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Is Banking Secrecy Real? Implementing Transparency Requirements in Banking Sector

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Banking Secrecy, history, advantages and disadvantages.

- ▶ It is a conditional agreement between a bank and its clients that all foregoing activities remain secure, confidential, and private.
- ▶ Banking secrecy is prevalent in Switzerland, Luxembourg, Monaco, Hong Kong, Singapore, Ireland, Lebanon and the Cayman Islands.
- ▶ Swiss banking secrecy was first codified with the Banking Act of 1934, thus making it a crime to disclose client information to third parties without a client's consent.
- ▶ The **Banking Secrecy Law** was issued in **Lebanon** on September 3, 1956 and was one of the most comprehensive pieces of **banking secrecy legislation** in the world.
- ▶ However, countries that impose banking secrecy laws, are most likely to attract moneys derived from large scale and violent criminal enterprises.
- ▶ Banking Secrecy Act (BSA): in 1970, requires disclosures of large currency transactions. (create a paper trail to trace proceeds from drugs and illegal sources)



Rethinking Transparency.

Know Your Customer (KYC), FATCA, CRS

- ▶ USA Patriot Act: KYC mandatory for all US banks before October 2002.
- ▶ The 2008 financial crisis put government budgets under strain, and multinational companies were criticized or failing to pay their “fair share” of tax.
- ▶ 2010: Passing of the FATCA provision by the U.S. Congress.
- ▶ 2014: more than 90 countries committed to the AEOI under CRS.
- ▶ 2015: Lebanese Law 44 (included Tax evasion as a money laundering crime)
- ▶ 2016: Lebanese Law 55 Exchange of information for tax purposes:
 - *Penalties for non compliance.*
 - *The provisions of this Law shall have effect despite any obligation as to confidentiality or other restriction, imposed by any other Law, upon the disclosure of information.*



FATCA

Background and Requirements.

- ▶ The UBS scandal: Bradley Birkenfeld provided the IRS detailed accounts of how he helped U.S. taxpayers evade paying millions in U.S. taxes.
- ▶ More than USD 20 Billions of undeclared Income.
- ▶ UBS paid \$780 million penalty.
- ▶ UBS agreed to disclose the names of 4,450 U.S. account holders suspected by the IRS of evading taxes.
- ▶ Fourteen additional major Swiss banks, including Credit Suisse, came under criminal investigation.
- ▶ Wegelin, the oldest Swiss bank, was indicted, pled guilty, and then filed for bankruptcy in 2013.
- ▶ In 2013, Switzerland signed the OECD Tax Convention.



FATCA

Background and Requirements.

- ▶ FATCA targets non-compliance by U.S. taxpayers using foreign accounts. FATCA requires foreign financial institutions (FFIs) to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.
- ▶ FFIs are obliged to **Identify**, **Report**, and **Withhold** on accounts held by U.S. taxpayers.



FATCA

Project Implementation

- ▶ **Understanding FATCA regulations** (more than 300 pages of U.S. Law):
 - FATCA indicia to determine a U.S. Tax payer (Nationality, Dual Nationality, Birth Place, Residency, Standing instructions, U.S. Hold Mail).
 - Treatment of New Clients (Onboarding clients).
 - Treatment of Preexisting clients. (High Value Accounts, Substantial Ownership)
 - Treatment and definition of entities (Active, Passive, Financial, Exempted)
 - Reporting of accounts held identified U.S. tax payers.
 - Reporting of other affected accounts (Joint account, entities with U.S. substantial owners)
 - Identifying Recalcitrant clients.
 - Withholding obligations.



FATCA

Project Implementation

- ▶ **Determining Stakeholders:**
 - Affected Customers.
 - Compliance.
 - Audit.
 - Operations.
 - IT.
- ▶ **Identifying the Business Owner and the Project Manager.**



FATCA

Project Implementation

► Gap Analysis:

- Regulatory requirements (Banking Secrecy)
- Availability of data (to capture U.S. indicia)
- Correctness of data (to avoid over-reporting or miss-reporting)
- Readiness of the system (or the need for a specialized software)
- Availability of the tools needed for reporting (Encryption and Decryption keys, Certifications)
- Different definition of banking terms (Dormant, type of entities, controlling person)
- Management willingness to report identified clients
- FATCA Compliance Culture



FATCA

Project Implementation

▶ **Closing of identified Gaps:**

- Updating the opening of account documents
- Updating of the Customers' Database
- Redefining banking conditions to meet new definitions (dormant, ownership, etc.)
- Adopting a specialized software (to extract, compile, and report data)
- Training of employees and educating of management



FATCA

Reporting

- ▶ **Data to be reported:**

Personal info: Account holder's name, address, TIN, Date and Place of birth

Account info: Account balance (at year end), Interests paid, Dividends paid, Other income or gross proceeds

Financial Institution submitting the report.

- ▶ **Means and form of FATCA reports**

FFI registration with the IRS

Reports to be prepared in XML V2.0 format

Reports to be submitted via IDES (International Data Exchange System)



AEOI and CRS

Background and requirements

- ▶ In 2012 the five major European countries (the United Kingdom, France, Spain, Italy and Germany) agreed with the United States on a reciprocal exchange of FATCA information under Intergovernmental Agreements (IGAs)
- ▶ In response to the G20 request the OECD (Organisation for Economic Co-operation and Development) approved during its Council on 15 July 2014 on the CRS.
- ▶ Over 100 jurisdictions have committed to exchanging information with each other under the CRS. (Lebanon will exchange information with 63 countries).



AEOI and CRS

Reporting Indicia

- ▶ Account Holder is resident in a Reportable Jurisdiction;
- ▶ Mailing address in a Reportable Jurisdiction;
- ▶ Telephone numbers in a Reportable Jurisdiction;
- ▶ Standing instructions to transfer funds to a Reportable Jurisdiction;
- ▶ Power of attorney or signatory authority granted to a person with a address in a Reportable Jurisdiction;
- ▶ A “hold mail” or “in-care-of” address in a Reportable Jurisdiction.



FATCA and CRS

Differences

	FATCA	CRS
Governing Authority	U.S.	Local tax authorities.
Registration	IRS registration to obtain GIIN.	No registration required.
Account Scope / Reportable Persons	U.S individual and entity accounts. Passive NFFEs with substantial U.S. owners.	Individual and entity accounts held by tax residents of any CRS participating jurisdiction. Passive NFEs with Controlling Person(s) that are resident in a CRS participating jurisdiction.
Documentation Requirements	IRS forms W-8 / W-9 generally used to capture data.	U.S tax forms are not acceptable to capture all CRS data (e.g. multiple tax residencies, CRS legal entity classification); CRS self-certifications must be developed.
Thresholds for pre-existing accounts	FI may choose to apply thresholds in order to Minimize due diligence.	Threshold does not apply for individuals (may apply for entities – subject to local regulatory discretion)

FATCA and CRS

Differences

	FATCA	CRS
Controlling Person	Owner of 10%.	Owner of 25%.
Reporting	One XML file sent through IDES.	An XML file for each reportable jurisdiction sent to the MOF.
Role of Local Authorities	No Role	Law 55 Ministry of finance letter dated April 5,2017 Ministry of finance Dec.1022 dated July 07, 2017 Ministry of finance Dec. 1248 dated Dec. 06, 2017

Local regulations related to transparency

- BDL Intermediate Circular 147 dated September 2019: Registration with the MOF.
- BDL Intermediate Circular 523 dated August 2019: forbidding of numbered accounts.
- BDL Intermediate Circular 498 dated June 2018: Definition of Beneficial Right Owner.
- Law 55: Automatic Exchange of Information.
- Law 44: Introducing Tax Evasion as a Money Laundry Offense.

Finally it is worth mentioning that Lebanon will be subject to a peer review (Mutual Assessment) in Jan 2021, by the MENAFATF which will cover the Technical Compliance and the Effectiveness of the AML/CFT measures.



We have what it takes to take what you have!

Suggested IRS Motto



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THANK YOU

