

STEP Israel Annual Conference 2017

Exchange of Information

The French Experience

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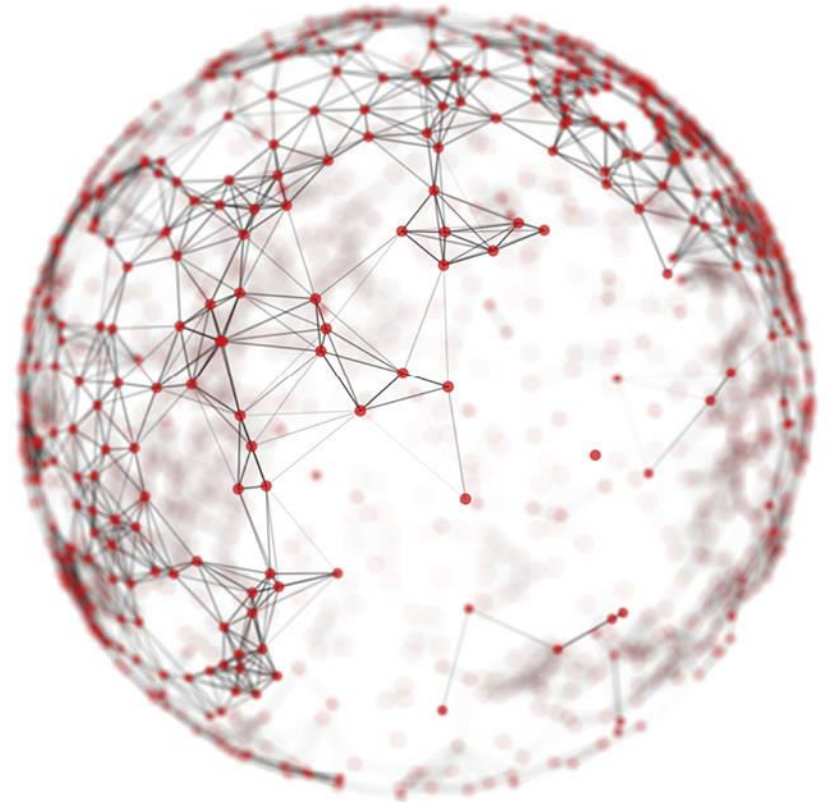


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Introduction

- **Transparency as a new paradigm**
 - **Digital world : services in exchange for personal data.**

- **“Paying a fair share of tax”**
 - **Since 2008: massive tax increases all over the world**
 - **Going after mobile income**
 - **Enemies :**
 - **Tax heavens;**
 - **Aggressive tax planning;**
 - **Solutions:**
 - **Multilateral anti abuse approaches (G20/OECD/BEPS/CMAATM)**
 - **Tightening of anti abuses rules. Criminalization of tax.**
 - **Reputational risk – boycott**
 - **Transparency – disclosure.**

About exchange of information (2/23)

– Chronology

- **1997:** development of the Standard Magnetic Format (SMF) in order to ease the exchange of tax information
- **2003:** adoption of the EU Savings Directive as the first multinational automatic exchange of information program
- **2010:** adoption of the Foreign Account Tax Compliance Act (FATCA) by the US Congress. Against the background of the global financial crisis, this significant political momentum provided the necessary impetus to set up a global automatic exchange standard
- **2012:** UK, France, Spain, Italy and Germany agreed with the US on a reciprocal exchange of FATCA information under Intergovernmental Agreements (IGAs). In the same year, the OECD presented a report on the AEOI, which was endorsed by the G20 at the Los Cabos summit
- **2013:** the G20 made a formal request to the OECD to develop a common reporting standard (CRS)
- **Since 2014: the G20 endorsed the full CRS (incl. commentaries) and 102 jurisdictions are now committed to implementing the CRS by 2017 or 2018.**
- **Since 2017:** progressive effectiveness for the new AEOI

About exchange of information (3/23)

– **Typology of exchange of information (bilateral and multilateral)**

- Exchange upon request:

- one competent authority asks for particular information from another competent authority concerning a taxpayer
- Typically, the information requested relates to an examination, inquiry or investigation of a taxpayer's tax liability for specified tax years
- (art. 26 OECD Model convention)

- Spontaneous Exchange of Information

- *“information is exchanged spontaneously when one of the Parties, having obtained information which it assumes will be of interest to another Party, passes on this information without the latter having asked for it”.*
- art. 7 Multilateral Convention on Mutual Administrative Assistance in Tax Matters

About exchange of information (4/23)

– Typology of exchange of information (bilateral and multilateral)

- Automatic Exchange of Information (AEOI):
 - information is available periodically under a State's own system and transmitted automatically on a regular basis.
- Country by Country Reporting (CbCR):
 - template for multinational enterprises (MNEs) to report annually and for each tax jurisdiction in which they do business specific information.
 - The OECD recently released guidance for tax administrations, implementation status and exchange relationships between tax administrations.
- Others:
 - Tax rulings (EU)
 - Public register (EU): ultimate beneficial owner and Trusts (4th directive “MLTF”) :
 - accessible for everyone having a **legitimate interest** (i.e French Tax Administration which may transfer those informations to other countries)
 - Other anti-laundering tools

About exchange of information (5/23)

1. OECD - Exchange of information upon request (Assistance)(1/3)

Legal basis:

- **Bilateral** administrative assistance treaties:
 - Double tax treaties
 - Article 26 of the model OECD model (new model)
 - Specific agreements of "Information Exchange Agreements", or "TIEA ", according to the 2002 model developed by the OECD;
- **Multilateral** Convention of January 25, 1988 on Mutual Administrative Assistance in Tax Matters, as amended by the Additional Protocol of May 2010.
- **European Union Law** : Directive 77/799/EEC of 2011 on administrative cooperation mainly.

About exchange of information (6/23)

1. OECD - Exchange of information upon request (Assistance) (2/3)

- a request (i)
 - related to a specific criminal or civil tax investigation or civil tax matters (ii)
 - under investigation (iii)
 - local sources haven't permitted to obtain requested informations
- Exchange of informations that are "foreseeably relevant" to the administration
 - An expansive definition of foreseeably relevant informations to cover banking details and ownership details of companies/persons/funds/trusts etc.
 - Confidentiality obligation:
 - Informations are only transmitted to authorities in charge of the tax recovery in matter
 - Informations can not be transmitted to other administration even if it might be useful

About exchange of information (7/23)

1. OECD - Exchange of information upon request (Assistance) (3/3)

- Many improvements since 2009 (through OECD's initiatives)
- Apart from exchange of information, representatives of one tax authority may be permitted to conduct tax examinations in territory of the other State including interviews of individuals and examination of records.

- Guarantees to the taxpayer:
 - Confidentiality
 - Communication of information to taxpayer (dispute)

- Limited efficiency.

About exchange of information (8/23)

2. OECD - Group demand (assistance) (1/2):

- Article 26 of the OECD Model
- Several individuals which are not individually identified
- General prohibition of « fishing expeditions »

Conditions:

- a detailed description of the group and the specific facts and circumstances that have led to the request,
- an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non compliant with that law
- a clear factual basis
- how the requested information would assist in determining compliance by the taxpayers in the group

About exchange of information (9/23)

2. OECD - Group demand (assistance) (2/2)

- the case of Switzerland

- Signature of an amendment to the tax treaty between France and Switzerland on 25 June 2014
- End of the prohibition of requests concerning a group of taxpayers (exchange of letters of 11 February 2010)
- Objective: allowing requests concerning a group of unidentified taxpayers and obtaining information from the banking sector without knowing the identity of the financial institution holding the account.
- Definition of group demand: « A request for administrative assistance that requires information on several individuals who have had an identical pattern of behavior and are identifiable using specific data »
- Retroactive application of the agreement (as from February 13, 2013)

About exchange of information (10/23)

3. Automatic exchange (1/4)

- Automatic exchange of information: considered as the ultimate weapon to fight international tax fraud and to ensure transparency
 - No prior request necessary
 - Before 2014: limited to a certain category of incomes (interests, dividends) in EU

- **OECD Actions**
- BEPS Action 5 on Harmful Tax Practices
 - Substantial activity requirement to benefit from a preferential regime
 - Improvement of transparency, including compulsory spontaneous exchange on rulings related to preferential regimes
- BEPS Action 12 - Disclosure of aggressive tax planning
 - Framework for the design of rules that are flexible to country specific risks and needs
 - Special recommendations for rules that focus on international tax schemes
 - Enhanced models of information sharing using the JITSIC network as a platform
- New BEPS Multilateral Convention

About exchange of information (11/23)

3. Automatic exchange (2/4)

- Since 2014: 51 jurisdictions (“early adopters”) signed an agreement to automatically exchange information
 - **Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard (“CRS”)** (February 14, 2014)
 - **OECD Multilateral Competent Authorities Agreement** (October 29, 2014)
 - An holistic approach
 - All EU countries, China, India, Hong Kong, Russia and more than 100 other countries have agreed to become signatories
 - More than 100 countries won’t take part to the automatic information exchange
 - Not signed by the US (FATCA not reciprocal)
 - Many countries in Asia (Taiwan, Thailand...), Africa (Morocco, Egypt...), and South America (Paraguay, Dominican Republic...)

About exchange of information (12/23)

3. Automatic exchange (3/4)

- Annual and automatic exchange with other countries party to the Convention on Mutual Administrative Assistance in Tax Matters:
 - Name, address, taxpayer identification number, and date and place of birth of each reportable person.
 - Account number,
 - Name and identifying number of the Reporting Financial Institution;
 - Account balance or value as of the end of the relevant calendar or, if the account was closed during such year or period, the closure of the account

- “CRS” procedure to be followed by banks

- Every year, French Tax Authorities will receive informations about assets owned by French residents near a financial institution incorporated in a country party to the convention.
 - An exchange within 9 months, concerning data collected during previous year

About exchange of information (13/23)

3. Automatic exchange (4/4)












- A Peer review audit had been set up to ensure:
 - Correct implement of the automatic exchange of information by all countries concerned
 - Sufficient confidentiality and data protection

- Applicable between September 2017 and September 2018 (depending on country)
 - First exchange planed in September 2017 concerning data collected in 2016
 - 500 bilateral automatic exchange relationships had established between over 60 jurisdictions committed to exchanging information automatically pursuant to the CRS

- An evolutive process:
 - On may 2017 - Disclosure facility on the Automatic Exchange Portal had been released
 - Now, interested parties can report potential schemes to circumvent the CRS
 - Other improvement to be expected














About exchange of information (14/23)

— 2017

Jurisdiction	Committed to first exchange in	Primary legislation	Secondary legislation	Guidance	List of low risk non-reporting FIs and excluded accounts	Domestic Reporting Format	Wider Approach
 Anguilla	2017	✓	✓			CRS	✓
 Argentina	2017	✓	✓	✓	✓	✓	✓
 Belgium	2017	✓	n.a.	✓	✓	✓	✓
 Bermuda	2017	✓	n.a.	n.a.	✓	CRS	✓
 British Virgin Islands	2017	✓			✓		✓
 Bulgaria	2017	✓	n.a.		✓		✓
 Cayman Islands	2017	✓	✓	✓	✓	CRS	✓
Colombia	2017	✓	✓	n.a.		CRS	✓
 Croatia	2017	✓	✓	✓	✓		✓
 Cyprus	2017	✓	✓		✓	CRS	✓
 Czech Republic	2017	✓	✓		✓		✓
 Denmark	2017	✓	✓	✓	✓	CRS	✓













About exchange of information (15/23)

– 2017

Jurisdiction	Committed to first exchange in	Primary legislation	Secondary legislation	Guidance	List of low risk non-reporting FIs and excluded accounts	Domestic Reporting Format	Wider Approach
 Estonia	2017	✓	✓	✓	✓	CRS	✓
 Faroe Islands	2017	✓	✓	n.a	✓	✓	✓
 Finland	2017	✓	✓	✓	✓	CRS	✓
 France	2017	✓	✓		✓	✓	✓
 Germany	2017	✓	n.a.	✓	✓	CRS	✓
 Gibraltar	2017	✓	✓	n.a	✓	CRS	✓
 Greece	2017	✓			✓		✓
 Greenland	2017	✓					✓
 Guernsey	2017	✓	✓	✓	✓	✓	
 Hungary	2017	✓	n.a		✓		
 Iceland	2017	✓	✓	✓	✓	✓	✓
 India	2017	✓	✓	✓	✓	✓	✓
 Ireland	2017	✓	✓	✓	✓	CRS	✓














About exchange of information (16/23)

– 2017

Jurisdiction	Committed to first exchange in	Primary legislation	Secondary legislation	Guidance	List of low risk non-reporting FIs and excluded accounts	Domestic Reporting Format	Wider Approach
 Isle of Man	2017	✓	✓	✓	✓	CRS	✓
 Italy	2017	✓	✓	n.a	✓		✓
 Jersey	2017	✓	✓	✓	✓	CRS	Optional
 Korea	2017	✓	✓	✓	✓	✓	✓
 Latvia	2017	✓	✓	n.a	✓	CRS	Optional
 Liechtenstein	2017	✓	✓	✓	✓	CRS	Optional
 Lithuania	2017	✓	✓	✓	✓	CRS	✓
 Luxembourg	2017	✓	✓	✓	✓		✓
 Malta	2017	✓	✓	✓	✓	Dual system	✓
 Mexico	2017	✓	✓	✓	✓	CRS	✓
 Montserrat	2017	✓	✓				✓
 Netherlands	2017	✓	✓	✓	✓	Domestic	✓










About exchange of information (17/23)

– 2017

Jurisdiction	Committed to first exchange in	Primary legislation	Secondary legislation	Guidance	List of low risk non-reporting FIs and excluded accounts	Domestic Reporting Format	Wider Approach
 Norway	2017	✓	✓	✓	✓	✓	✓
 Poland	2017	✓	n.a		✓		✓
 Portugal	2017	✓	✓		✓	CRS	✓
 Romania	2017	✓	✓		✓	CRS	Narrow
 San Marino	2017	✓	✓	✓		CRS	✓
 Seychelles	2017	✓	✓	✓	n.a	CRS	✓
 Slovak Republic	2017	✓	✓	n.a	✓	CRS	✓
 Slovenia	2017	✓	✓	✓	✓	CRS	✓
 South Africa	2017	✓	✓	✓	✓	✓	✓
 Spain	2017	✓	✓	n.a	✓		✓
 Sweden	2017	✓	✓	n.a	✓	CRS	✓
 Turks and Caicos Islands	2017	✓	✓		✓		✓
 United Kingdom	2017	✓	✓	✓	✓	✓	✓













About exchange of information (18/23)

— 2018

Jurisdiction	Committed to first exchange in	Primary legislation	Secondary legislation	Guidance	List of low risk non-reporting FIs and excluded accounts	Domestic Reporting Format	Wider Approach
 Andorra	2018	✓					narrow
 Antigua y Barbuda	2018	✓	✓				
 Aruba	2018						
 Australia	2018	✓	n.a.	✓	✓	✓	✓
 Austria	2018	✓	✓	✓	✓	CRS	narrow
 Bahamas	2018	✓	✓				narrow
 Bahrain	2018	✓	✓			CRS	✓
 Barbados	2018	✓					
 Belize	2018	✓				CRS	✓
 Brazil	2018	✓	✓			✓	✓
 Brunei Darussalam	2018						















About exchange of information (19/23)

– 2018

Jurisdiction	Committed to first exchange in	Primary legislation	Secondary legislation	Guidance	List of low risk non-reporting FIs and excluded accounts	Domestic Reporting Format	Wider Approach
 Canada	2018	✓	✓	✓	✓	CRS	✓
 Chile	2018						
 China	2018	✓					✓
 Cook Islands	2018	✓	✓				✓
 Costa Rica	2018	✓	✓				✓
 Curaçao	2018	✓					✓
 Dominica	2018						
 Ghana	2018	✓					✓
 Grenada	2018						✓
 Hong Kong (China)	2018	✓	n.a	✓	✓	✓	Optional
 Indonesia	2018	✓					
 Israel	2018	✓					✓













About exchange of information (20/23)

– 2018

Jurisdiction	Committed to first exchange in	Primary legislation	Secondary legislation	Guidance	List of low risk non-reporting FIs and excluded accounts	Domestic Reporting Format	Wider Approach
 Japan	2018	✓	✓		✓		✓
 Kuwait	2018						✓
Lebanon	2018	✓					
 Marshall Islands	2018	✓	✓		n.a		✓
 Macao (China)	2018						
 Malaysia	2018	✓	✓				✓
 Mauritius	2018	✓	✓	✓	✓		✓
 Monaco	2018	✓	✓	✓	n.a		✓
 Nauru	2018	✓	✓	n.a			✓
 New Zealand	2018	✓	n.a				✓
 Niue	2018	✓	✓		n.a		✓
 Panama	2018	✓					✓
 Qatar	2018						
 Russian Federation	2018					✓	
 Saint Kitts and Nevis	2018	✓	✓	n.a	✓		✓

About exchange of information (21/23)

— 2018

Jurisdiction	Committed to first exchange in	Primary legislation	Secondary legislation	Guidance	List of low risk non-reporting FIs and excluded accounts	Domestic Reporting Format	Wider Approach
 Samoa	2018	✓	n.a				✓
 Saint Lucia	2018	✓	n.a				✓
 Saint Vincent and the Grenadines	2018	✓	✓				✓
 Saudi Arabia	2018						✓
 Singapore	2018	✓	✓	✓	✓	CRS	✓
 Sint Marteen	2018			n.a			
 Switzerland	2018	✓	✓	✓	✓		Optional
 Trinidad and Tobago	2018						
 Turkey	2018			n.a			
 United Arab Emirates	2018	✓	✓			CRS	
 Uruguay	2018	✓	✓				✓
 Vanuatu	2018	✓					

About exchange of information (22/23)

4. Automatic exchange within the EU

Two main legal basis :

- European Directive 2011/16/EU
- Directive 2014/107/EU (“DAC 2”)

- Extension of the cooperation between tax authorities to the automatic exchange of information on financial accounts
 - Automatic exchange of information on interest, dividends and similar incomes, on the balance of financial accounts and on the sale’s income of financial assets
 - Based on the CRS
 - Applicable since January 1st, 2015
 - First exchange of information according to CRS planed in 2017 (data collected in 2016)

About exchange of information (23/23)

– Automatic exchange in Israel

- 30 June 2014: signature of the Israel-US FATCA Model 1A agreement ordering Israeli banks to report details of US persons holding bank accounts in Israel to the Israel tax authority which passed on the information to the IRS
- March 2016: Legislation on Bank information exchange approved by Israeli parliament
- 30 August 2016: Israel ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters
- Israel already committed to implement the CRS by the end of 2018

Common Reporting Standard (« CRS ») (1/2)

- Established by the OECD
- Due diligence rules that financial institutions need to follow to collect and then report the information
- CRS requires reporting by Financial Institutions to the local tax authorities on
 - the identity of each reportable Account Holder on their Reportable Accounts
 - the balance on these accounts as at 31st December of each year
 - income (interest, dividends, gross proceeds, and other income) on these accounts.
- Exchange to the tax authorities of the relevant Participating CRS Jurisdiction identified in the client data.

Common Reporting Standard (« CRS ») (2/2)

- The information that must be provided includes:
 - 1) The name, address, jurisdiction(s) of residence, Taxpayer Identification Number(s) (“TIN”) and date and place of birth;
 - 2) The account number(s);
 - 3) The year-end account balance(s) or value (starting 31st December 2016) or, if an account was closed during the year, a “0”-balance for that account; and
 - 4) In the case of any:
 - a. Custodial Account:
 - i. The total gross amount of interest, dividends or other income generated with respect to the assets held in the account, in each case paid or credited to the account during the calendar year or other appropriate reporting period; and
 - ii. The total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period.
 - b. Depository Account: The total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
 - c. Account other than a Custodial Account or a Depository Account: The total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

Exchange information within the EU

Exchange of information as a corollary of fundamental freedoms

Exchange of information pursuant to EU law (1/9)

- **EU FISCAL CONTEXT**

- Common Market: 4 fundamental freedoms (capital, goods, person, establishment)
- Tax competition but no discrimination (otherwise obstacle to EU freedoms)
- Harmful tax practice (competition) : OECD/EU
- Rulings and State aid
- Code of Conduct (corporate taxpayers) – Anti-avoidance tax package (EU)
 - Prevent aggressive tax planning
 - Tax transparency
 - Create level playing field.
 - Strong and coordinate actions

- **Enhancing administrative cooperation and tax transparency:**

- On 17 June 2015 the Commission published an Action Plan for fair and efficient corporate taxation in the EU.
- The Action Plan sets to reform the corporate tax framework in the EU, in order to tackle tax abuse, ensure sustainable revenues, increase transparency and support a better business environment in the Single Market. This may result also in further proposals to extend administrative cooperation.

Exchange of information pursuant to EU law (2/9)

- **Directive 2011/16/EU on Mutual Assistance Directive on administrative cooperation in the field of taxation:**
- Since January 2015: automatic exchange of information concerning income from employment, directors' fees, life insurance products, pensions and income from immovable property.
 - Assistance within the EU in tax matters in accordance with the OECD standard
 - To exchange information that are “**foreseeably relevant**” between tax administration
 - Upon request (spontaneous and automatic) with rules and procedures to avoid “fishing expeditions”
 - All taxes covered except customs duties, excise taxes, VAT and social contributions
 - Possibility for tax authorities from one Member State to take part to administrative investigations within the territory of another Member State
 - Exchange of collected information between Member States
 - Extension to passive income as of 01/01/2016.

Automatic exchange pursuant to EU law (4/9)

- **Directive 2015/2376/EU: automatic exchange of tax rulings and agreements upon transfer pricing (1/3)**
 - A modification of 2011 Directive to set up automatic exchange of information concerning cross-border tax rulings and advance transfer pricing agreements for undertakings
 - A secured central registry:
 - Centralization and retaining of the information exchanged (rulings and TP agreements)
 - Free access for EU member State
 - Free access for the European Commission but only to control the Directive implementation

Automatic exchange pursuant to EU law (5/9)

- **Directive 2015/2376/EU: automatic exchange of tax rulings and agreements upon transfer pricings (2/3)**

- An extensive application scope:
 - Rulings and agreements concerning “cross-borders operations”
 - An transaction qualifies as a cross-border operation if it takes place between companies which are resident of different countries, **including those outside the European Union**
 - All rulings and agreement made, modified or renewed since the 31st December 2016
 - For previous rulings and agreement:
 - Mandatory transmission if they were in force on the 1st of January 2014,
 - Mandatory transmission if they were made, modified or renewed between 1st of January 2014 and the 31st December 2016 even if they were not in force
 - No application concerning rulings and agreements about individuals

Automatic exchange pursuant to EU law (7/9)

- **Country-by-Country Reporting (« CbCr ») (1/3)**
- OECD BEPS Actions 13 on TP Documentation (Chapter V OECD Guidelines)
- Country-by-Country Reporting (« CbCR »): Country-by-country allocation of the profits of the group and tax paid, as well as information on aggregates concerning the localisation of its activities
- Goal: Better risk assessment from tax administrations
 - Improve transparency and taxpayers' compliance
 - Resources better deployed
 - Tax audits better oriented

Automatic exchange pursuant to EU law (8/9)

- **Country-by-Country Reporting (« CbCr ») (2/3)**

- 2005: The Commission adopted JTPF Code of Conduct on transfer pricing documentation for associated enterprises in the EU (Communication 2005/543)
- EU two-tiered approach superseded by OECD three-tiered approach
- But EU TPD in line with OECD on Masterfile and Local file

– **Master file content:**

- general description of the business and business strategy
- general description of the MNE group's organisational, legal and operational structure
- general identification of the associated enterprises engaged in controlled transactions involving enterprises in the EU;
- general description of the controlled transactions involving associated enterprises in the EU, i.e. a general
- description of (i) flows of transactions (tangible and intangible assets, services, financial), (ii) invoice flows, and (iii) amounts of transaction flows;
- general description of functions performed, risks assumed and a description of changes
- ownership of intangibles (patents, trademarks, brand names, know-how, etc.) and royalties paid or received
- MNE group's inter-company TP policy that explains the arm's length nature of the company's transfer prices
- list of CCAs, APAs and rulings covering TP aspects as far as group members in the EU are affected, and
- an undertaking by each domestic taxpayer to provide supplementary information upon request and within a reasonable time frame in accordance with national rules

Automatic exchange pursuant to EU law (9/9)

- **Country-by-Country Reporting (« CbCr ») (3/3)**

– **Local file content:**

- detailed description of the business and business strategy
- information, i.e. description and explanation, on country-specific controlled transactions, including (i) flows of transactions (tangible and intangible assets, services, financial), (ii) invoice flows, and (iii) amounts of transaction flows
- comparability analysis, i.e.: (i) characteristics of property and services, (ii) functional analysis (functions performed, assets used, risks assumed), (iii) contractual terms, (iv) economic circumstances, and (v) specific business strategies
- explanation of the selection and application of the transfer pricing method(s), i.e. why a specific transfer pricing method was selected and how it was applied
- relevant information on internal and/or external comparables if available, and
- description of the implementation and application of the group's inter-company transfer pricing policy

– **EU 2015-2019 JTPF Program of Work:**

- Interpretation of CbCR in the light of MNEs' value chains within the EU
- EU-TPD to be monitored to take into account conclusions of the BEPS project
- Development of a new IT based tool to minimise compliance burden and increase efficient use of TP Documentation

Other tax initiatives linked to the exchange of informations

1. Economic and Financial Affairs Council:

- Finance Ministers of the European Union Member States

2. Public registries:

- Directives to implements public or partially public registries concerning rulings, Trusts and ultimate beneficial owners within the EU (transposition in progress)
- Access granted to tax administrations wich might transmit the collected informations

3. Fiscalis 2020:

- An EU cooperation program enabling national tax administrations to create and exchange information and expertise
- Developing major trans-European IT systems in partnership
- A various person to person networks bringing together national officials across Europe
- A budget of € 234.3 million for 7 years from January 1st 2014

EU law concerning tax recovery

- **Cooperation between Member State concerning tax recovery since 1976:**
 - A Directive no 2010/24/EU of 7 March 2010 concerning the recovery of claims relating to taxes, duties and other measures
 - A progressive extension to all taxes (EAGF, VAT, excise duty, income tax and wealth tax (2001 and 2002 Directive))
 - Some other receivables (such as tax penalties)

 - Conditions :
 - An enforceable title (i) as required by the Regulation EU 1189-2011 (specific tax form)
 - Undisputed debt (ii): EU law concerning tax recovery can not be used if the debt is disputed within the requiring State
 - National procedures for recovery must have been applied (iii)

Exchange of information : the French experience

A political and budgetary imperative

Exchange of information in France (1/8)

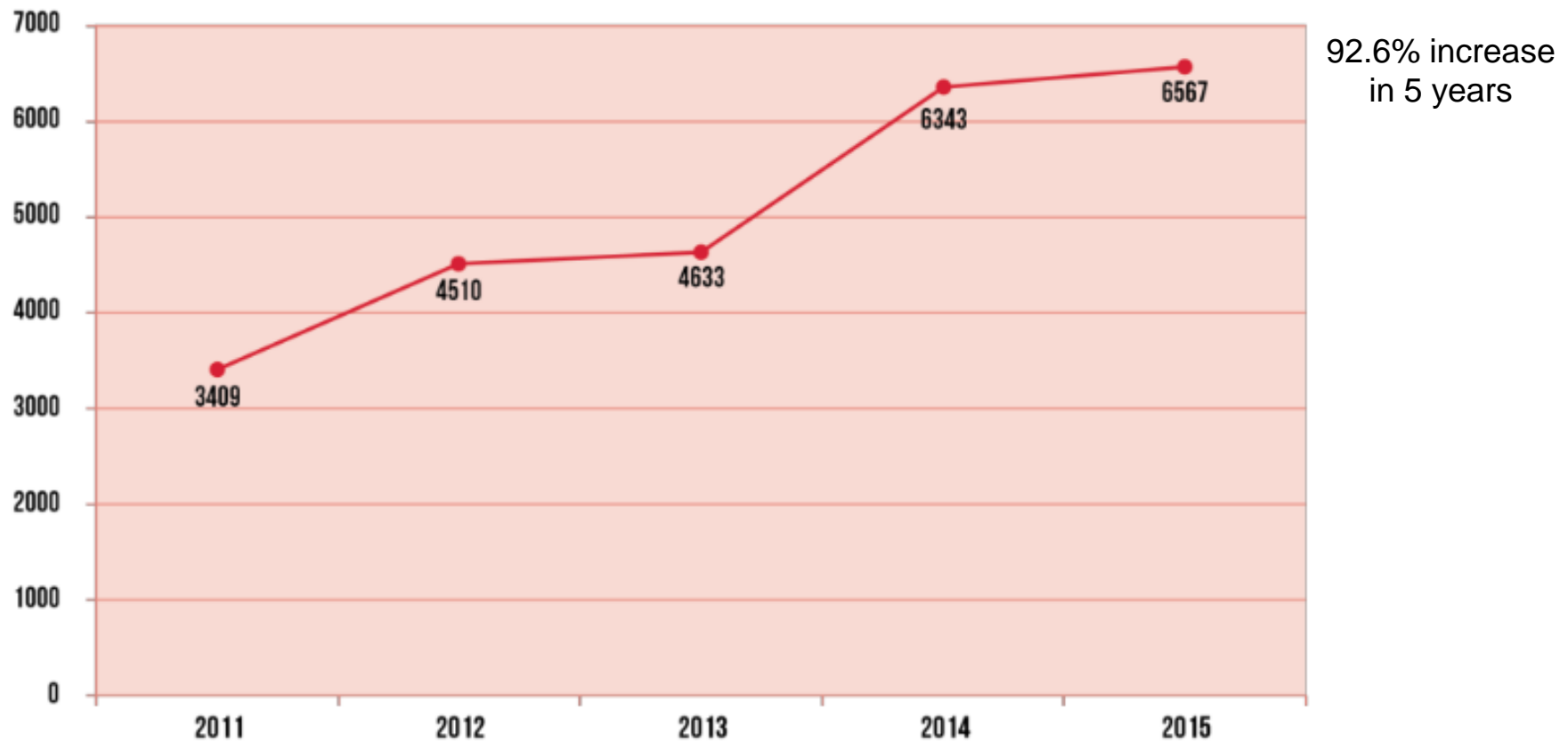
- **Tax fraud and tax evasion:**
 - A major concern for French Public Authorities
 - Transparency considered as a democratic issue (Cahuzac Affair, UBS case)

- **Rationalization and improvement of special procedures:**
 - Specific criminal incriminations and more severe penalties have been implemented within french tax law
 - A reorganization of the French Tax Authorities to set up services dedicated to fight tax fraud and tax evasion:
 - “tax police” (BNRDF – *Brigade nationale de répression de la délinquance fiscale*)
 - “financial prosecutor” (PNF – *Parquet national financier*).

- **Exchange of Information upon requested not satisfactory: toward AEOI**

Exchange of information in France (2/8)

Informations received by France following requests is increasing:



Exchange of information in France (3/8)

Voluntary Disclosure Program:

- Criminal Amnesty

- 2016 :
 - 46 972 taxpayers applied
 - Euro 28.8 billions of foreign assets disclosed
 - Euro 6,3 billions collected since 2013

- To be shut down with AEOI?

- Urgent to file

Exchange of information in France (4/8)

- **A multiplicity of legal basis in France:**
 - Tax treaties :
 - Article 26 from the OECD model
 - An evolution from “agreements on mutual administrative assistance” to “agreements avoiding double taxation and covering administrative assistance”
 - Convention on Mutual Administrative Assistance in Tax Matters (with no DTT partners)
 - OECD Multilateral Competent Authorities Agreement and CRS
 - First exchange expected in September, 2017 concerning data collected in 2016
 - With 51 countries (2017)
 - UE law:
 - Directive no 77/799/CEE, Directive 2011/16/EU on administrative cooperation
 - French tax law
 - Article 1649 AC of the French Tax Code: financial institutions must communicate to tax authorities informations about taxpayer’s incomes and financial assets

Exchange of information in France (5/8)

- The French national advisory board aiming at fighting tax fraud released a report in September 2016 stating:
 - Fight against tax fraud is an international issue requiring international measures
 - CbCr is one of the greatest outcomes of information sharing between tax administrations
 - Better cooperation with other countries
 - Upcoming measures mostly at the EU level for more transparency and preventing anti-abuses.

Exchange of information in France (6/8)

– UBS

- UBS faces litigations in Europe and France for Tax Avoidance Laundering and illegal solicitation
 - Sentence up to euro 4,5 billion
- German investigators seized files concerning “French” anonymous UBS clients between 2004 and 2012 and transmitted it to French Tax Authorities.
- France requested Switzerland to revealed names of UBS bank holders
 - More than **45,000 anonymous bank accounts**
 - Between **8 and 13 billions of euros non revealed**
 - **Likely to be handed over to France**
- Issue for French taxpayers having closed their undisclosed account or having transfer their tax domicile since then without having gone through the VDP. Information requested :
 - Required surname, forenames, date of birth and address of the account holder
 - beneficial owner and any other person coming to the rights and obligations of the latter two qualities
 - The balance of the accounts from January 1st 2010 to 2015

Exchange of information in France (6/8)

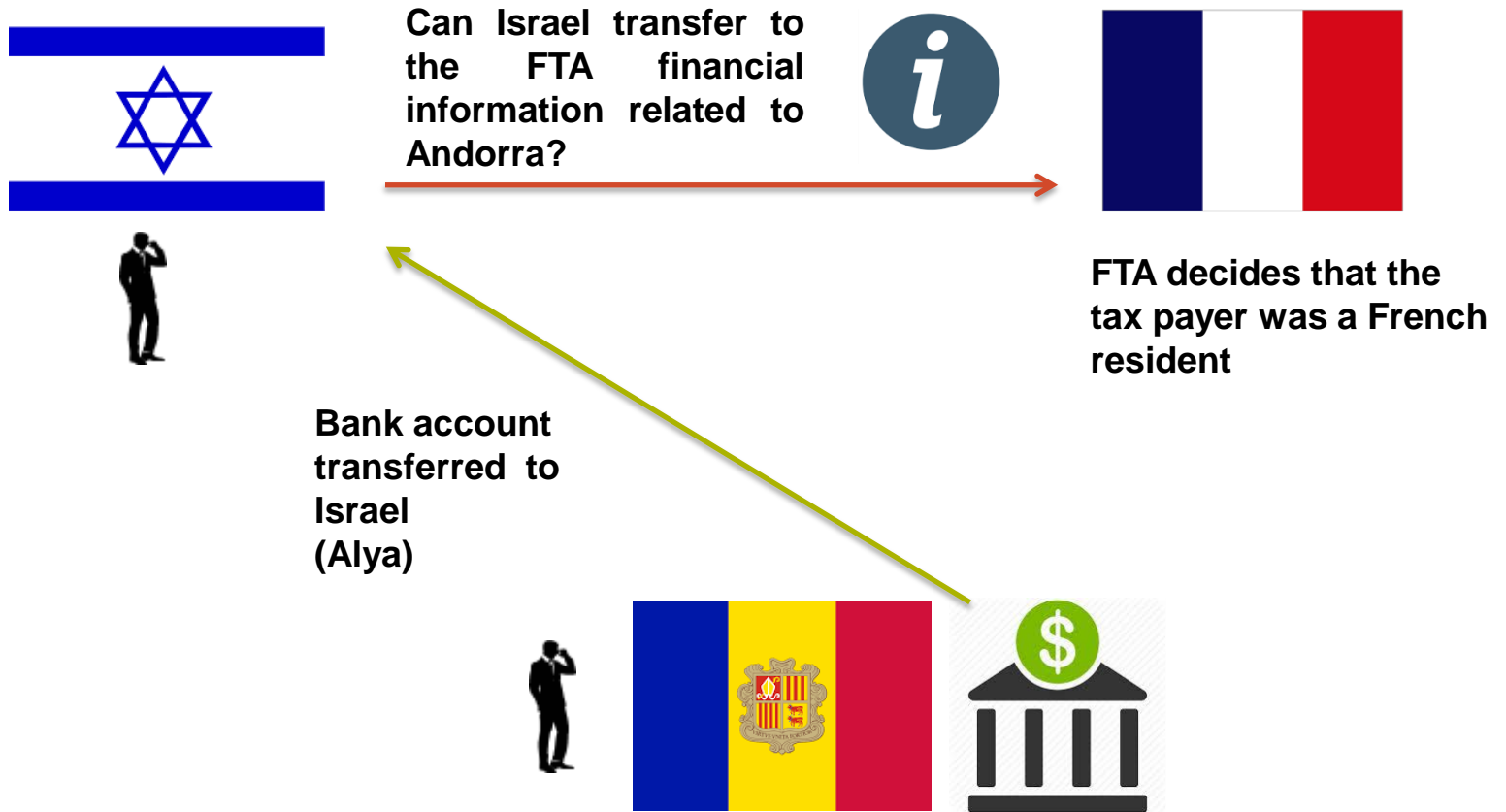
– UBS

- The Netherlands made a group request to Switzerland for having names, account numbers and credits amounts of Dutch tax resident not having sent back to UBS the tax compliance form
 - Swiss Supreme Court determined that the request was not a fishing expedition and should be answered (12 September 2016).
- Swiss courts and authorities less incline to oppose tax information requests even if Swiss law allows taxpayer to challenge foreign requests.
- In 2010, former employees reported these practices to French Tax Authorities
- The FTA made a parallel between the information contained in these files and French tax payers which voluntarily disclosed their account held abroad. They asked for some complementary information on the remaining group of tax payers to the bank.
- Dutch authorities dit it before in September 2015 when they asked for information on their tax payers holding UBS bank accounts between February 2013 and December 2014.

French Domestic Law allowing AEOI (3/3)

- Law no 2005-225 of March 14, 2005 and the Decree no 2005-1198 of September 19, 2005 about the ratification of the OECD Convention on Mutual Administrative Assistance in Tax Matters
- Law of July 26, 2013 : new article 1649 AC of the French Tax Code: legal basis to allow financial institutions to collect data about their clients
- Law no 2015-1778 of December 28, 2015 for Multilateral Competent Authority Agreement about Automatic Exchange of Informations related to financial accounts ;
- Decree no 2016-1779 of December 19, 2016 about the Multilateral Competent Authority Agreement about Automatic Exchange of Informations related to financial accounts signed in Berlin on October 29, 2014

Practical case: foreseeable difficulties





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