

CRS & Practitioners

George Hodgson

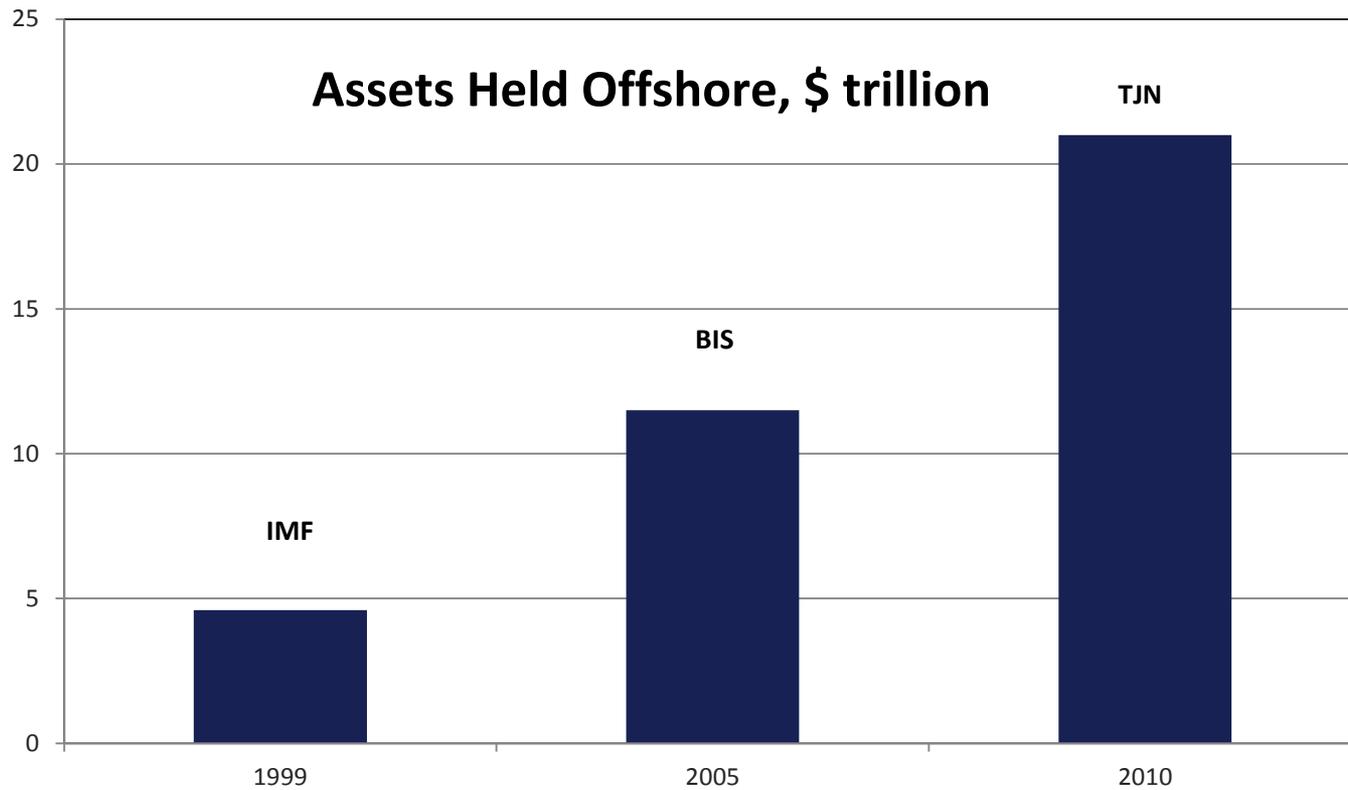
Alphabet soup – from FATCA to CRS

- AEOI** – Automatic Exchange of (Tax) Information
- FATCA** – Foreign Account Tax Compliance Act - US legislation
- IGA** – Inter Governmental Agreement (aka ‘The Treaty’)
 - UK/US Treaty that implements FATCA in UK
- CDOT** – Crown Dependencies (and) Overseas Territories
 - FATCA style IGAs between UK & CDs and OTs
- CRS** – Common Reporting Standard , new global standard for AEOI
- DAC** – Directive on Administrative Cooperation
 - EU Directive implementing CRS across EU

Why transparency? – The growth of offshore

- **Mid-1950s – Growth of euro markets**
- **1970s – \$ breaks gold link, fixed exchange rates begin to disappear**
- **1979 – UK abolishes Exchange Controls**
- **1980s – Exchange controls disappear through most of developed world**
- **As offshore assets grow, domestic tax systems seen as being undermined**

The growth of offshore assets



The road to transparency

- **1980s – Multilateral Convention on Mutual Administrative Assistance on Tax matters. FATF formed.**
- **1990s – G-7 debate on Harmful Tax Practices & Tax Havens, OECD report on Harmful Tax Competition**
- **2000s – OECD Global Forum created, TIEA programme launched – with blacklist, EU Savings Tax Directive, UBS fine for assisting US tax evasion, UK/Liechtenstein LDF**
- **2010s – FATCA, UK CD/OT IGAs, US/Swiss amnesty, Swiss sign Multilateral Convention, CRS launched, EU public corporate register of beneficial ownership & non-public trust register, BEPs.**

Transparency – STEP Members' Views

2009 - 'Offshore Evolution', STEP commissioned research of offshore members' views;

- 'The consensus opinion was unequivocal: secrecy is dead'
- 'The secrecy story was a lot like watching the movie Titanic; you know how it is going to end before it starts'
- 'Tax planning based on no one finding out it's tax fraud'

From FATCA to CRS

- Having implemented FATCA, focus now on CRS
- Almost 100 jurisdictions have committed to CRS
- First wave require info on 2016 to be reported spring 2017
- Basic structure of FATCA and CRS are similar but there are traps for the unwary
- In EU the CRS has been implemented by the DAC, broadly same as CRS, but again some traps for the unwary
- **Next challenge is Global Forum 'Africa Initiative'**

CRS & Africa

- **Global Forum in middle of 3 year ‘Africa Initiative’ – 6 nominated ‘leaders’ – Burkina Faso, Cameroon, Gabon, Ghana, Kenya & Morocco. Ghana paired with UK, Morocco with France.**
- **Aim is ‘peer to peer knowledge transfers to support developing countries to implement and benefit from AEOI in a timely manner’.**
- **Expectation is that African membership of Global Forum will grow rapidly – Chad is latest to join.**
- **Focus of session at **STEP Global Congress in Amsterdam** – speakers from OECD, Transparency International and the Extractive Industries Transparency Initiative.**

CRS & national governance

- **STEP has done work looking at links between AEOI and quality of national governance on World Bank indicators**
- **Should we be sharing data with Guinea-Bissau, Libya, Central African Republic, South Sudan, Congo, Sudan and Somalia – all in **global bottom 10 for quality of national governance?****
- **Should we be sharing data with Russia (bottom quartile) or China (third quartile, death penalty for tax crimes)?**
- **What protections should citizens have from abuse of tax data?**

Transparency – STEP's Response

As a professional body committed to its mission and values, STEP:

- **Condemns tax evasion**
- **Condemns anything that helps criminal or terrorist financing**
- **Defends rule of law & right to plan for tax**
- **Defends our clients' right to legitimate confidentiality**
- **Defends our clients' information from risk of abuse**

From FATCA to CRS: FAQs

7 common issues causing problems:

- **Reporting options for trusts that are FIs**
- **Financial Assets test & treatment of cash**
- **Treatment of charities**
- **Treatment of protectors**
- **Treatment of discretionary beneficiaries**
- **Trust residence**
- **Non-participating jurisdictions**

Trusts that are FIs – reporting options

	FATCA	CRS
Trustee Documented	✓	✓
Direct Reporting	✓	✓
Owner Documented	✓	x
Sponsored Investment Entity	✓	x
Third Party Service Provider	✓	✓

Financial Assets test

If the trust gets most of its income from financial assets, it will be a Financial Institution where:

- The trustee is an FI (i.e. a corporate trustee)
- The trustee engages an FI to manage the trust
- The trustee engages an FI to manage the financial assets of the trust (i.e. a discretionary fund manager)

	FATCA	IGA	CRS	DAC
Financial assets test	✓	✗	✓	✓

Financial Assets test

CRS definition of Financial Assets

- ‘Financial Asset’ – definition (VIII A.7) includes long list of securities and financial asset – no mention of cash, but...
- ‘The term “Financial Asset” ...while it does not refer to assets of every kind, it **intends to encompass any assets that may be held in an account maintained by a Financial Institution** with the exception of a non-debt, direct interest in real property.’ (CRS Commentary VIII.23)
- Conversations with policy makers suggest that OECD will shortly clarify that cash is **not** a Financial Asset

Charities & AEOI

Under FATCA IGA:

- IGA Annex II – Charities that are FIs are generally ‘Deemed Compliant FIs’ and do not need to register or report
- Charities that are not FIs are Active NFEs and their accounts are not reportable

Under CRS:

- Charities that are FIs are not ‘Deemed Compliant’. They must complete CDD on Controlling Persons and report any Reportable Persons
- Charities that are not FIs are Active NFEs and their accounts are not reportable

Charities & CRS

Charities that are FIs

- Will need to CDD Controlling Persons, including ‘beneficiaries’, i.e. anyone receiving payments from trustees
- If payment is made to a Passive NFE (e.g. another charity), ‘look through’ needs to identify controlling persons & their tax residence
- If payment made to another FI no reporting, unless....
- ...payment is made to FI in CRS non-participating jurisdiction.

Do you need to report protectors?

CRS Implementation Handbook

Who is reported	Trust is Passive NFE - Table 8	Trust is FI – Table 7
Settlor	✓	✓
Trustee	✓	✓
Beneficiary, mandatory	✓	✓
Beneficiary, discretionary	✓	✓
Protector	✓	✗
Any other person exercising control	✗	✓

Do you need to report protectors?

OECD view (see STEP website)

- In the case of trust that is FI, protectors should be regarded as included in Table 7 ('any other person with effective control')
- Protector should be identified regardless of how much effective control they actually have
- Protector who is not a beneficiary has no taxable interest?

What type of Controlling Person the account holder is (e.g. a protector) must be included in the report to enable the tax authority to make appropriate use of the information

Discretionary beneficiaries

**Discretionary beneficiaries:
Account Holders/Controlling Persons only in year of distribution?**

	FATCA IGA	CRS	DAC
Trust is FI	✓	✓	✓
Trust is Passive NFE	✓	✓*	x

***At discretion of jurisdiction**

Discretionary beneficiaries (DAC)

Q: Does a bank need a self certification from a discretionary beneficiary not in receipt of payment?

A: ‘For purposes of determining whether a controlling person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person’ (DAC V.2A)

Conclusion: In theory, a self certification from the trustees should be sufficient, but in practice...?

Trust residence

Under CRS:

- **‘A trust will be considered to be resident where the trustee(s) is resident. If there is more than one trustee, the trust will be a Reporting Financial Institution in all Participating Jurisdictions in which a trustee is resident. In other words, if the trustees are each resident in different jurisdictions, the trust would be a Reporting Financial Institution in each of those Participating Jurisdictions, and would each separately report in respect of their Reportable Accounts....’**
- **Unless trustees can certify that trust has reported in at least one Participating Jurisdiction**

CRS – non participating jurisdictions

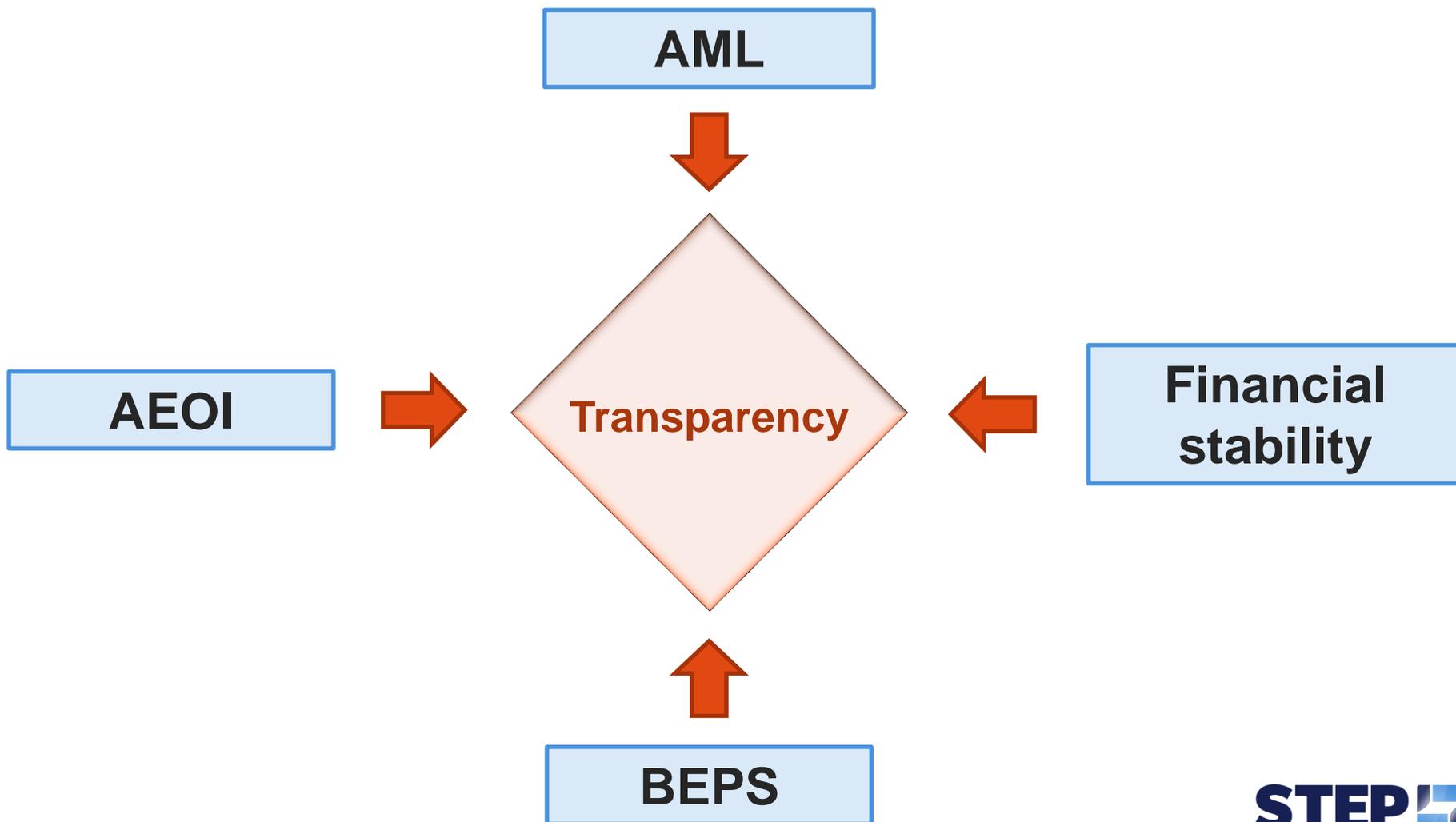
- 51 jurisdictions committed to exchange of information in 2017 – 41 jurisdictions committed to exchange in 2018
- Any professionally managed Investment Entity resident in a non-participating jurisdiction to be treated as a Passive NFE (i.e. full look through required)
- All jurisdictions required to legislate ‘to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures.’ **e.g. recent UK anti-avoidance legislation attacking ‘enablers of offshore evasion’ and corporate ‘failure to prevent’**

CRS – position of US

Reciprocal Model 1 IGA

- So far, US only reports gross interest paid on depository account held by individuals and US source income for custodial accounts – **no look through for entities**
- **Article 6:** The US ‘acknowledges the need to achieve equivalent levels of reciprocal automatic information exchange...(and) is committed to...pursuing the adoption of regulations and advocating and supporting relevant legislation to achieve such equivalent levels of reciprocal automatic exchange’
- **Is US non-participating jurisdiction?**
- **Is it ‘wise’ to avoid reporting by going to US?**

Transparency is not just about AEOI



Implications for the Industry

- **Intense regulatory scrutiny**
- **Growing strategy of attacking ‘enablers’ as well as tax evaders**
- **Penalties for getting it wrong spiralling**
- **Many large institutions are now de-risking and leaving the business**
- **Significant industry restructuring underway**

What about the client?

- **Will the number of wealthy families in the world continue to grow? – Yes**
- **Will they still want to geographically diversify their wealth? – Yes**
- **Will they need advice that assures multi-jurisdictional compliance? – Yes**
- **Will they now opt for simpler structures? – Possibly**

Questions

