GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF
INFORMATION FOR TAX PURPOSES

CRS WORKSHOP - UKRAINE

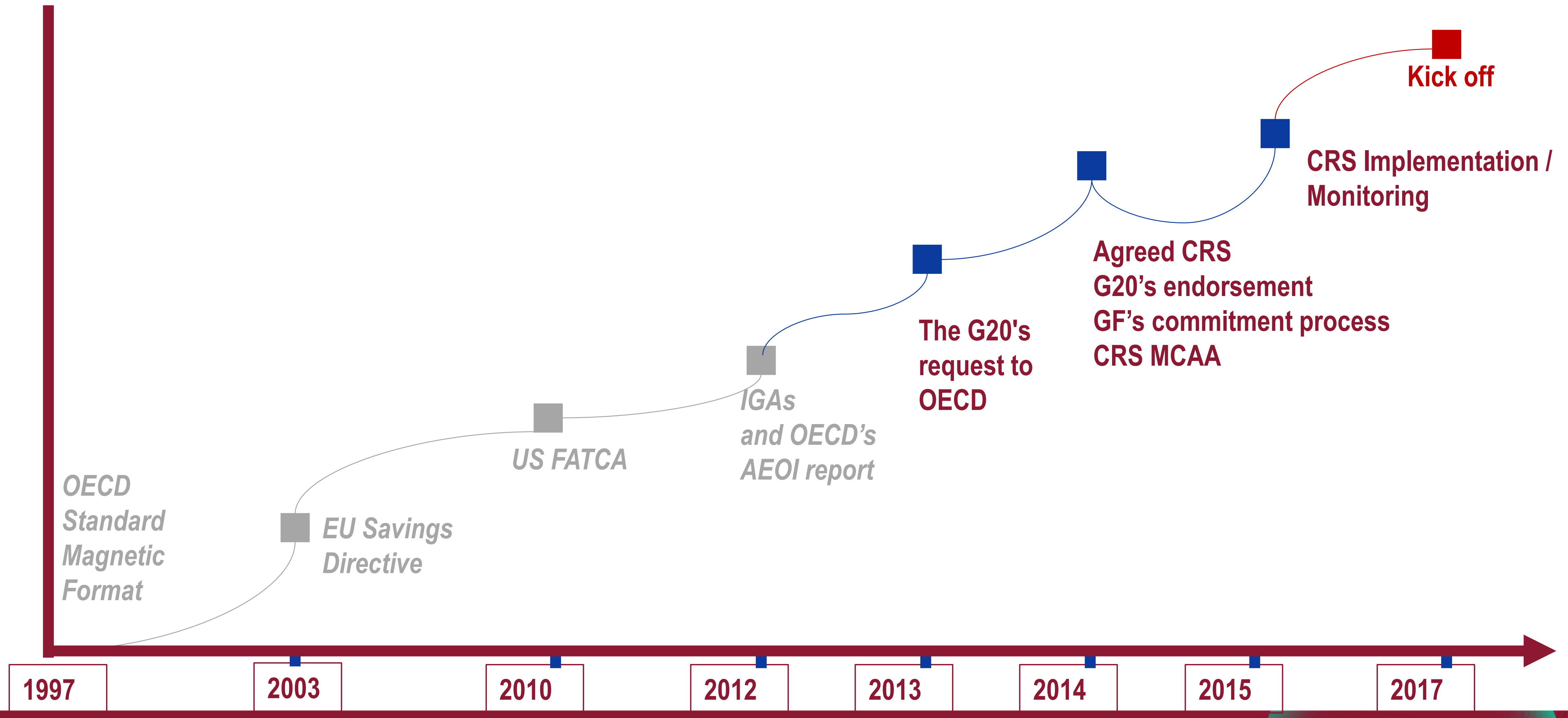
Obligations of Financial Institutions under the CRS

Capacity Building and Outreach Unit
Global Forum Secretariat
20 – 21 June 2023

OECD
BETTER POLICIES FOR BETTER LIVES

1. Origin and history of AEOI/CRS

The Origin of AEOI/CRS



How did we get to the CRS?

US

FATCA

2010

- Annual automatic information reporting.
- Reporting by Foreign Financial Institutions of accounts held for US taxable persons.
- Wide definition of Financial Institution and Financial Accounts.
- Standardized due diligence rules.
- Very often implemented through IGAs backed by domestic legislation

How did we get to the CRS?

Calls for a new single international standard - most effective and efficient

G8 UK
UNITED KINGDOM 2013

July 2013: "We commit to establish the automatic exchange of information between tax authorities as the new global standard ..."

Australia 2014

November 2014: G20 leaders "endorse the global Common Reporting Standard for the automatic exchange of tax information (AEOI) ..."

December 2014: the Directive implementing the Standard is adopted, with exchanges taking place from 2017.

29 October 2014: 51 jurisdictions signed a multilateral competent authority agreement to automatically exchange financial account information.

Relationship with FATCA

1

The CRS builds very closely on FATCA, minimizing costs

2

Differences however remain :

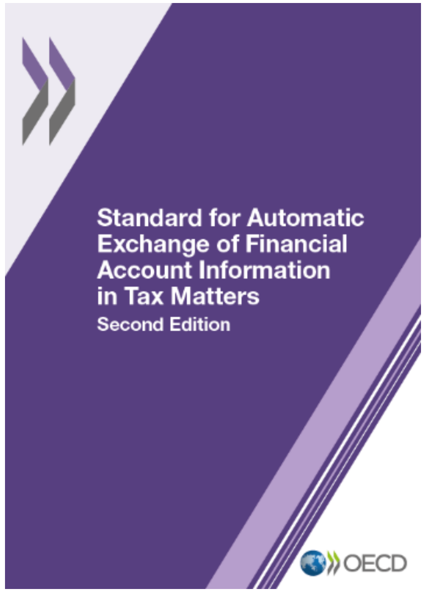
- Removal of US specificities (citizenship resulting in tax residency, references to US domestic law, etc.)

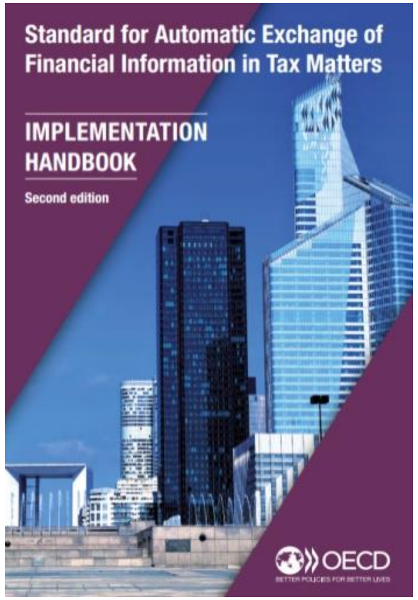
- Areas designed for a multilateral rather than bilateral approach

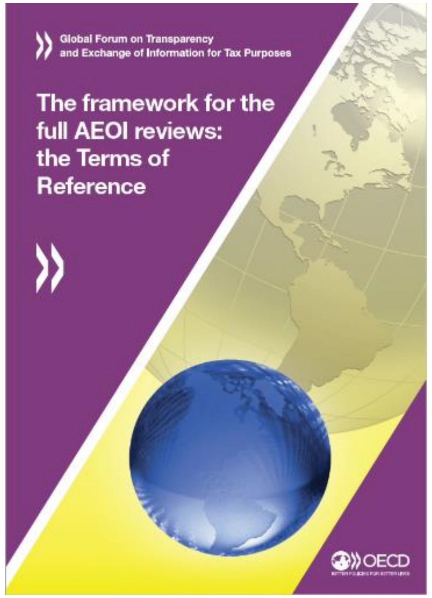
3

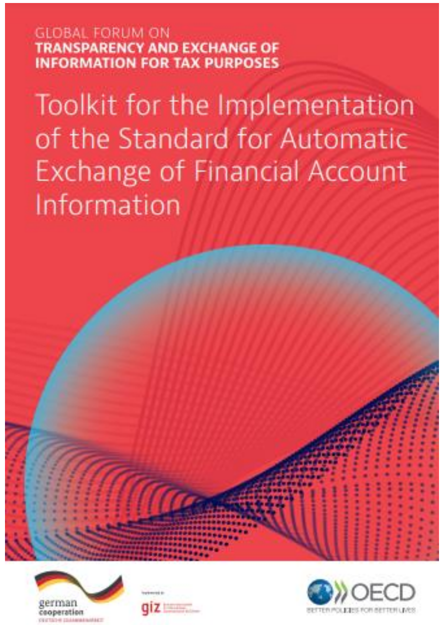
AND CRS is Government (Competent Authority - CA) to Government (CA) only.

CRS materials include the AEOI implementation toolkit and ToR









2. What is AEOI?

What is AEOI/CRS?

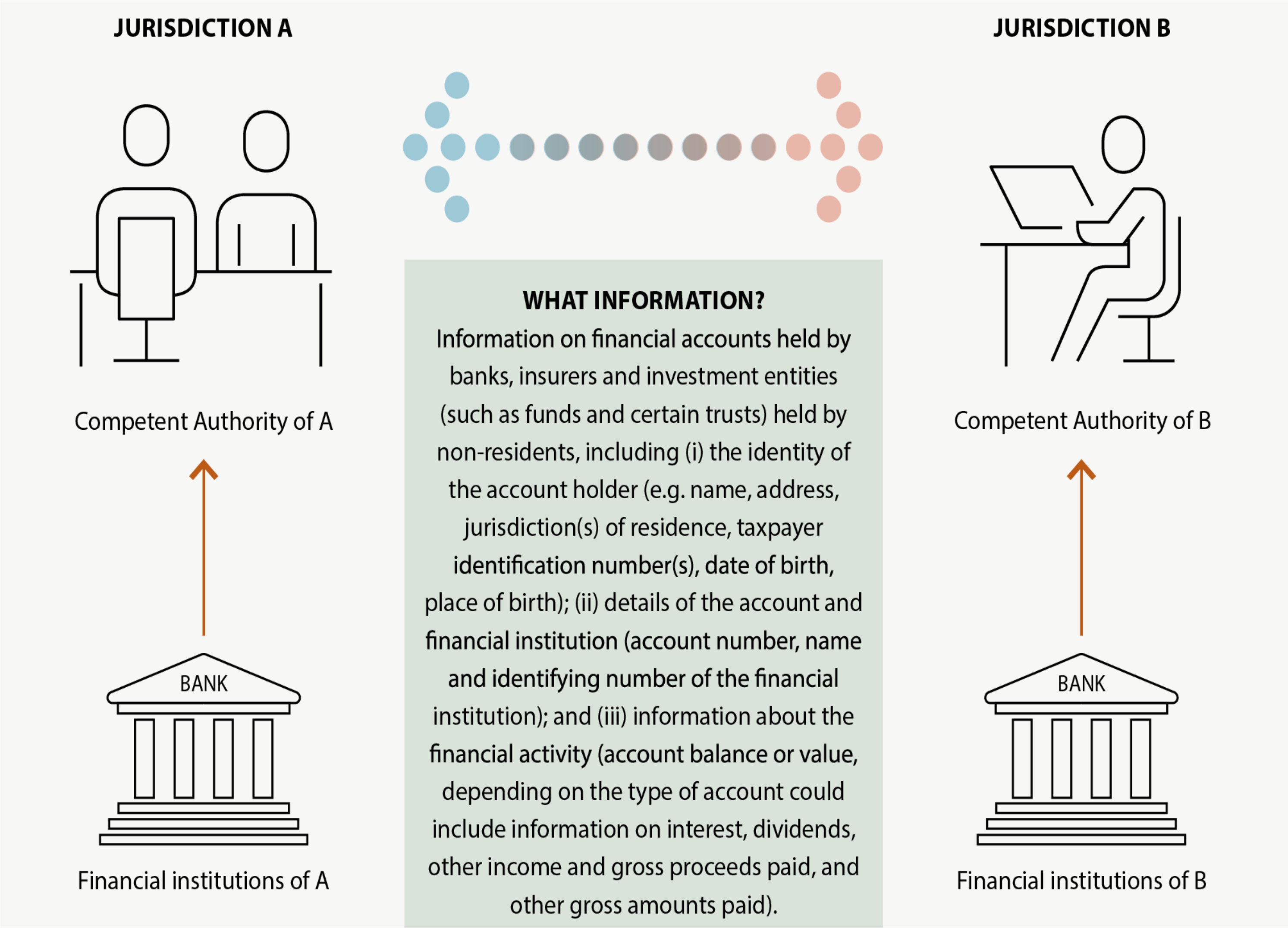
AEOI

- Systematic transmission of "bulk" taxpayer information
- Predefined data (dividends, interests, pensions…)
- Without any prior request
- Fixed transmission schedule
- From the source country to the residence country

=

- FATCA
- CRS
- ETR
- CBCR
- And many others

Automatic exchange of financial accounts information



- Automatic exchange of a predefined set of information (dividends, interests, pensions, etc.) between tax authorities.
- **Annual** exchange of information on financial accounts held by non-resident individuals and entities in a pre-defined format.
- Information exchanged includes details about the **Financial Account** (e.g. the Financial Institution maintaining it, the account number and the account balance) and details about the **Account Holder** (e.g. their name, address, date of birth and Taxpayer Identification Number).

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3. Status of implementation

OECD

AEOI Status of Commitments (as of 19 June 2023)*

JURISDICTIONS HAVING UNDERTAKEN FIRST EXCHANGES IN 2017 (49)
Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, United Kingdom
JURISDICTIONS COMMITTED TO UNDERTAKING FIRST EXCHANGES IN 2018 (51)
Andorra, Antigua and Barbuda, Aruba, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Curacao, Dominica, Greenland, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Lebanon, Macau (China), Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, Niue, Pakistan, Panama, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay, Vanuatu
JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2019/2020/2021/2023/2024/2025 (21)
2019: Ghana, Kuwait; **2020:** Nigeria, Oman and Peru; **2021:** Albania, Ecuador, and Kazakhstan; **2022:** Jamaica and Maldives; **2023**: Jordan, Montenegro, Thailand, and Uganda; **2024**: Georgia, Kenya, Moldova, Tunisia, and Ukraine; **2025**: Armenia, Rwanda and Morocco; **2026:** Mongolia

* The United States has undertaken automatic information exchanges pursuant to FATCA from 2015 and entered into intergovernmental agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. They also include 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.

** Note by Turkey: The information in the documents with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”. Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in the documents relates to the area under the effective control of the Government of the Republic of Cyprus.

*** Developing countries that do not host a financial centre were not asked to commit to a specific date of first exchanges but these jurisdictions have done so.

**** Developing countries that do not host a financial centre were not asked to commit to a specific date of first exchanges.

Impact of AEOI (as of end of 2022)

- Over **100** jurisdictions exchanging information automatically, **20** more due to commence in coming years
- Information on over **111 million accounts** being exchanged, **valued** at almost **€ 11 trillion**
- AEOI triggers significant number of requests for further information, **up 5x** since 2018

- **€ 2.4 billion** in tax, interest and penalties identified as a result of information received under AEOI
- More generally, **over € 114 billion** of additional revenues identified through voluntary disclosure programmes and offshore tax investigations, most of which is linked to the move to AEOI

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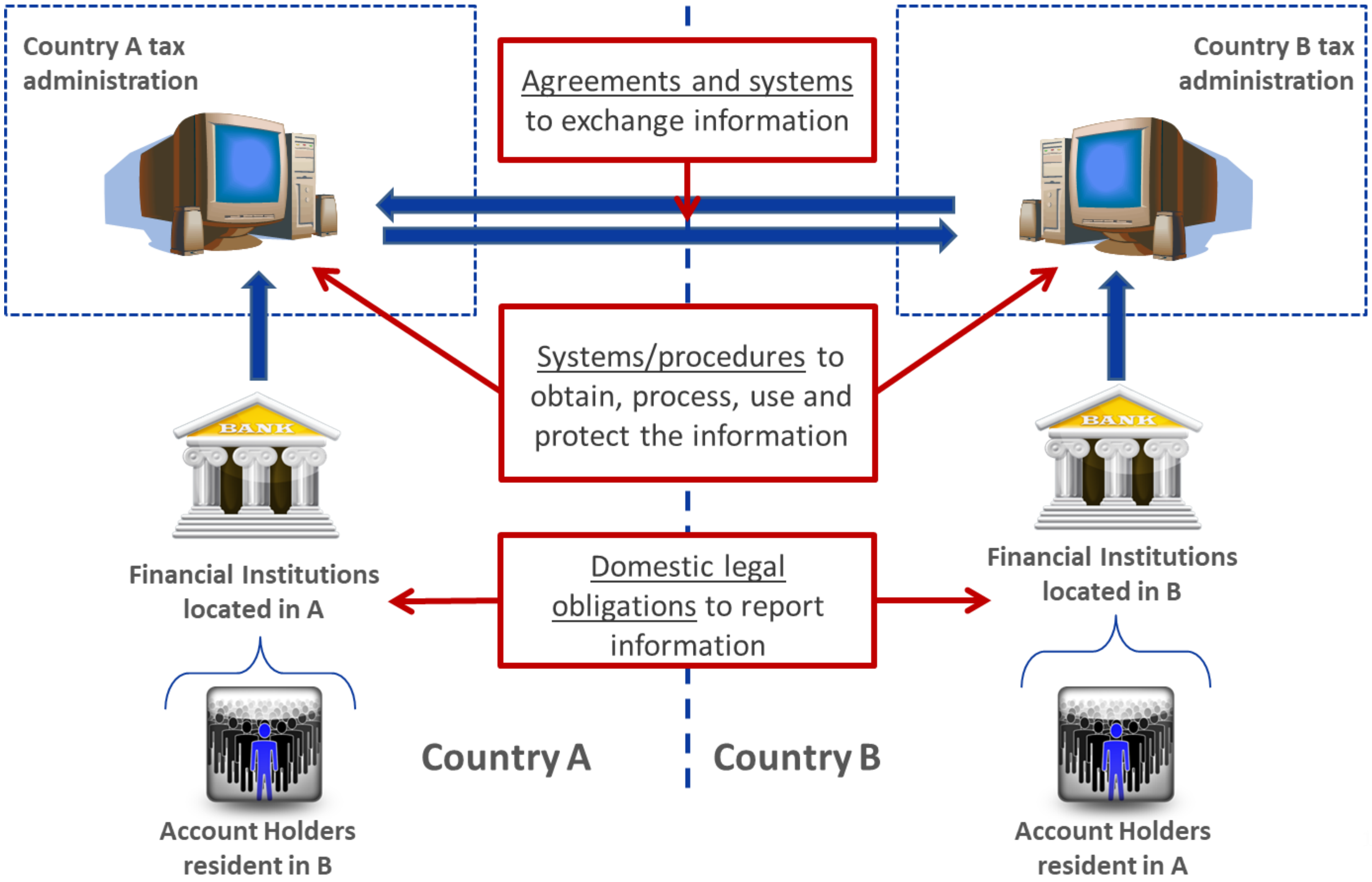
4. Essential elements of the AEOI standard

OECD

CRS: the basic framework

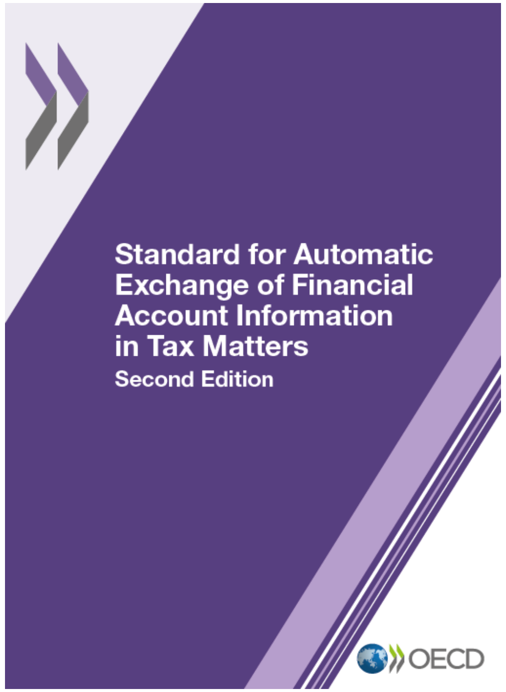


Building blocks

AEOI Standard

- Domestic legislation
- International agreements
- Administrative and IT capacity
- Confidentiality and data safeguards

A general overview: 5 steps



Reporting Financial Institutions — **Step 1**

review their

Financial Accounts — **Step 2**

to identify

Reportable Accounts — **Step 3**

by applying

Due diligence rules — **Step 4**

and then

Report the relevant information — **Step 5**

Rationale

Reporting Financial Institutions

- Wide in scope
- Closest to the taxpayer

Financial Accounts

- Wide in scope

Reportable Accounts

- Targeted to risk

Due diligence rules

- Standardized, building on existing procedures
- Recognize difference between preexisting and new accounts and individuals and entities

Report the relevant information

- Information to identify the Account Holder and assess tax risk

5. Obligations of Financial Institutions

Step 1: Reporting Financial Institution

Reporting Financial Institutions — Step 1

review their

Financial Accounts — Step 2

to identify

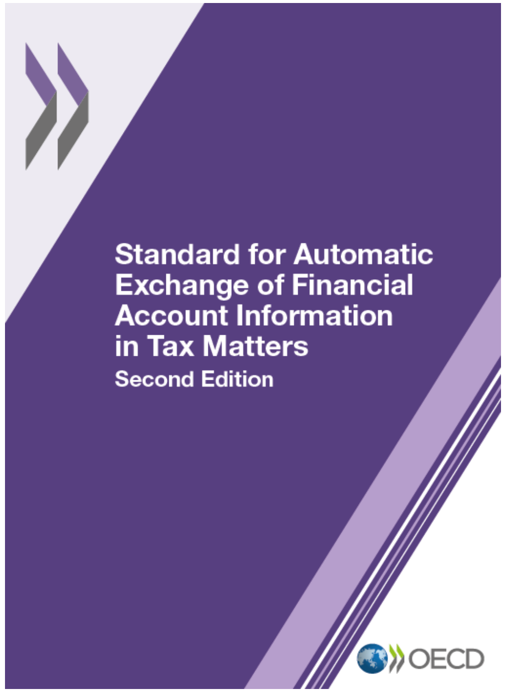
Reportable Accounts — Step 3

by applying

Due diligence rules — Step 4

and then

Report the relevant information — Step 5



Conditions

An Entity …

in a Participating Jurisdiction …

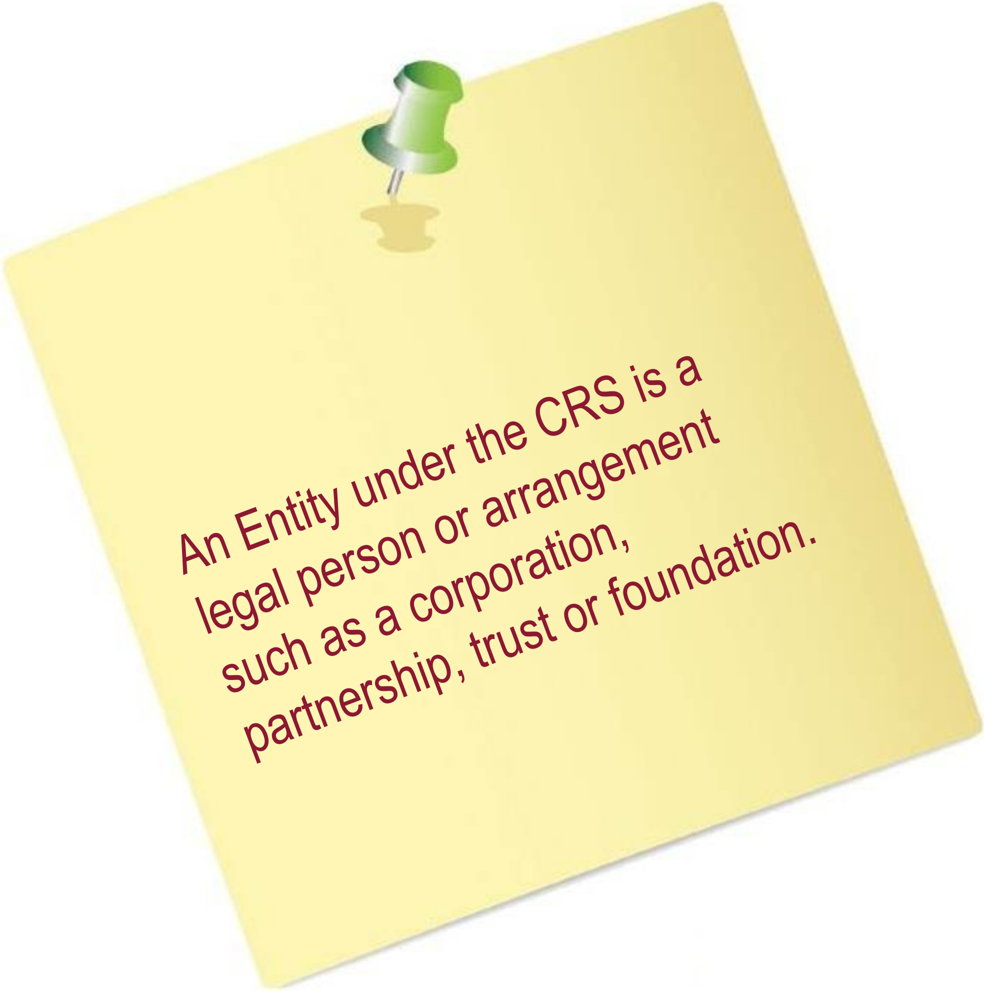
that is a Financial Institution …

and is not a Non-Reporting Financial Institution …

is a Reporting Financial Institution.

An Entity …

- A broad definition of Entity …
- All entities should classify themselves if they are Reporting Financial Institutions, subject to their business activities.



In a Participating Jurisdiction cont….

Unpacking "residence" for the CRS:

Entity	Residence under the Standard: "subject to the jurisdiction of the Participating Jurisdiction" (it can enforce reporting)
Entities that have tax residence (e.g. company)	Residence for tax purposes
Non-tax resident Entities (e.g. partnership)	Place of incorporation, management or financial supervision
Multiple resident Entities (e.g. company with two or more residences)	Where accounts are maintained
Trusts	Where one or more trustees are resident (unless information reported elsewhere due to tax residence)

A Reporting Financial Institution

Depository Institutions	Banks, savings/loan institutions, credit unions etc.
+	
Custodial Institutions	Custodian banks, brokers, depositories, etc.
+	
Investment Entities	Funds, portfolio managers, investment trusts ,etc.
+	
Specified Insurance Companies	Life insurance companies.
−	
Non-Reporting Financial Institutions	Low risk: Government entities, pension funds, other.

Reporting Financial Institutions

Financial Institutions defined

Depository Institutions

- Accepts deposits in the course of a banking or similar business.

Custodial Institutions

- ≥ 20% of gross income from holding Financial Assets for others.

Investment Entities

- Type A: Gross income primarily (≥50%) from business investment activities (trading/investing in Financial Assets, portfolio management, investing/administering/managing FA/funds) on behalf of customers; or
- Type B: Gross income primarily (≥50%) from investment in Financial Assets and managed by a Financial Institution.

Specified Insurance Companies

- Insurance company making payments on a Cash Value Insurance/Annuity Contracts.

Non-Reporting Financial Institutions

- Specified low risk institutions and jurisdiction-specific lists.

Financial Institutions, further defined

Non-Reporting Financial Institutions

- Government Entity, International Organisation, Central Bank (other than payments on obligations held in commercial activity)
- Broad participation retirement fund
- Narrow participation retirement fund
- Pension fund of a government entity, international organisation or central bank
- Qualified credit card issuer
- Exempt collective investment vehicle
- Trustee documented trust
- Any other Entity with low risk of tax evasion, similar characteristics to the above, defined in domestic law, does not frustrate purposes of the Standard

Step 2: Financial Accounts

Reporting Financial Institutions — Step 1

review their

Financial Accounts — Step 2

to identify

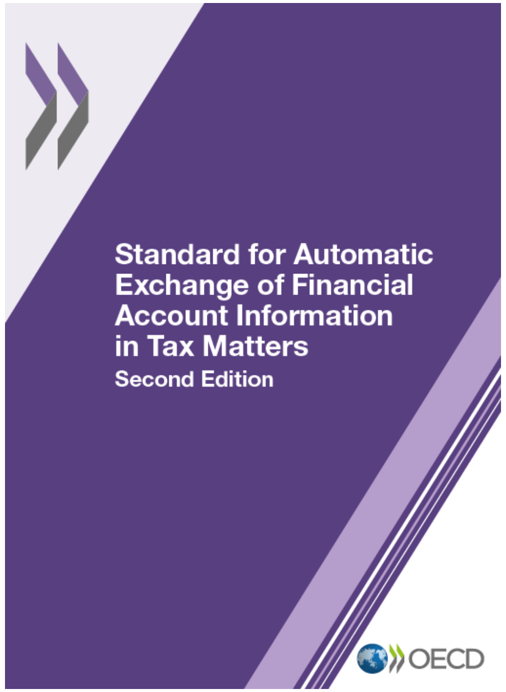
Reportable Accounts — Step 3

by applying

Due diligence rules — Step 4

and then

Report the relevant information — Step 5



Financial Account

General rule: an account "maintained" by a Financial Institution (FI) – "scoping analysis"

Specifically including:

Account	The FI generally considered to "maintain" it (in ordinary sense)
Depository Accounts	The FI obliged to make payments with respect to the account
Custodial Accounts	The FI that holds custody over the assets in the account
Equity and debt interests	The interests in an Investment Entity are "maintained" by that Investment Entity (or other FI)
Cash Value Insurance/ Annuity Contracts	The FI obliged to make payments with respect to the contract

Excluded Accounts (low risk)

- Retirement and pension accounts
- Other tax-favoured accounts
- Term Life Insurance Contracts
- Estate Accounts
- Escrow Accounts
- Depository Accounts due to not-returned overpayments
- Other Low-risk excluded accounts

Step 3: Reportable Accounts

Reporting Financial Institutions — Step 1

review their

Financial Accounts — Step 2

to identify

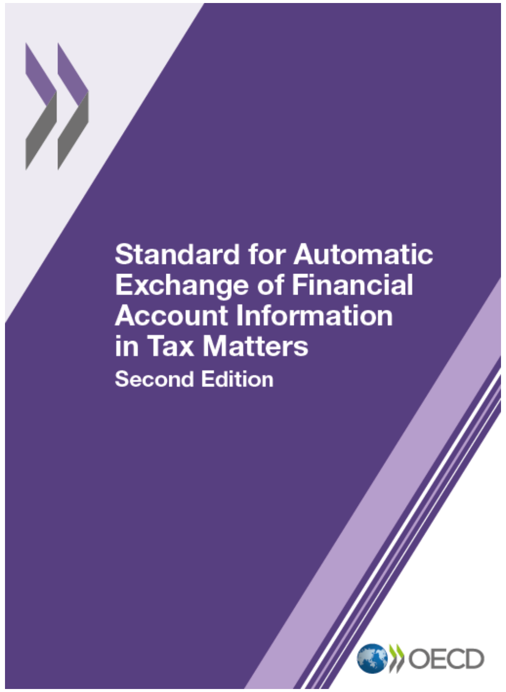
Reportable Accounts — Step 3

by applying

Due diligence rules — Step 4

and then

Report the relevant information — Step 5



Reportable Accounts

An account held by …

One or more Reportable Persons	A Passive Non-Financial Entity with one or more Controlling Persons that is a Reportable Person

Reportable Accounts

A Financial Account held by a person …

who is a Reportable Jurisdiction Person …

and is not excluded from being a Reportable Person …

is a Reportable Account.

Reportable Jurisdiction Person

Reportable Jurisdiction Person

- An Individual or Entity resident for tax purposes in a Reportable Jurisdiction (or effective management if no tax residence).
- Detailed due diligence rules for Financial Institutions to follow.

Reportable Jurisdiction

- As defined in domestic in law where Financial Institution reports, in a published list.
- Will include all jurisdictions with which the Financial Institution's jurisdiction has an agreement to automatically exchange information under the Standard (link to **the wider approach**).

Exclusions

- Exclusions include: corporations whose stock is regularly traded on an established securities market (and their related entities); government entities; and Financial Institutions.

Controlling Persons that are reportable

A Financial Account held by …

a Passive Non-Financial Entity …

with a Controlling Person(s) that is a Reportable Person(s) …

<u>is a Reportable Account</u>.

Passive Non-Financial Entities (where beneficial ownership relevant)

Entity Account Holders

Financial Institutions

Non-Financial Entities (NFEs)

Not reportable (do their own reporting)

Except Type B Investment Entities in Non-Participating Jurisdictions – treated as Passive NFEs

Active NFEs Tax evasion less likely

Passive NFEs Tax evasion more likely!

Active NFEs and Passive NFEs

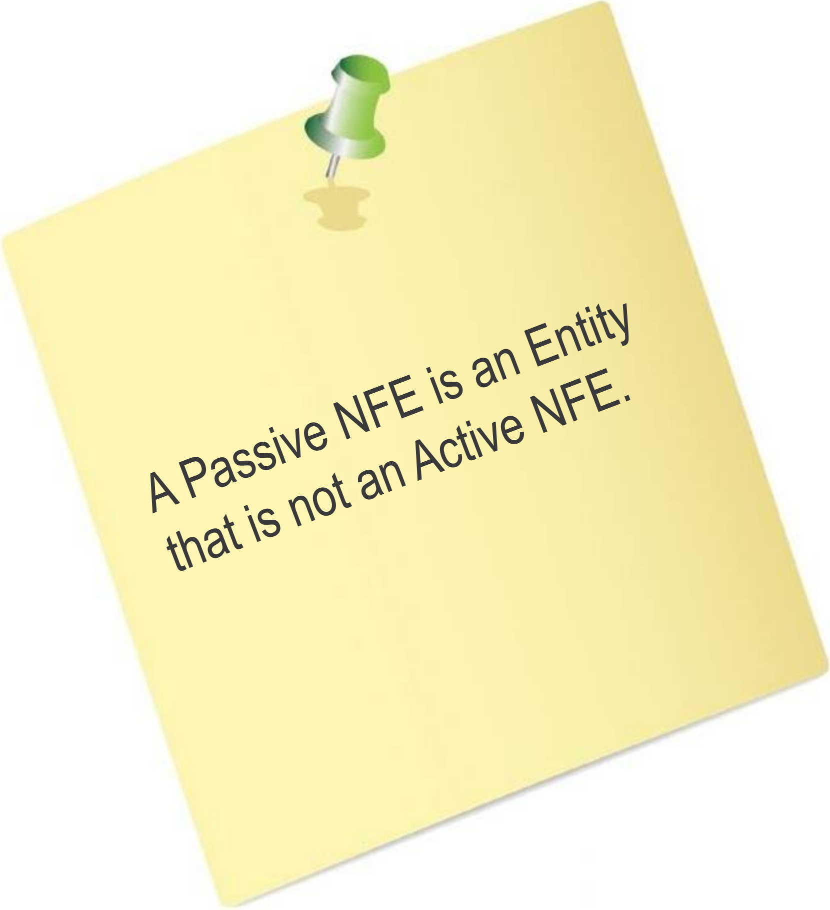
Active NFEs

- active NFEs by reason of income and assets;
- publicly traded NFEs;
- Governmental Entities, International Organisations, Central Banks, or their wholly owned Entities;
- holding NFEs that are members of a nonfinancial group;
- start-up NFEs;
- NFEs that are liquidating or emerging from bankruptcy;
- treasury centres that are members of a nonfinancial group; or
- non-profit NFEs.

Passive NFEs

- NFE that is not an Active NFE
- "Type b" Investment Entity resident in Non-Particpating Jurisdiction

Passive NFEs = higher risk of tax evasion = must look through



Passive NFE:

- <u>Includes</u>: Entities with ≥50% of income which is passive income or ≥50% of assets produce passive income (dividends, interest, rents etc.)
- <u>Includes</u>: Type B Investment Entities located in non-Participating Jurisdictions.
- <u>Excludes</u>: Publically traded Entities (and Entities related to them), Government Entities, Charities, etc.

Controlling Person = Beneficial Owner

- Legal persons: must "look through" the Entity to identify the natural person(s) who exercises control over the Entity
- Generally, through cascade approach: (i) controlling ownership interest in the entity (e.g. ≥ 25% ownership), or (ii) person(s) exercising control through other means or (iii) senior managing official
- CRS rules for Trusts: settlor(s), trustee(s), protector(s), beneficiary(ies) or class(es) of beneficiaries (and equivalent or similar positions in the case of other legal arrangements) must always be treated as Controlling Persons

The term "Controlling Person" corresponds to the term "beneficial owner" (Rec 10) and must be interpreted in a manner consistent with the 2012 FATF Recommendations.

FATF

Step 4: Due Diligence Rules

Reporting Financial Institutions — Step 1

review their

Financial Accounts — Step 2

to identify

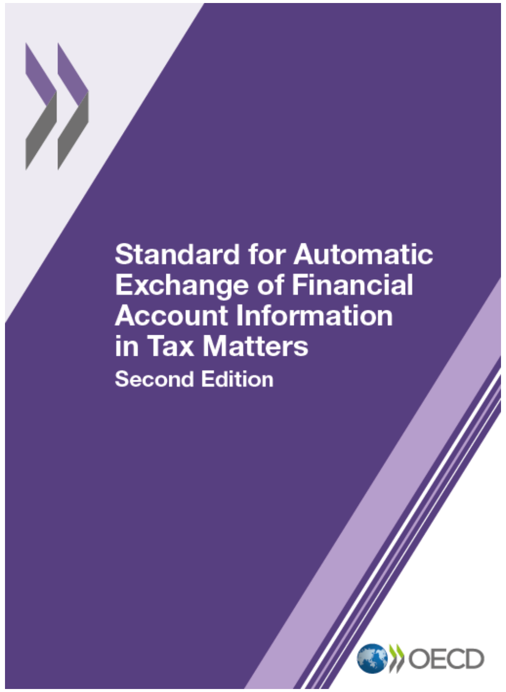
Reportable Accounts — Step 3

by applying

Due diligence rules — Step 4

and then

Report the relevant information — Step 5



Categories of Accounts

Financial Accounts

Excluded

Preexisting Individual

- Held by an individual.
- Open at the point new account procedures introduced.

New Individual

- Held by an individual.
- Subject to the new account procedures.

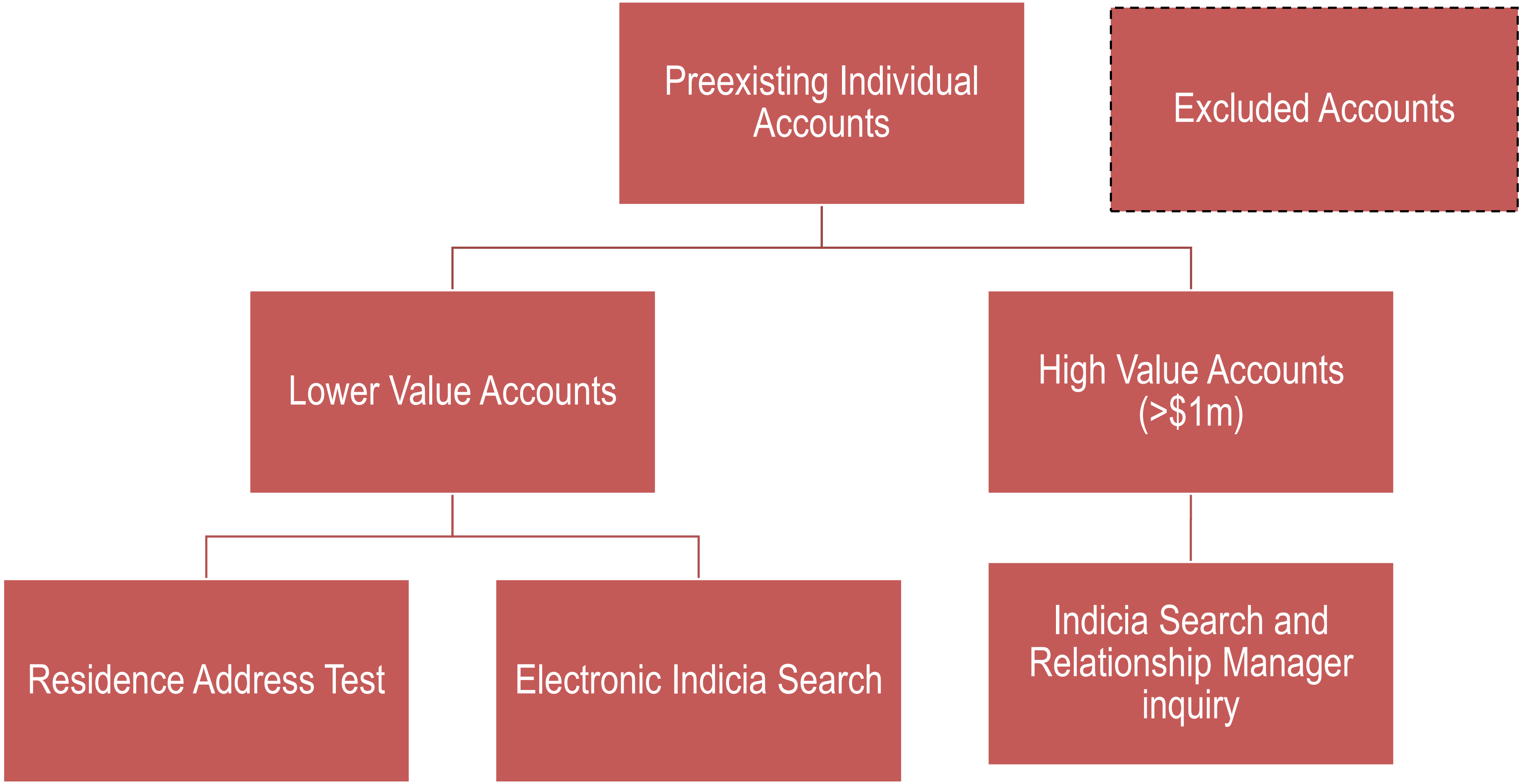
Preexisting Entity

- Held by an Entity.
- Open at the point new account procedures introduced.

New Entity

- Held by an Entity.
- Subject to the new account procedures.

Preexisting Individual Accounts



Preexisting Individual Low Value Accounts

Lower Value Accounts: Residence Address Test

- Optional alternative test based on **residence address on file**.
- Address must be:
  - **"current"**; and
  - based on **Documentary Evidence**
- Otherwise indicia search must be performed.
- **Relaxations** for dormant accounts, non-Government issued but corroborative documentary evidence and pre-AML accounts.

Documentary Evidence

- **Includes**: Government issued certificate of residence; Government issued identification; any audited financial statement or third-party credit report.

Preexisting Individual Low Value Accounts

List of indicia:

- the Account Holder's residence status;
- the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
- the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
- in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
- whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and
- whether there is any power of attorney or signatory authority for the account.

Preexisting Individual High Value Accounts

Aggregation

- To apply the threshold all Account Holder's Financial Accounts must be aggregated, to the extent the computerised system allows and the relationship manager has actual knowledge.

Indicia (of tax residency)

- **Indicia**: electronic, as for Low Value.
- In addition to a search of electronic records a **paper search** for any indicia not captured electronically.
- Indicia can be "**cured**" : Self-certification and Documentary Evidence.

Relationship manager inquiry

- **Actual knowledge** of the relationship manager the Account Holder is a Reportable Person – if they know, must report.

Undocumented Accounts

Only applies to Pre-existing Individual Accounts meeting certain conditions:	
<u>For Preexisting Individual Lower Value Accounts:</u> • If a "hold mail" instruction or "in-care-of" address is discovered in the electronic search, and no other address and none of the other indicia are identified for the Account Holder, the Reporting Financial Institution must, **in the order most appropriate to the circumstances, apply the paper record search, or seek to obtain from the Account Holder a self certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder.** • If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account as an undocumented account.	**<u>For Preexisting Individual High Value Accounts:</u>** • If a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of High Value Account (including electronic record search, paper record search and relationship manager inquiry for actual knowledge), and no other address and none of the other indicia are identified for the Account Holder, the Reporting Financial Institution **must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder.** • If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account.

Categories of Accounts

Financial Accounts

Excluded

Preexisting Individual	New Individual	Preexisting Entity	New Entity
• Held by an individual. • Open at the point new account procedures introduced.	• Held by an individual. • Subject to the new account procedures.	• Held by an Entity. • Open at the point new account procedures introduced.	• Held by an Entity. • Subject to the new account procedures.

New Individual Accounts

Always collect self-certification upon account opening to determine if Account Holder is a Reportable Person

- A valid self-certification must be obtained, establishing tax residency (ies). The process is flexible but the content is not.
- Must be signed/positively affirmed, dated, and include Account Holder's:
  - Name
  - Residence address
  - Jurisdiction(s) of residence for tax purposes
  - TIN(s)
  - Date of birth

Must confirm reasonableness of the self-certification

- Self-certification must be compared to other information obtained in connection with the account opening (e.g. AML/KYC).
- Not reasonable if reason to know it is unreliable. (e.g. China is declared as residence but French passport/phone)
- If unreliable, need either a new self-certification or a reasonable explanation and documentation.

Categories of Accounts

Financial Accounts

Excluded

Preexisting Individual

- Held by an individual.
- Open at the point new account procedures introduced.

New Individual

- Held by an individual.
- Subject to the new account procedures.

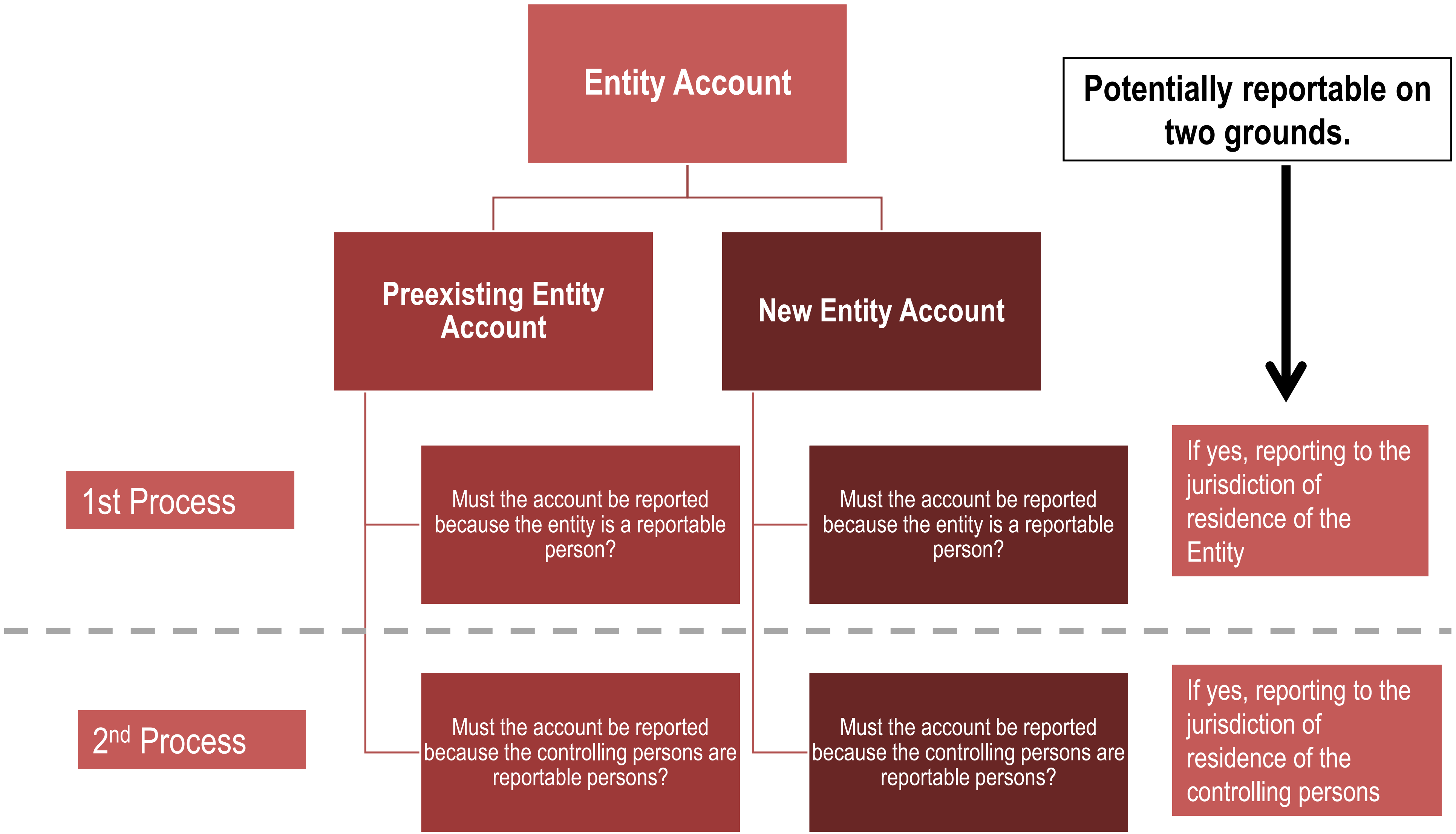
Preexisting Entity

- Held by an Entity.
- Open at the point new account procedures introduced.

New Entity

- Held by an Entity.
- Subject to the new account procedures.

Entity Account



Preexisting Entity Account

First process : is the account to be reported due to the Entity?

Preexisting Entity Accounts

Excluded Accounts

Exempt if ≤ $250k

Examine information on file or public/obtain a self-certification

Possibly reportable due to the Entity Account Holder

Preexisting Entity Account – Look-Through

Second process : is the account to be reported due to controlling persons of the Entity ?

Non Financial Entity

(NFE)

Financial Institution

= End of procedure

Except for Investment Entity type B in a non-participating Jurisdcitions

Info. In its possession, or public or self-certification

Active NFE – End of the procedure – no need to identify the residence of CPs

Passive NFE &

Investment Entity type B in a non-participating Jurisdcitions

Solde ≤ $1m – use info on file to identify residence of CPs

Balance > $1m – Self-certification of residence of CPs

(indicia search if not obtained)

Possibly reportable due to the Controlling Persons

New Entity Account

First process : is the account to be reported due to the Entity?

New Entity Account

No threshold

Obtain a self-certification and control its reasonableness

No need of the Self-certification if the FI establishes based on information:

- that is publically available; or
- in the Financial Institutions possession

the Entity is not a Reportable Person.

Possibly reportable due to the Entity Account Holder

New Entity Account – Look through

Second process : is the account to be reported due to controlling persons of the Entity ?

Non Financial Entity
(NFE)

Financial Institution
= End of procedure

Except for Investment Entity type B in a non-participating Jurisdictions

Info. In its possession, or public or self-certification

Active NFE – End of the procedure – no need to identify the residence of CPs

Passive NFE &
Investment Entity type B in a non-participating Jurisdcitions

Only Self-certification of the residence of the CPs (provided by the Entity or the CPs)

Possibly reportable due to the Controlling Persons

Step 5: Information Reporting

Reporting Financial Institutions

Step 1

review their

Financial Accounts

Step 2

to identify

Reportable Accounts

Step 3

by applying

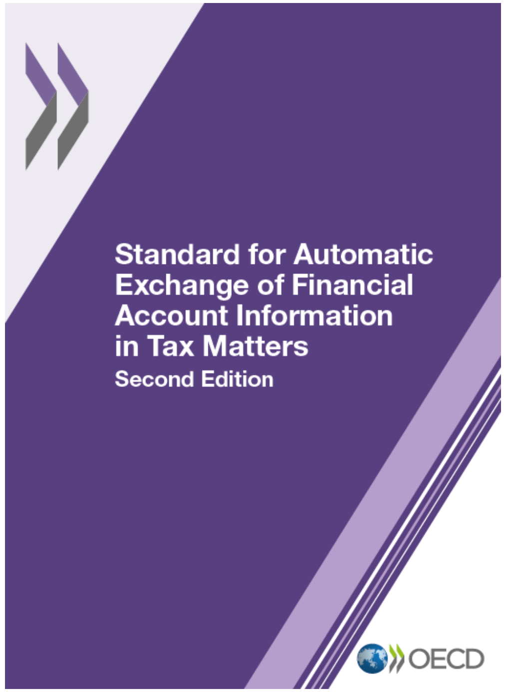
Due diligence rules

Step 4

and then

Report the relevant information

Step 5



What information needs to be reported

Information type	Information
To **identify the Account Holder & Controlling Persons** 	• Name • Address • Jurisdiction(s) of residence • Where available and required: • TIN(s), Date of birth, Place of birth
To **identify the accounts and Financial Institution** 	• Account number (or functional equivalent, e.g. contract number or policy number) • Name and identifying number of the Financial Institution
In relation to **financial activity** in the account 	• Account balance or value (or account closure in-year) (equity interest of investment entities?) • For <u>depository accounts</u>: interest paid or credited • For <u>custodial accounts</u>: interest, dividends, other income and gross proceeds paid or credited • For <u>other accounts</u>: gross amounts paid or credited • **<u>Joint accounts, and Controlling Persons of Passive Non-Financial Entities (NFE):</u>** share of the income & assets/account balance or value

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Thank you

For more information

- https://oe.cd/tax-transparency
- https://twitter.com/OECDtax
- gftaxcooperation@oecd.org
- https://oe.cd/tax-news

OECD