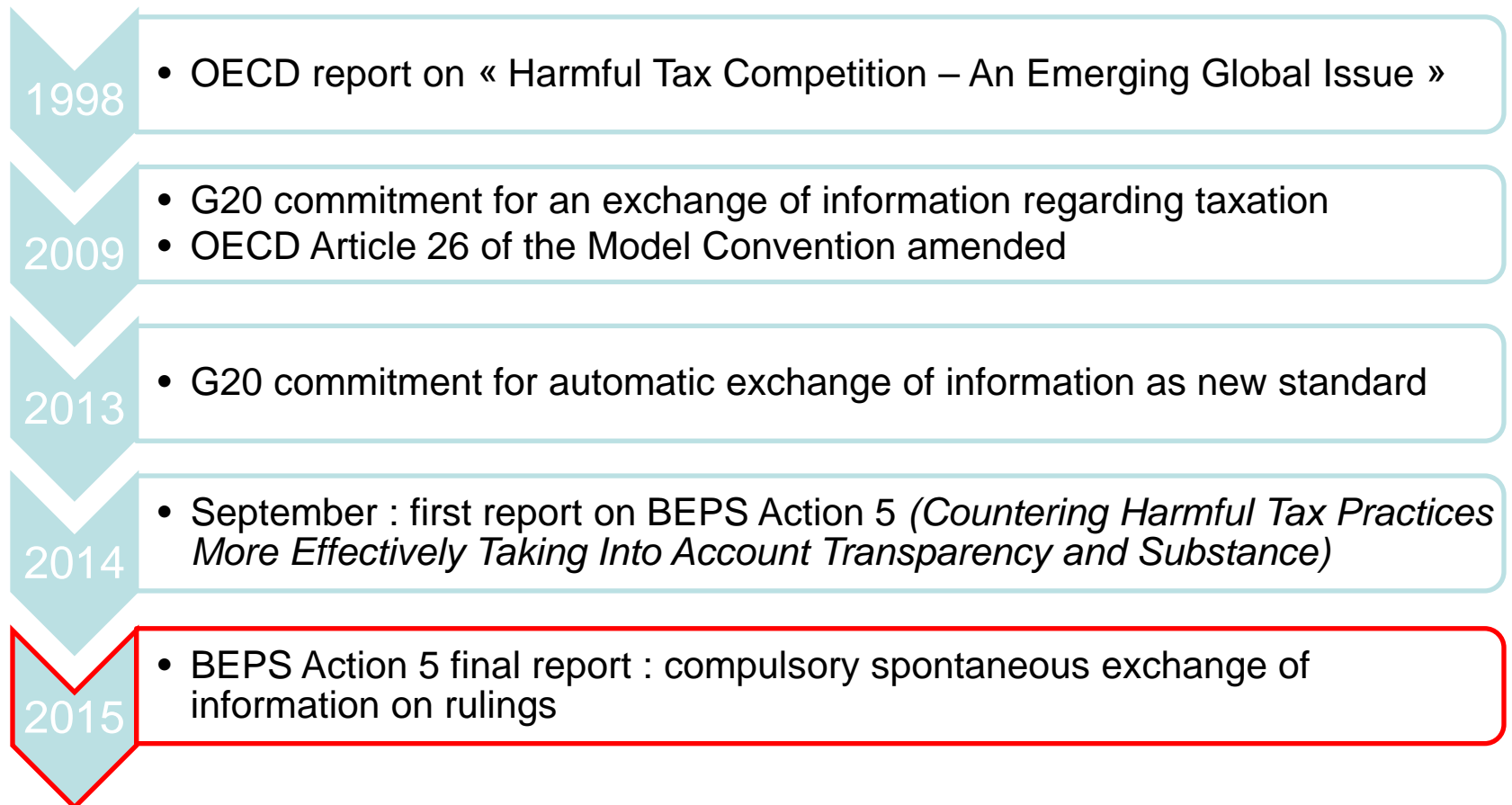
- Directive 2014/107/EU on the automatic and mandatory automatic exchange of information in the field of taxation (**DAC 2**) amending DAC 1

2015

- Tax transparency package dated 18 March 2015
- Transparency on tax rulings : proposal for a directive dated 18 March 2015 amending the 2011/16/EU directive on the mandatory automatic exchange of information in the field of taxation
- Directive 2015/2376/UE of 8 December 2015 (**DAC 3**)

Introduction

Exchange of Information on tax rulings – Evolution OECD Level





Introduction

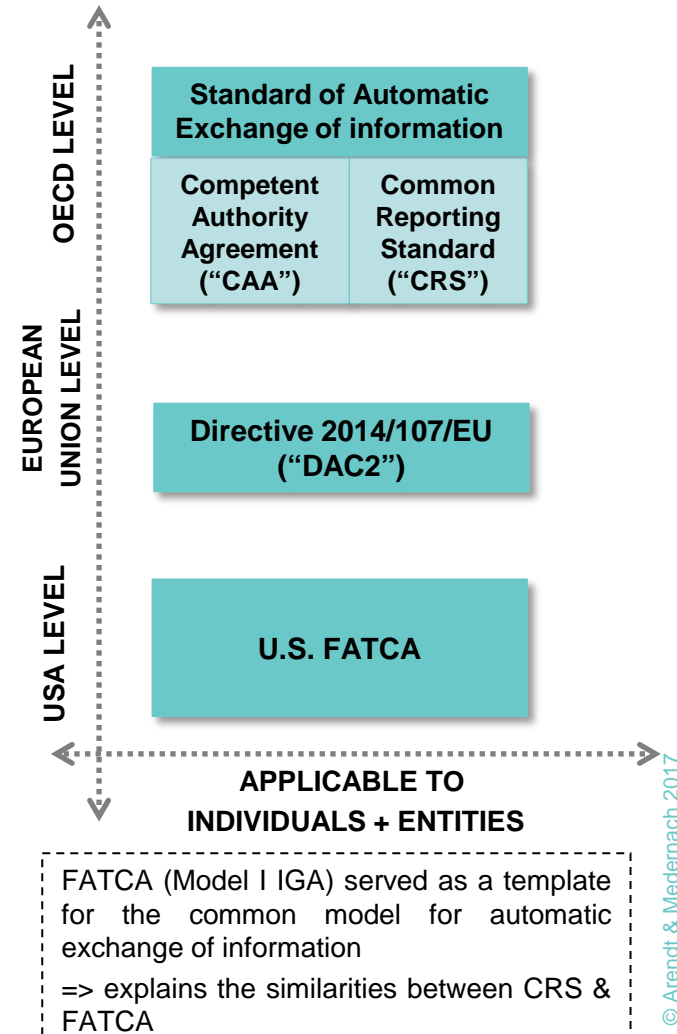
Country-by-country reporting – Evolution

	2013	2014 - 2015		2016	2017	2018
EU	<ul style="list-style-type: none"> Directive 2013/34/EU in order to consider the possibility to introduce and produce, on an annual basis, a CbC reporting Commission requests information (i) IP regimes and (ii) tax rulings 	<ul style="list-style-type: none"> Participation to the elaboration of the BEPS Actions with the OECD 		<ul style="list-style-type: none"> Proposal for a directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation <p>25 May: Directive 2016/881/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC 4)</p>	<p>Notification deadline 31 March 2017, for 2016 CbC reports</p> <p>First filing deadline within 15 months of the last day of the Fiscal Year of the MNE Group (18 months for the fiscal year 2016)</p>	
OECD	<ul style="list-style-type: none"> 12-13 November: beginning of the BEPS elaboration 	<ul style="list-style-type: none"> January to March : Elaboration of the report on transfer pricing and Country-by-Country reporting 16 September : publication of the template 	<ul style="list-style-type: none"> 6 February : first substantive report 8 June : Action 13 Country-by-Country Reporting Implementation Package released 	<p>27 January: Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of Country-by-Country reports</p> <p>First reporting period MNE's fiscal year beginning on or after 1 January 2016</p>	<p>First filing deadline as early as 31 December 2017, for 2016 CbC reports</p>	
US	<ul style="list-style-type: none"> Participation of the USA to the elaboration of the BEPS Actions with the G20 and the OECD 		<ul style="list-style-type: none"> 21 December US regulation on CBC reports released 		<p>First reporting period taxable years beginning on or after the publication date of final regulations (for calendar year parents, likely 1 January 2017)</p>	<p>First filing deadline with the parent's income tax return due date, including extensions (for calendar year parents, 15 September 2018)</p>

Introduction

CRS and FATCA – Evolution

- **25 January 1988:** Convention on Mutual Administrative Assistance in Tax Matters
- **18 March 2010:** US Hire Act (FATCA);
- **29 October 2014:** signature of OECD Multilateral Competent Authority Agreement (“**MCAA**”) by 51 jurisdictions;
- **9 December 2014:** adoption of Directive 2014/107/EU (“DAC 2”) amending Directive 2011/16/ EU on Administrative Cooperation by EU Council;
- **18 December 2015:** Luxembourg law implementing the MCAA and DAC 2;
- **30 September 2017:** commitment for first information exchange (1st group of countries) including Luxembourg;
- **2018:** commitment for information exchange by a 2nd group of countries including Switzerland and Russia.

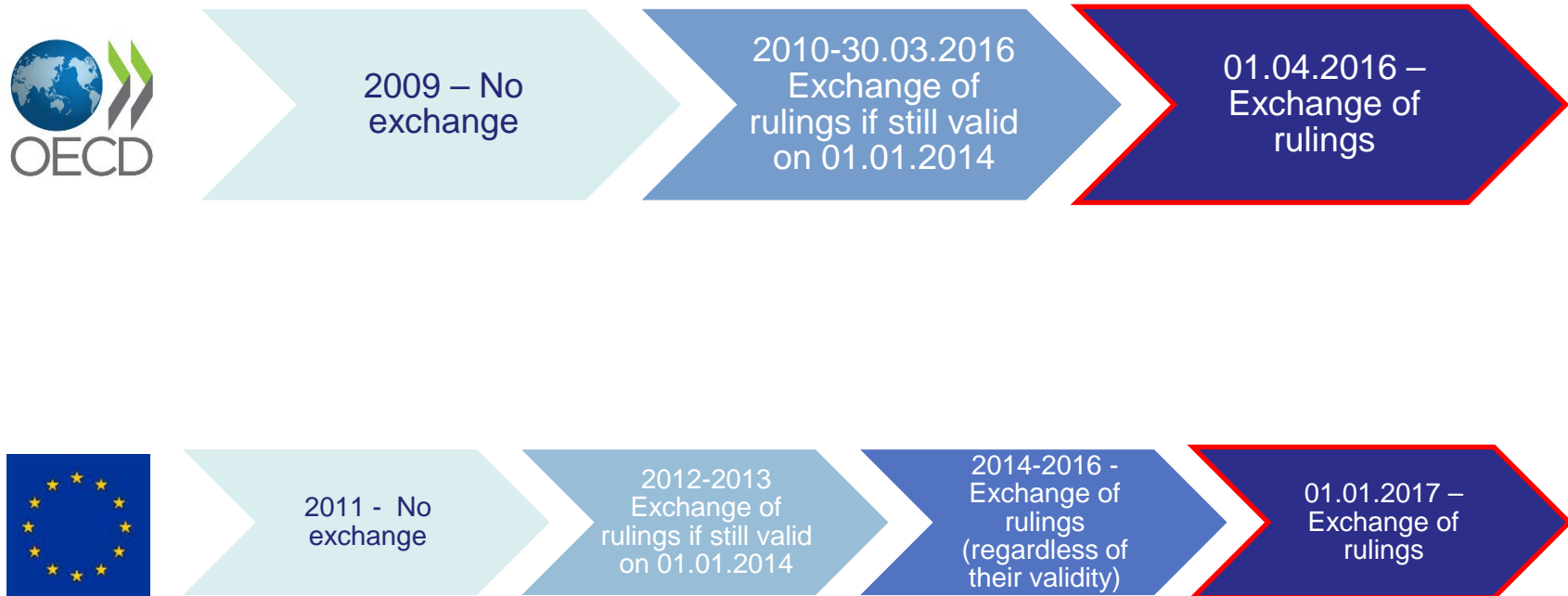




2. Multinational Enterprises (MNEs)

2. Multinational Enterprises (MNEs)

Exchange of rulings – Comparative timeline





2. Multinational Enterprises (MNEs)

Exchange of rulings – Type

	Type of Exchange
DAC 3	« Mandatory automatic exchange »
BEPS 5	« Spontaneous mandatory exchange »

2. Multinational Enterprises (MNEs)

Exchange of rulings – Scope

	Scope of the exchange
DAC 3	<p>DAC applies to any agreement, communication, or any other instrument or action with similar effects (including in the context of tax audit)</p> <ul style="list-style-type: none"> - issued by a public entity upon which a person is entitled to rely - irrespective of whether it is effectively used <p>Ruling</p> <ul style="list-style-type: none"> - on the interpretation or application of a provision - related to a cross-border transaction (including the presence of a permanent establishment) - issued prior to the transactions or activities (or the submission of the tax return) <p>APA</p> <ul style="list-style-type: none"> - defining in advance criteria of transfer pricing on cross-border transactions between associated enterprises (or imputing profits to a PE)
BEPS 5	<p>Similar fields:</p> <ul style="list-style-type: none"> - also include rulings issued post-transaction

2. Multinational Enterprises (MNEs)

Exchange of rulings - Categories

	Type of rulings
DAC 3	<p>A non-exhaustive list in the preamble</p> <ul style="list-style-type: none"> ✓ APA (unilateral, bilateral or multilateral decisions); ✓ PE or anything with a potential impact on the tax base of a PE; ✓ The tax status of a hybrid entity in one Member State which relates to a resident of another jurisdiction; ✓ Assessment basis for depreciation of an asset in one Member State that is acquired from a group company in another jurisdiction.
BEPS 5	<p>6 categories of rulings:</p> <ul style="list-style-type: none"> ✓ Preferential regimes (according to the FHTP); ✓ Unilateral APAs ; ✓ Downward adjustment to taxable profits; ✓ PE; ✓ Related party conduit rulings; ✓ Any topic in relation to base erosion;

2. Multinational Enterprises (MNEs)

Exchange of rulings – Beneficiaries

	Beneficiaries
DAC 3	All EU member States and the European Commission (with some exceptions)
BEPS 5	Countries of residence of all related parties of the OECD convention on administrative cooperation The residence country of the ultimate parent company and the immediate parent company

2. Multinational Enterprises (MNEs)

Exchange of rulings - Implementation

	Entry into force Exchange period
DAC 3	<ul style="list-style-type: none"> • Implementation as of 1/1/2017 • For rulings/APAs issued from 2012 to 2016 : communication before 1/1/2018 • For rulings/APAs issued as from 2017 : communication 3 months at the latest after the end of the semester during which rulings/APAs were issued
BEPS 5	<ul style="list-style-type: none"> • For rulings/APAs issued as from 2010 : communication before the end of 2016 • For rulings/APAs issued as from 1/4/2016 : communication 3 months at the latest after the release of the decision <p><i>NB: A country that has granted a ruling cannot invoke the lack of reciprocity as an argument for not spontaneously exchanging information with an affected country, where the affected country does not grant, and therefore cannot exchange, rulings</i></p>

2. Multinational Enterprises (MNEs)

Exchange of rulings – Impact on Russia-Luxembourg cross-border structures

- Spontaneous exchange based on Article 7 of the Convention:
 - *A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:*
 - a) *the first-mentioned Party has **grounds for supposing that there may be a loss of tax** in the other Party;*
 - b) *a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which **would give rise** to an increase in tax or to liability to tax in the other Party;*
 - c) *business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax **may result** in one or the other Party or in both;*
 - d) *a Party has **grounds for supposing that a saving of tax may result** from artificial transfers of profits within groups of enterprises;*
 - e) *information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which **may be relevant** in assessing liability to tax in the latter Party.*

- No statistics available so far.

2. Multinational Enterprises (MNEs)

Country-by-country Reporting – Action 13 of the BEPS Plan

- Aims at enhancing transparency by ‘multinational groups’ towards tax administrations using a three-tiered standardized approach requiring multinational groups to provide tax administrations with:

high-level
information
regarding their
business operations
(a ‘**master file**’)

detailed
transactional
transfer pricing
documentation (a
‘**local file**’)

**TP Master
File**

**TP Local
File**

**CbC
Report**

a ‘**CbC report**’ that
will provide annually
and for each tax
jurisdiction in which
the multinational
group carries on a
business the amount
of revenue, profit
and tax paid

2. Multinational Enterprises (MNEs)

Country-by-country Reporting – Key Definitions

- **MNE** – means any Group that includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction

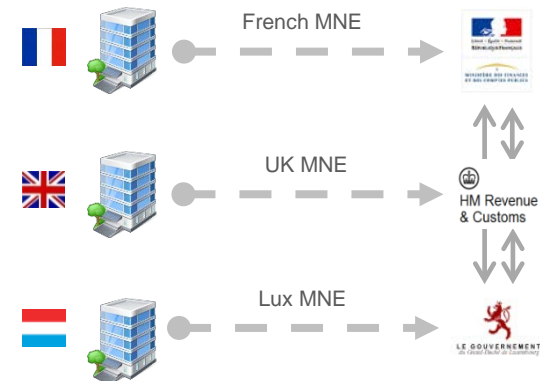
- **Ultimate Parent** – owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that
 - i. it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or
 - ii. It would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence

2. Multinational Enterprises (MNEs)

Country-by-country Reporting – At a glance

- **The exchange consists of :**

- The systematic communication; of
- Certain predefined information on MNEs value chain to the relevant country of residence;
- without prior request, at pre-established regular intervals.



- **Who is concerned?**

- **MCAA Participating Countries;**
- **Ultimate Parents** of **MNEs** have to transmit information to their local tax authorities;
- **MNEs** with a consolidated turnover **in excess of EUR 750m**

- **When?**

- Entry into force in 2016 for “**early adopters**” with a first reporting due in 2017/18 (for FY2016);
- Entry into force in 2017 with a first reporting due in likely 2018/19 (for FY2017).

- **Penalties**

- On the basis of local law (in Luxembourg up to EUR 250,000)

2. Multinational Enterprises (MNEs)

Country-by-country Reporting – Impact on Russia-Luxembourg cross-border structures (MNEs)

- Which countries does the reporting cover?
 - The reporting will cover all countries in which a group operates, **regardless of whether the group has its headquarters inside or outside the European Union**
 - The required data has to be disclosed by country for EU member States.
 - The required data must also be disclosed separately for each jurisdiction that is included by the European Union on a **list of tax jurisdictions that do not meet certain criteria for good tax system governance**.
 - The required data may be aggregated for all other countries
- Russia has signed CbC MCAA on 26 January 2017
- Open issues
 - Requirements on preparation of consolidated accounts in EU and non-EU jurisdictions.
 - Under Luxembourg regulation investment vehicles such as SIF / SICAR / AIF are in principle not obliged to consolidate at fund level.



3. Individuals

3. Individuals

Automatic exchange of information at a glance

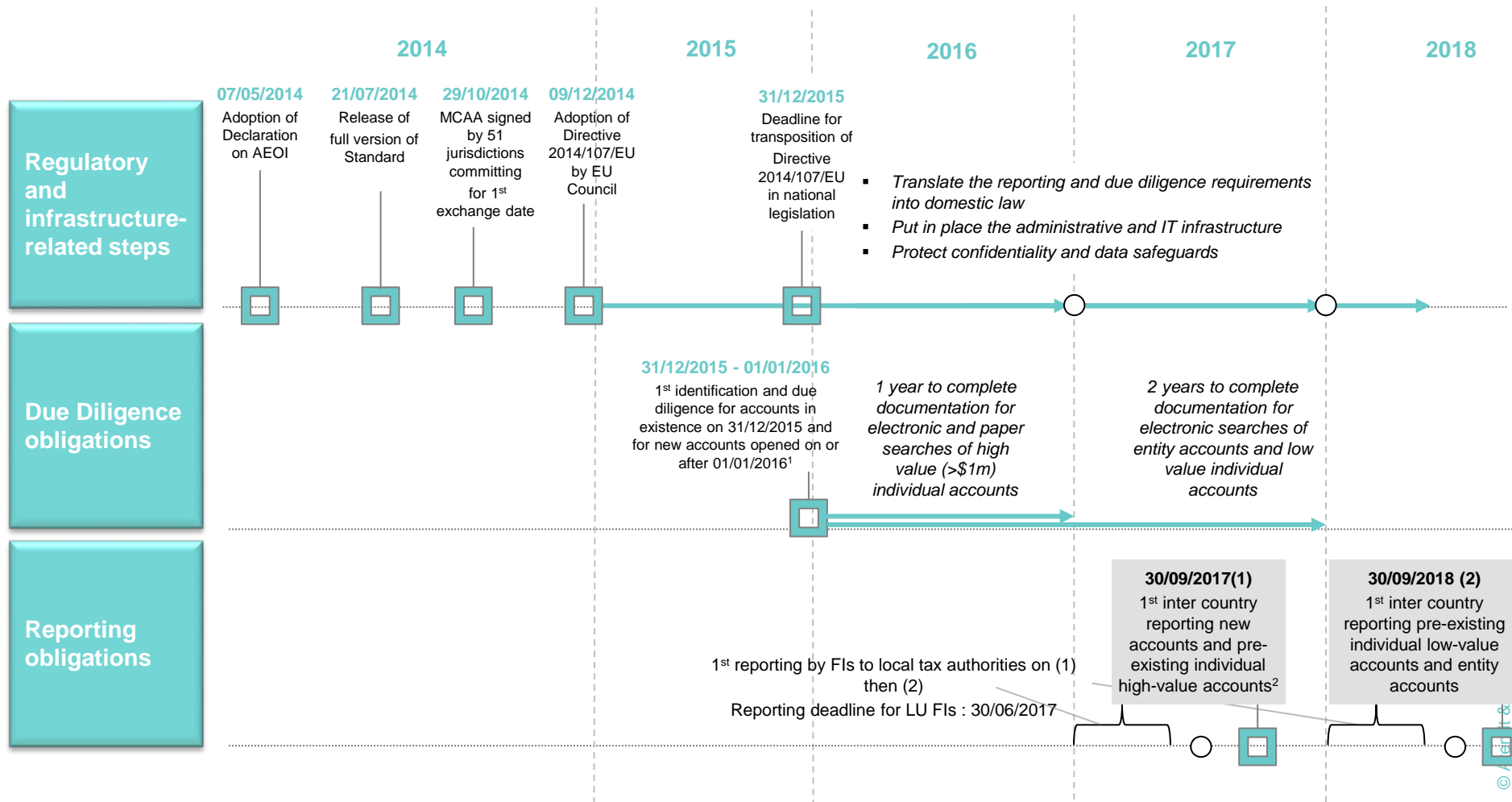


“Banker since 1810...

Tax authorities’ officer since 2012”

3. Individuals

Automatic exchange of information at a glance – timeline



¹ 01/01/2016 : accounts opened prior to this date will be treated as pre-existing (on or after = new accounts).

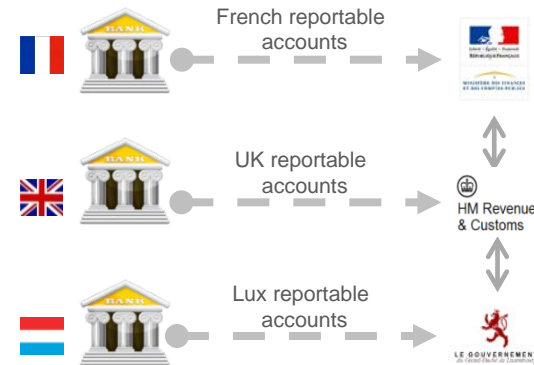
² Either first exchanged by 30/09/2017 or by 30/09/2018, depending on when FIs identify account as reportable.

3. Individuals

Automatic exchange of information under CRS at a glance

- **The exchange consists in :**

- The systematic communication; of
- predefined information on residents in other countries to the relevant country of residence;
- without prior request, at pre-established regular intervals.



- **Who is concerned?**

- **Tax authorities of CRS Reportable Jurisdictions;**
- **Financial Institutions (“FIs”)** located in a CRS Reportable Jurisdiction which have to transmit information to their local tax authorities;
- **Individual or legal persons resident in a CRS** Reportable Jurisdiction which holds a reportable account

- **When?**

- Entry into force in 2016 for “**early adopters**” with a first reporting due in 2017 (for FY2016);
- Entry into force in 2017 with a first reporting due in 2018 (for FY2017).

3. Individuals

Automatic exchange of information – evolution in Luxembourg

- **Transposed Directive 2014/107/EU setting into force the CRS MCAA**
 - CRS Law dated 18 December 2015
 - « Règlement Grand-Ducal » dated 15 March 2016, as last amended on 24 March 2017 listing:
 - excluded accounts
 - 86 Partner jurisdictions (Due Diligence)
 - 48 Reportable jurisdictions (Reporting)

- **In Luxembourg, in case of non-compliance with CRS rules**
 - **In case of non-compliance with due diligence rules or with requirement** to implement arrangements for communication of information, fine up to 250 000 EUR;
 - **In case of non communication, or late/ incomplete/ incorrect communication**, fine up to 0.5% of amount which should have been communicated with a minimum of 1500 EUR.

3. Individuals

Automatic exchange of information – Participating jurisdictions (as of November 2016)

87 signatories of the Multilateral Competent Authority Agreement and Intended First Information exchange date

- **Jurisdictions undertaking first exchange by 2017:**

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, Turks and Caicos Islands, United Kingdom.

- **Jurisdictions undertaking first exchange by 2018**

Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, Belize, Brazil, Canada, Chile, China, Cook Islands, Costa Rica, Ghana, Grenada, Indonesia, Israel, Japan, Kuwait, Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, **Russia**, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Sint Maarten, Switzerland, Uruguay.

At Luxembourg level, the “Règlement Grand-Ducal” details a list of 86 Partner Jurisdictions for due diligence purposes including **Russia.**

3. Individuals

Automatic exchange of information – Reportable jurisdictions in Luxembourg (as of March 2017)

At Luxembourg level, the “Règlement Grand-Ducal” details a list of 48 Reportable Jurisdictions for reporting purposes:

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

3. Individuals

Automatic exchange of information – the scope under CRS

- **Financial information to be reported with respect to reportable accounts:**
 - All types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of income);
 - Account balances; and
 - Sales proceeds from financial assets.

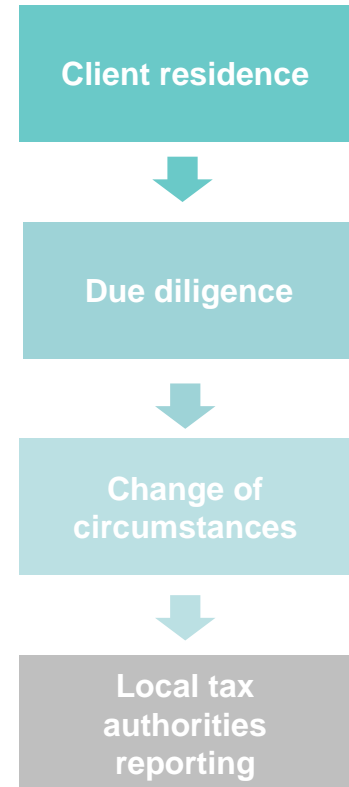
- **Financial institutions required to report under the CRS:**
 - Depository Institutions (e.g. Banks)
 - Custodians Institutions;
 - Certain insurance companies; and
 - Investments Entities (e.g. Funds)

- **Reportable accounts:**
 - Accounts held by individuals and entities (resident in a CRS Participating Jurisdiction);
 - “Look-through” approach regarding passive entity to report on the individuals (resident in a CRS Participating Jurisdiction) that ultimately control these entities irrespective of whether the passive entity holding the account is a resident in a CRS Participating Jurisdiction or not).

3. Individuals

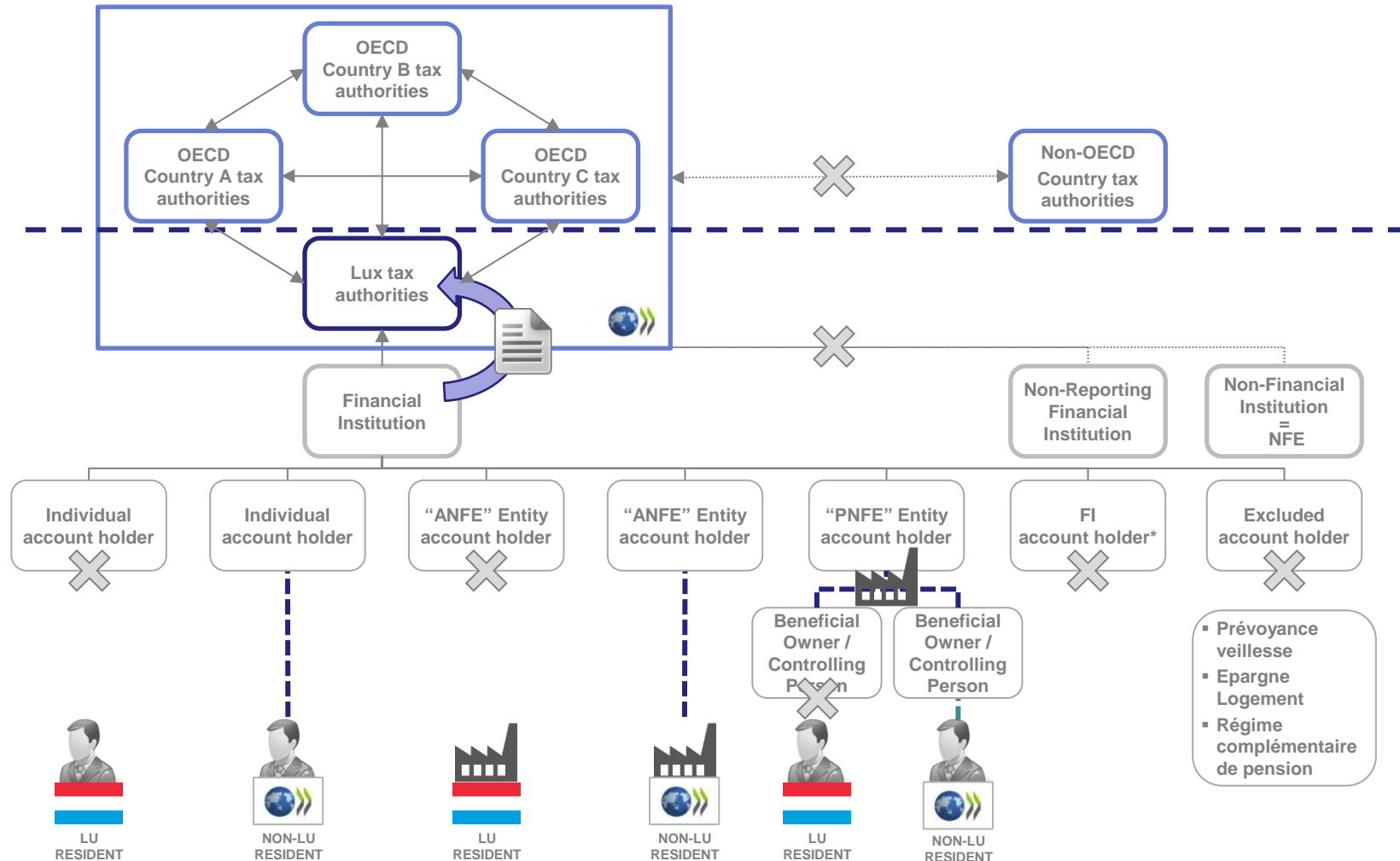
Automatic exchange of information – the procedure under CRS

- Operationally, a Luxembourg FI (e.g. a fund, other Investment Entity or other FI) will be required to **identify individual or legal persons resident in any participating country other than Luxembourg** and holding an account in this FI (Reportable Accounts);
- For the purpose of identifying those accounts, the FI will need to **implement the due diligence procedures** contained in the Annex I of the Standard for AEOI **for accounts existing at 31 December 2015** (“Pre-existing Accounts”) and **for accounts opened on or after 1 January 2016** (“New Accounts”);
- In addition, the FI will need to **implement appropriate communication channels and procedures to any change of circumstances** that convert an account into a Reportable Account;
- Finally, should a reportable account be identified, the **reporting will need to be made** to the *Administration des Contributions Directes* by 30 June 2017 as far as Luxembourg is concerned.



3. Individuals

Automatic exchange of information – overview of the CRS regime




3. Individuals

Automatic exchange of information – Impact on Russia-Luxembourg cross-border constellation

- Russia has signed CRS MCAA and committed to the exchange as from 2018
- According to CRS MCAA the establishment of a bilateral CRS exchange relationship between participating jurisdictions is a three step process whereby both jurisdictions must:
 - join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters;
 - sign the CRS MCAA; and
 - file the subsequent notifications under Section 7 of the CRS MCAA.
- The notifications to be filed by each jurisdiction include:
 - a confirmation that domestic CRS legislation is in place and whether the jurisdiction will exchange on a reciprocal or non-reciprocal basis,
 - a specification of the transmission and encryption methods,
 - a specification of the data protection requirements to be met in relation to information exchanged by the jurisdiction,
 - a confirmation that the jurisdiction has appropriate confidentiality and data safeguards in place; and
 - a list of its intended exchange partner jurisdictions under the CRS MCAA.
- A particular bilateral relationship under the CRS MCAA becomes effective only if both jurisdictions have the Convention in effect, have filed all of the above notifications and have listed each other.

3. Individuals

Automatic exchange of information – Impact on Russia-Luxembourg cross-border constellation

- How fast will the implementation and notification procedure run in Russia?
- Multilateral relationship with the EU or single jurisdiction approach?
 - Noteworthy is the order of the Federal Tax Service (FNS) of the Russian Federation dated 4 March 2016 No. MMB-7-17/117, as amended by the order dated 30 September 2016 No. MMB-7-17/527 and applicable as of 1 January 2017, regarding the list of countries (territories) that are not participating in exchange of information for tax purposes with the Russian Federation that “black-lists” 109 jurisdictions and 19 territories among which considerable amount is participating to CRS and are even Partner and/or Reportable Jurisdictions in Luxembourg and other EU Member States.
 - Luxembourg is not on the list 

3. Individuals

Automatic exchange of information – “regulatory evolution”?



”- I do not want to report myself to my tax authorities...

- No worries, we can do that for you.”



Thank you for your attention!

Contact us

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