

Update on Tax Secrecy Initiatives

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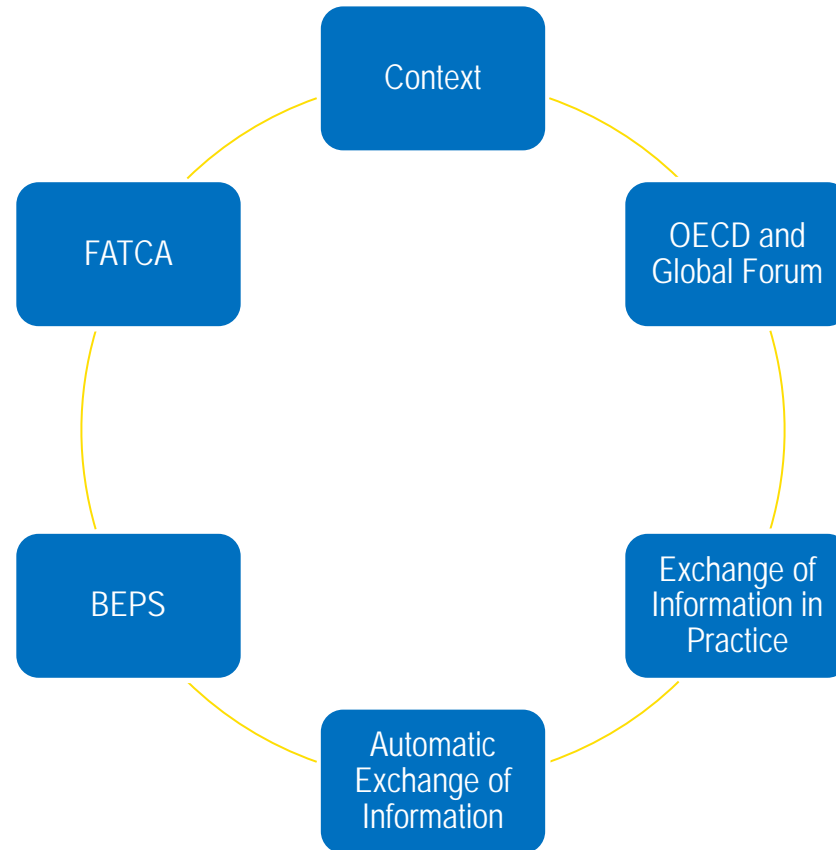
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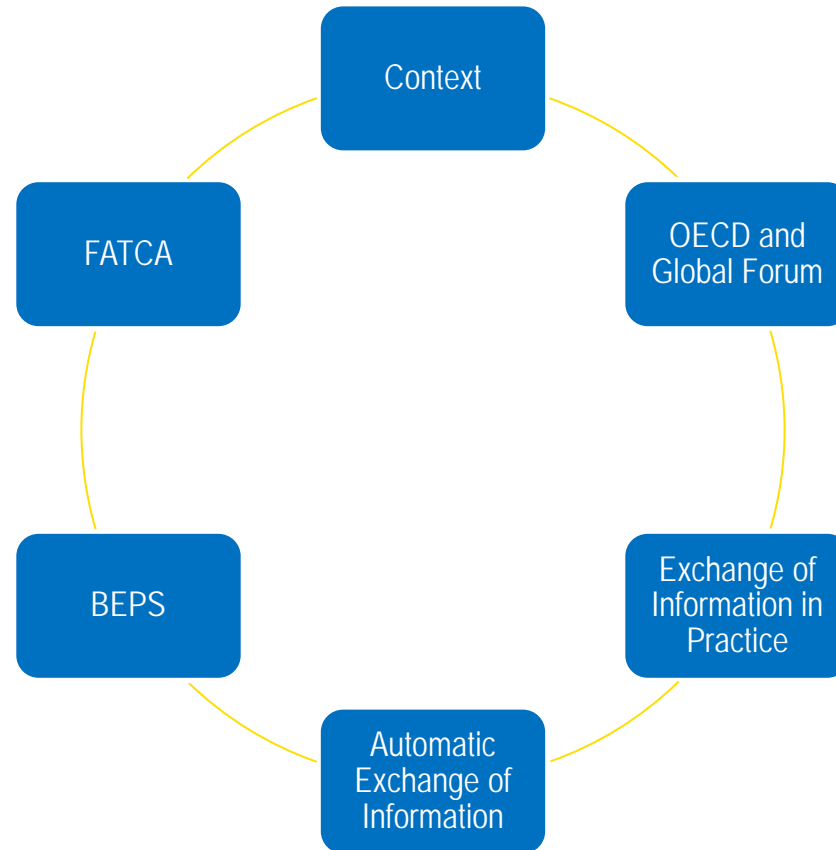
Agenda



Context



Agenda



- Early 2000s
- 2009
- Article 26 OECD Model/UN Model and 2002 Model Agreement on Exchange of Information on Tax Matters



“Substantially Implemented” means...

- Whether a jurisdiction has signed 12 agreements on exchange of information that meet the OECD standards, taking into account the following:
 - Agreements with other tax havens excluded;
 - Willingness to continue to sign agreements after the threshold is reached;
 - Effectiveness of the implementation;
- Legal and administrative framework are important



Progress Report Global Forum on Transparency and Exchange of Information

- 119 member jurisdictions
- Almost 800 bilateral TIEAs
- Completed 100 peer reviews
 - Phase 1: quality of a jurisdiction's legal and regulatory framework
 - Phase 2: practical operation of that framework
- 21 peer reviews published since June 2012



- Jurisdictions that have substantially implemented the OECD standards
- Jurisdictions that have committed to the standards but have not yet substantially implemented:
 - Nauru
 - Niue
- Jurisdictions not committed to the OECD standards



Phase 1: Legal and Administrative Framework

- Domestic legal and administrative framework which allows for transparency and exchange of information
 - Ensure that **information is available** to the tax authorities (e.g. account keeping requirements);
 - Ensure that **information is accessible** (e.g. no restrictions caused by bank secrecy, power to obtain and provide the information);
 - Ensure the existence of **exchange of information mechanisms**;
 - Respect for **taxpayer's rights** and **confidentiality** of information



Phase 1: Legal and Administrative Framework

Phase 1 assessments lead to one of the following determinations with respect to each essential element of the standards

Determinations – Phase 1

The element is in place

The element is in place, but certain aspects of the legal implementation of the element need improvement

The element is not in place



Phase 2: Practical Implementation

- Verify whether the **information is truly available and accessible in practice**, and whether there are **mechanisms in place which effectively enable exchange of information** with foreign tax authorities
- Assess the level of cooperation in practice, in particular the **capacity to provide the information in a timely manner**



Phase 2: Practical Implementation

Phase 2 evaluation is based on an overall rating, which is applied on the basis of a four-tier system:

Rating	Phase 2 – Exchange of Information
Compliant	The essential element is, in practice, fully implemented
Largely compliant	There are only minor shortcomings in the implementation of the essential element
Partially compliant	The essential element is only partly implemented
Non-compliant	There are substantial shortcomings in the implementation of the essential element



Peer Review – Assessment Criteria (1)

- Availability of information for all relevant entities and arrangements
 - Ownership and identify information
 - Accounting records are kept
 - Banking information available for all account-holders
- Access to information
 - Power to obtain and provide information
 - Rights and safeguards (e.g. notification and appeals) are compatible with effective EOI



Peer Review – Assessment Criteria (2)

- Exchanging information
 - Effectiveness of the EOI mechanisms
 - Network covers all relevant partners
 - Adequate confidentiality provisions
 - Respect the rights and safeguards of taxpayers and third parties
 - Timely



Progress Reports/ Peer Reviews

Jurisdiction	Type of review	Publication date
Antigua and Barbuda	Phase 1	12 September 2011 and 20 June 2012
The Bahamas	Phase 1	14 April 2011
Barbados	Phase 1	28 January 2011 and 5 April 2012
Bermuda	Phase 1	30 September 2010 and 5 April 2012
The Cayman Islands	Phase 1	30 September 2010 and 12 September 2011
Curacao	Phase 1	12 September 2011
Jamaica	Phase 1	30 September 2010
Trinidad and Tobago	Phase 1	28 January 2011
The Turks and Caicos Islands	Phase 1	12 September 2011 and 26 October 2011



Peer Reviews Phase 2

Jurisdiction	Type of review	Scheduled
Antigua and Barbuda	Phase 2	Second half 2013
The Bahamas	Phase 2	Second half 2012
Barbados	Phase 2	First half 2013
Bermuda	Phase 2	Second half 2012
The Cayman Islands	Phase 2	Second half 2012
Curacao	Phase 2	First half 2014
Jamaica	Phase 2	First half 2013
Trinidad and Tobago	Phase 2	Second half 2013
The Turks and Caicos Islands	Phase 2	First half 2013



Exchange of Information in Practice

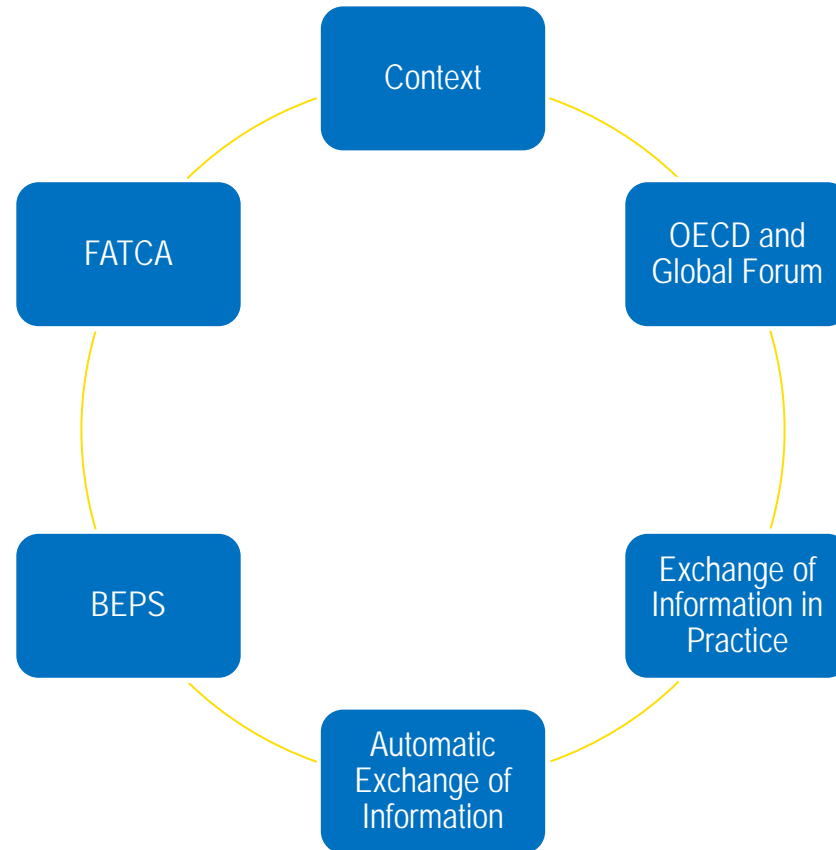
- Number of requests
- Time needed
- Reasons for intensive cooperation



- Focus on tax transparency
- Automatic exchange of information
- Profit shifting
- Developing countries
- Ownership



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Automatic Exchange of Information

- Systematic and periodic transmission of bulk information base
- Reporting of payments by payer (FI, employer)



Automatic Exchange of Information – how does it work

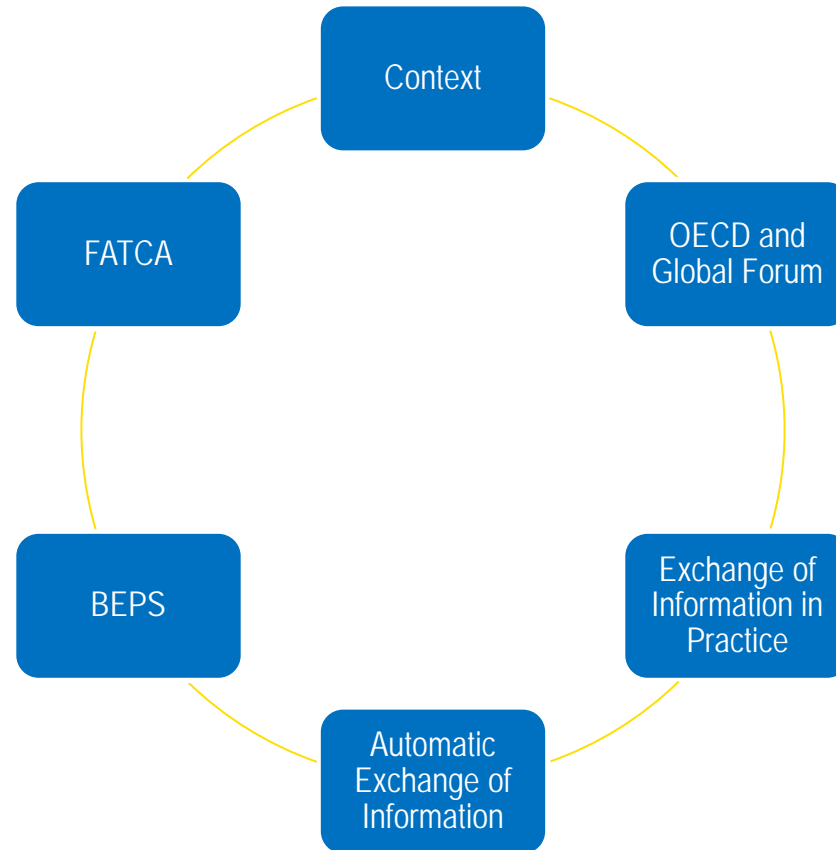
1. Payer or paying agent collects information from the taxpayer and/or generates information itself
2. Payer or paying agent reports information to the tax authorities
3. Tax authorities consolidate information by country of residence
4. Information is encrypted and bundles are sent to residence country tax authorities
5. Information is received and decrypted
6. Residence country feeds relevant information into an automatic or manual matching process
7. Residence country analyses the results and takes compliance action as appropriate



- Convention on Mutual Administrative Assistance in Tax Matters
- 9 April 2013:
 - France
 - Germany
 - Italy
 - UK
- Model 1 IGA



Agenda





Corporate taxation Wake up and smell the coffee Starbucks's tax troubles are a sign of things to come

Dec 15th 2012 | NEW YORK | from the print edition



Tax avoidance is robbing Britain of £5BILLION a year: Spending watchdog warns taxman is struggling to control epidemic

- National Audit Office inquiry lays bare 'staggering' scale of tax avoidance
- 2,285 tax avoidance schemes disclosed to HMRC by experts in eight years
- HMRC probing 41,000 tax avoidance cases among small firms or individuals

By BECKY BARROW

PUBLISHED: 02:40 EST, 20 November 2012 | UPDATED: 02:45 EST, 21 November 2012

THE WALL STREET JOURNAL

03 FEBRUARY 2013



Shell India accused of tax evasion



Kenya: KRA probes multinationals over tax evasion

Business Daily

By GEOFFREY IRUNGU

Posted Wednesday, June 22 2011

Mail Online

Microsoft avoids paying £159MILLION in corporation tax EVERY YEAR using Luxembourg tax loophole

- Microsoft avoids UK corporation tax on £1.7billion a year in UK revenue
- Along with other major companies, uses Luxembourg office to legally dodge tax
- Tech giant claims it 'fulfills all tax obligations'
- Tax activist blast the company as 'withholding money from the people who need it'

By SAM WEBB

Forbes

9/20/2012 @ 12:00PM | 878 views

Senate Committee Says Multinationals Heading Offshore



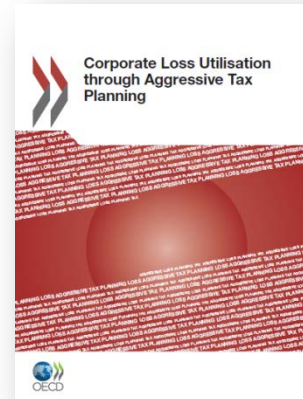
Recent developments: BEPS

- OECD project on Base Erosion and Profit Shifting
- Growing concern has been expressed regarding base erosion and profit shifting by MNEs
- Increased attention of civil society to corporate tax affairs
- Spreading perception that MNEs dodge taxes all around the world and in particular in developing countries
- G20 meetings of June and November 2012 focused on BEPS issue and requested OECD action



OECD Reports on Aggressive Tax Planning

- Tackling Aggressive Tax Planning through Improved Transparency and Disclosure (2011)
- Corporate Loss Utilisation through Aggressive Tax Planning (2011)
- Hybrid Mismatch Arrangements - Tax Policy and Compliance Issues (2012)



OECD BEPS Project

On tax, we know that in a globalised world, no one country can, on its own, effectively tackle tax evasion and aggressive avoidance. But as a group of eight major economies together we have an opportunity to galvanise collective international action We can examine the case for strengthening [the international] standards.

UK PM David
Cameron letter to
G8 leaders, 2
January 2013



OECD BEPS Project

OECD's Pascal Saint-Amans to Bloomberg
BNA Daily Tax Report,
13 February 2013



[If G-20 members agree, the BEPS project could end up] “redefining the architecture of international taxation, rules, tax treaties, guiding principles, recommendations, and decisions within the OECD ...”



OECD BEPS Project – Fast Track Timeline

- OECD Committee on Fiscal Affairs (CFA) discussion of scope of project – 22-23 January 2013
- OECD progress report for G20 Finance Ministers meeting released publicly – 12 February 2013
- G20 Finance Ministers to discuss OECD progress report – 15-16 February 2013
- BIAC to host conference at OECD for business community – 26 March 2013
 - Only formal opportunity identified so far for business discussion



OECD BEPS Project – Fast Track Timeline

- Detailed action plan for project to be developed by certain OECD member countries and OECD Secretariat – late May 2013
 - Specific measures
 - Means to implement those measures
 - Timetable for implementation steps
- Action plan to be approved by OECD CFA – June 2013



OECD BEPS Report—Highlights (3/4)

- Calls for cooperation and quick action at both OECD and national levels
 - Not necessarily identical
- Call for “immediate” action by tax administrations to improve “compliance”
- Acknowledges need for OECD to hear input of “all stakeholders,” including BRICS, business, and civil society (NGOs)

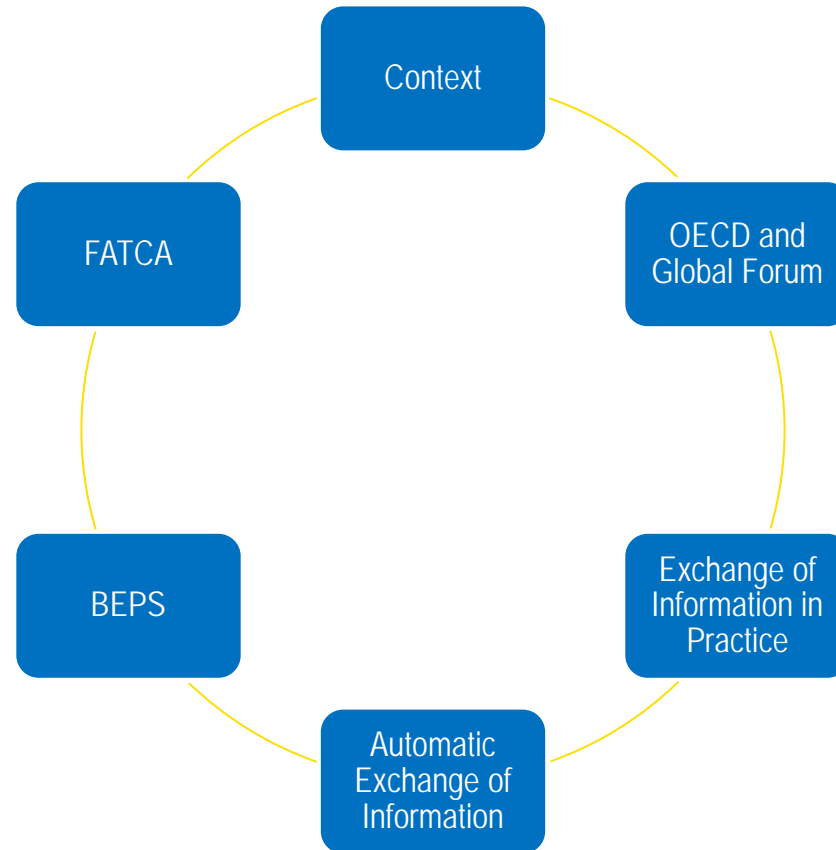


OECD BEPS Report Highlights (4/4)

- “Key pressure areas” include:
 - Transfer pricing
 - Hybrid mismatches and arbitrage
 - Related party debt financing, captive insurance, and intra-group financial transactions generally
 - Anti-avoidance measures, including GAAR and CFC regimes, thin cap rules, and rules against treaty “abuse”
 - Application of PE and other treaty provisions to profits from delivery of digital goods and services (*not limited to “Internet companies” and commissionaire structures*)
 - Harmful preferential regimes



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FATCA



FATCA

- Signed on 18 March 2010
- Aims to combat US taxpayers use of offshore accounts to avoid tax
- Intention: obtain information
- Withholding mechanism is a penalty
- The Joint Committee on Taxation of the US Congress projects FATCA revenues of USD 8.7 billion over 10 years



FATCA Timeline

2010

- 18 March: FATCA signed into law
- 27 August: IRS issues first round of FATCA guidance

2011

- 8 April: IRS issues second round of FATCA guidance
- 14 July: IRS issues third round of FATCA guidance

2012

- 8 February: IRS issues proposed regulations

2013

- 17 January: final FATCA regulations issued
- 14 February: first IGA signed based on Model II



FATCA Timeline

2014

- 1 January: grandfathered obligation cutoff

2015

- 1 January: FFIs begin withholding on US FDAP payments to recalcitrant high value account holders
- 1 January: USWAs and PFFIs begin withholding on payments to NFFEs

2016

- 1 January: begin withholding
- 1 January: limited FFI/limited branch status expire



FATCA Timeline

2017

- 1 January: withholding begin for USWAs, WAs and PFFI
- PFFI withholding on foreign passthru payment

2018

- 15 March: gross proceeds included



FATCA – Players and Obligations

- Imposition of “know your customer” and reporting requirements on foreign businesses
- If compliant → no WHT imposed
- Main players:
 - FFIs
 - NFFEs
- Withholding situation; 2 perspectives:
 - withholding agent making payment
 - payee



FATCA – Players and Obligations

- Certification requirement: a person making a “withholdable payment” must withhold 30% of the payment unless, it can “reliably associate the payment with documentation upon which it is permitted to rely” that a payment to an FFI is exempt, or unless it can treat an NFFE as a beneficial owner either having no substantial US owners or providing information about what any that it has, which the withholding agent reports to the IRS
- Withholdable payment means:
 - Any US source payment of fixed or determinable annual or periodic income (FDAP); and
 - Beginning in 2017, gross proceeds from the sale of any property of a type that can produce US source interest or dividends that would be FDAP income



Grandfathered Obligations

- In enacting FATCA, Congress grandfathered payments of interest or gross proceeds on obligations that were outstanding on 18 March 2012
- The regulations extend this grandfathering rule to exclude from FATCA withholding any payments made under an obligation “outstanding” on 1 January 2014 or any gross proceeds from the disposition of such an obligation
- IRS has added 3 new classes of grandfathered obligations:
 - Any obligation that could produce a foreign passthru payment and cannot produce a withholdable payment, if it is outstanding as of a date that will be 6 months from the issuance of final regulations defining passthru payments;
 - Any instrument that gives rise to a withholdable payment only because rules to be issued on dividend equivalents characterize its income as a dividend, if the instrument is outstanding 6 months after that kind of instrument becomes subject to the recharacterization; and
 - Any obligation to pay or repay collateral posted to secure a notional principal contract that is itself grandfathered

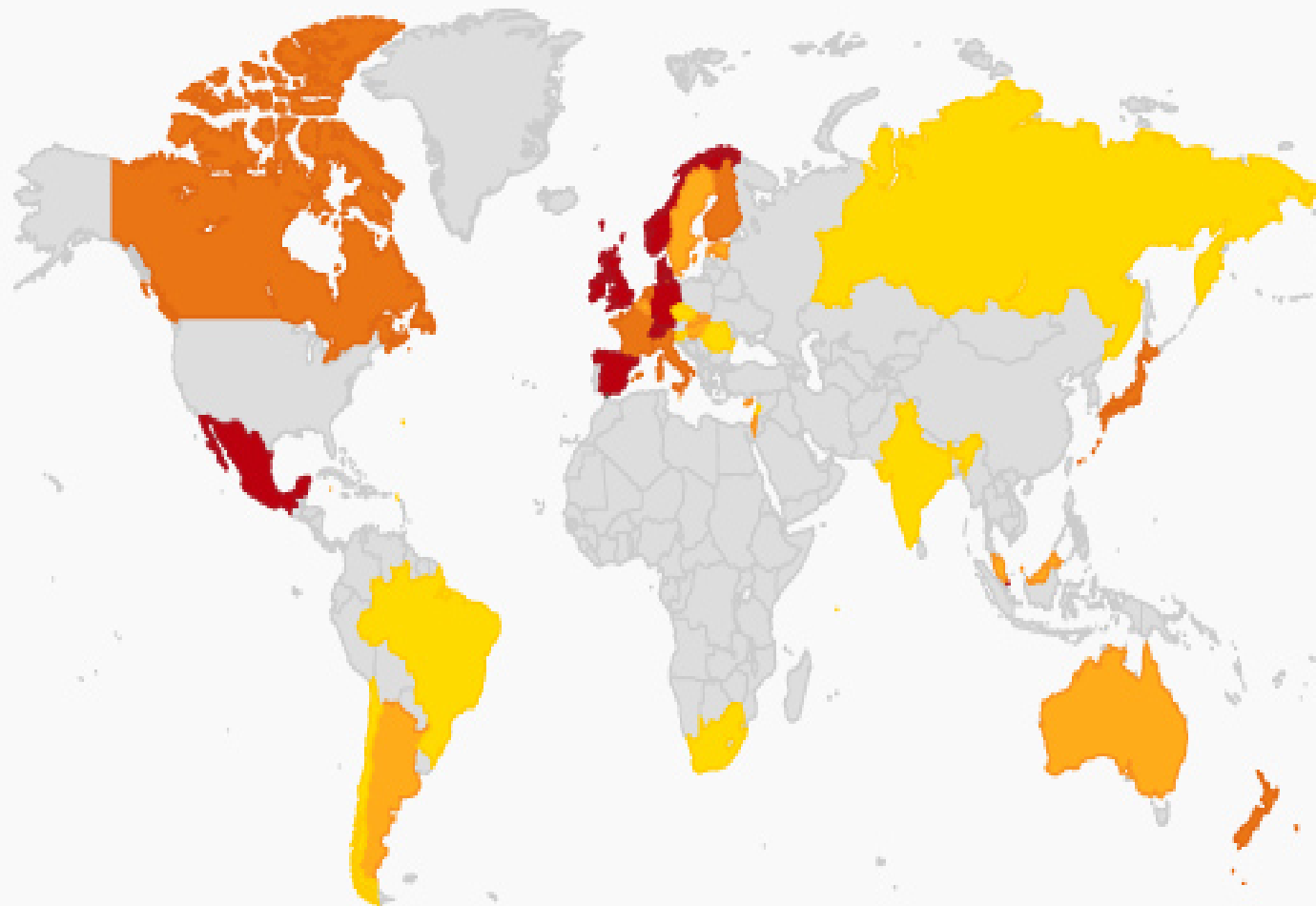


Preexisting Obligations

- Preexisting obligations are accounts, instruments or contracts that are outstanding on 31 December 2013
- Effective dates for WHT under FATCA depend in part on whether the obligation is a pre-existing one. Plus several provisions in the regulations reduce the administrative burden associated with an FFI's identifying US accounts that are pre-existing obligations
- Examples:
 - Preexisting individual accounts of USD 50,000 or less and pre-existing entity accounts that are cash value insurance and annuity contracts of USD 250,000 or less are exempt from the due diligence otherwise required of FFIs
 - Participating FFIs may rely solely on electronically searchable account information in conducting due diligence on pre-existing accounts under USD 1 million



FATCA IGA



IGA agreed: Denmark, Germany, Ireland, Mexico, Norway, Singapore, Spain, Switzerland and United Kingdom.

Conclude IGA negotiations: Canada, France, Finland, Guernsey, Isle of Man, Italy, Japan, Jersey, the Netherlands and New Zealand.

Engaged in dialogue towards IGA conclusion: Argentina, Australia, Belgium, the Cayman Islands, Cyprus, Estonia, Hungary, Israel, Korea, Liechtenstein, Luxembourg, Malaysia, Malta, the Slovak Republic and Sweden.

Exploring IGA options: Bermuda, Brazil, the British Virgin Islands, Chile, the Czech Republic, Gibraltar, India, Lebanon, Romania, Russia, Seychelles, Sint Maarten, Slovenia and South Africa.

Thank you!

