

Tax Transparency

The Common Reporting Standard
and HMRC's approach to offshore
evasion

Agenda

Topic	Speaker
Introduction	Edgar Lavarello
HRMC's strategy and approach to offshore evasion	Nick Warrington – HMRC
Practical approach to complying with FATCA & Automatic Exchange of Information (IGAs, CDOT, CRS & DAC)	Jimi MacDonald – PwC
The UK's proposed corporate criminal offence of failure to prevent facilitation of tax evasion	Jennie Haslett – HMRC Anthony Whatling – PwC
Announcements in the Autumn Statement that affect business in Gibraltar	Anthony Whatling - PwC
Questions	All

Introduction

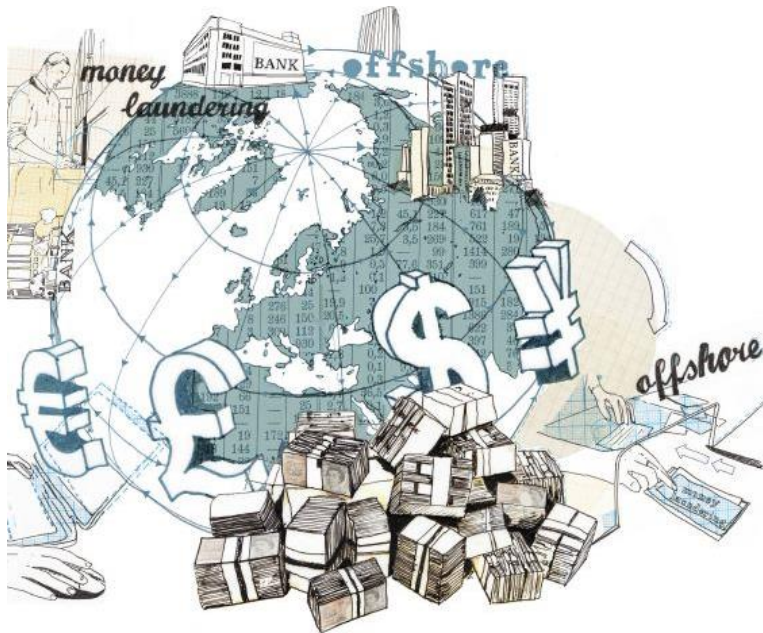
HRMC's strategy and approach to offshore evasion



HM Revenue
& Customs

International Tax Transparency and HMRC's changing approach

December
2015



Nick Warrington

Senior Policy Adviser

Centre for Offshore Evasion Strategy

No Safe Havens

The time has come for those with hidden offshore interests to come forward: there are no safe havens for tax evaders.

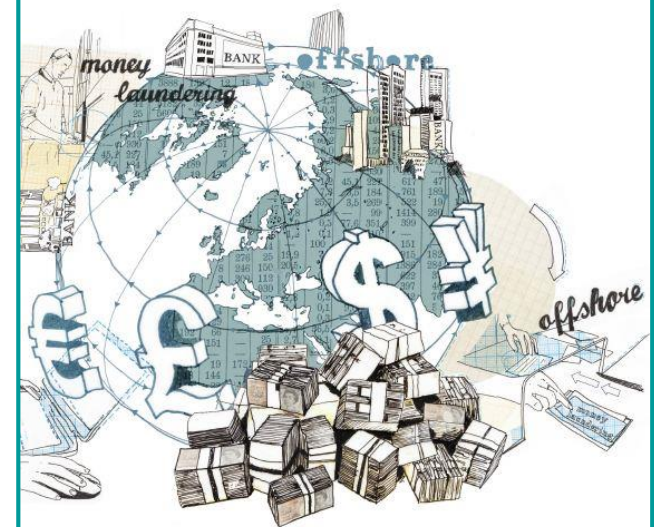
David Gauke MP, Exchequer Secretary to the Treasury

Foreword to 'No Safe Havens', HMRC's offshore evasion strategy 2013 and beyond



No safe havens

Our offshore evasion strategy 2013 and beyond



No Safe Havens: Objectives

The objectives of the No Safe Havens strategy are **to ensure:**

- there are **no jurisdictions** where UK taxpayers feel safe to hide their income and assets from HMRC;
- **would-be offshore evaders** realise that the **balance of risk** is against them;
- **offshore evaders voluntarily pay the tax due;**
- those who do not come forward are **detected and face vigorously enforced sanctions;**
- there will be **no place for facilitators** of offshore evasion.



Progress in recent years

Offshore Disclosure Facility

2007

New Disclosure Opportunity

2009/10

Crown Dependencies Disclosure Facilities

Run from 6 April 2013 until December 2015

CRS: Automatic Exchange of Information

First exchange of information in September 2017

Over 58,000 individuals have come forward to disclose offshore tax issues and HMRC has collected £2.7 billion in additional tax, penalties and interest from our disclosure facilities and international agreements

Lichtenstein Disclosure Facility

MOU signed August 2009 – runs to December 2015

UK-Swiss Tax Cooperation Agreement

Agreement signed October 2012

New Disclosure Facility

Time-limited; will run from 2016



Offshore Evasion at Budget 15

The 2015 Budget announced a package of measures to tackle offshore evasion, including consultations on:

- a new criminal offence for those who have not paid the tax due on offshore income;
- new civil penalties for enablers of tax evasion;
- a new offence of corporate failure to prevent tax evasion or the facilitation of tax evasion;
- toughening of the range of penalties available to HMRC, including naming those who have evaded tax



Offshore Evasion at Budget 15 (2)

Budget 15 also announced:

- the early closure of existing disclosure facilities at the end of 2015, and the opening of a new time-limited facility;
- a requirement for all financial institutions and tax advisors to notify their customers about new automatic exchange of information agreements;
- more investment in rewards for significant information on offshore tax evasion.

Offshore package expected to raise £565m by 2019-20. A large proportion of this expected through the new disclosure facility.



Autumn Statement 25 November 2015

Autumn Statement announced:

A new criminal offence for tax evasion – The Government will introduce a new criminal offence that removes the need to prove intent for the worst cases of failing to declare offshore income and gains. (Finance Bill 2016)

New civil penalties for offshore tax evaders – The Government will increase civil penalties for deliberate offshore tax evasion, require greater details of the evasion from deliberate offshore evaders, introduce a new penalty linked to the value of the asset on which tax was evaded offshore and increase public naming of offshore tax evaders

New civil penalties for those who enable offshore evasion – The Government will introduce civil penalties for those who enable offshore tax evasion, including public naming of the most serious enablers

A new criminal offence for corporations who fail to prevent the criminal facilitation of tax evasion - The Government will introduce a new criminal offence for corporates which fail to prevent their agents from criminally facilitating tax evasion by an individual or entity.

An additional requirement to correct past offshore tax non-compliance – The Government will consult on an additional requirement for individuals to correct any past offshore non-compliance with new penalties for failure to do so.



Disclosure Facility Terms

	Liechtenstein Disclosure Facility	Crown Dependencies Disclosure Facility	New Disclosure Facility
Immunity from Criminal Investigation?	✓	✗	✗
Penalties	<p>Tax Years 1999-00 to 2008-09 = 10%</p> <p>Typically 20-40% thereafter depending on the category of the jurisdiction</p> <p>No penalty where reasonable care is demonstrated.</p>	<p>Tax Years 1999-00 to 2008-09 = 10%</p> <p>Typically 20-40% thereafter depending on the category of the jurisdiction</p> <p>No penalty where reasonable care is demonstrated.</p>	At least 30%
Assessment Period	1999	1999	No Incentive offered
Composite Rate Option?	✓	✗	It is highly unlikely that there will be a CRO

- We continue to work on the detailed design of the New Disclosure Facility
- The opportunity needs to work for those wanting to come forward so there is benefit to HMRC working with advisers to facilitate that.



Beyond Disclosure Facilities?

AEOI begins next year (2016) for the Crown Dependencies and Overseas Territories under the Inter-Governmental Agreements

- This will give HMRC more information than ever before about the offshore investments of UK taxpayers
 - Much more than just bank accounts
 - Insurance products
 - Trusts
 - Other structures such as companies
- Incredibly powerful tool for identifying tax irregularities.



Common Reporting Standard

Over 90 jurisdictions have agreed to automatically share information on financial accounts. The first exchange of information will take place in **September 2017**, with all 90 countries exchanging information by **September 2018**.

HMRC will receive information about:

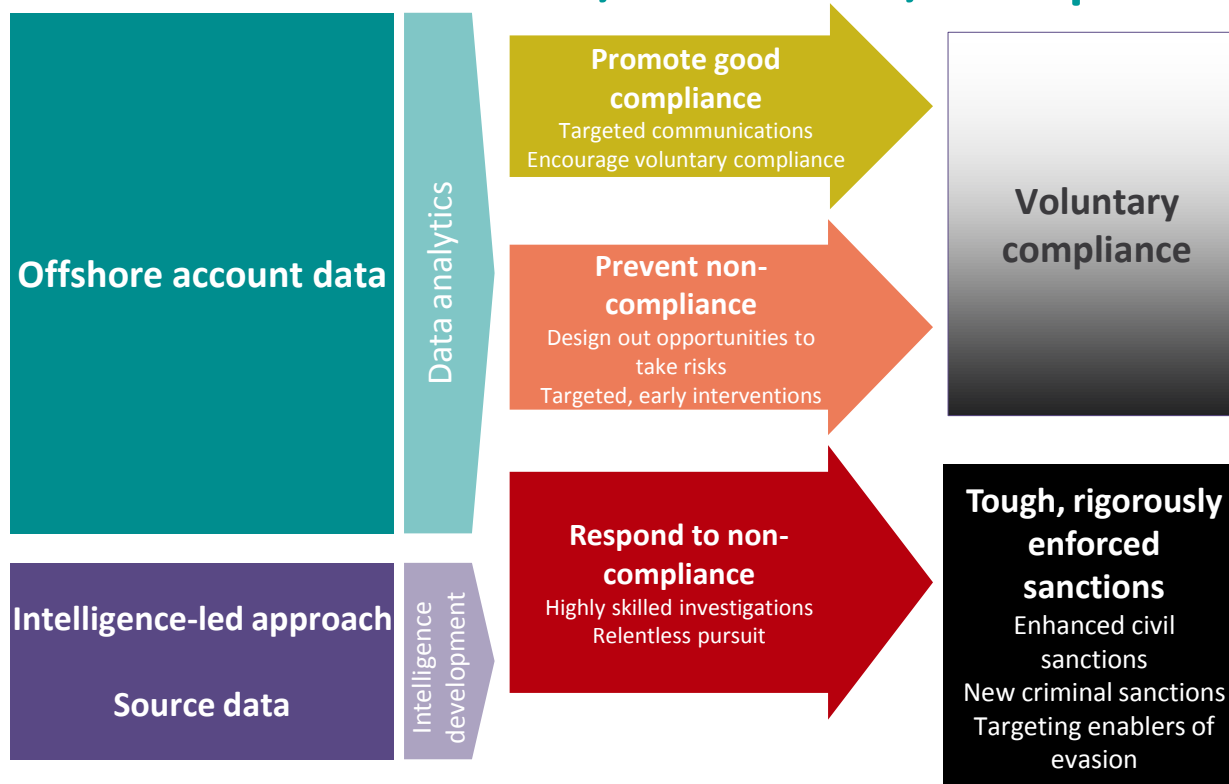
- overseas accounts
- insurance products
- other investments, including those held through overseas structures such as companies and trusts.

This includes details of the account holder or owner, including:

- name
- address
- date of birth
- balance of the account
- payments into the account



Using the data: Promote, Prevent, Respond



It is important you act now!

The time is limited for those wanting to settle their affairs to come forward.

- Automatic Exchange of Information is a huge step change and impacts on Gibraltar from next year.
- Not only about evasion – offshore affairs are complex and rules change with time
- Recommend Financial health checks for clients – it's better to be sure
- Customer service element
- Avoiding bigger future problems





HM Revenue
& Customs

Thank you

... any questions?

HM Revenue & Customs
100 Parliament Street,
London,
SW1A 2BQ

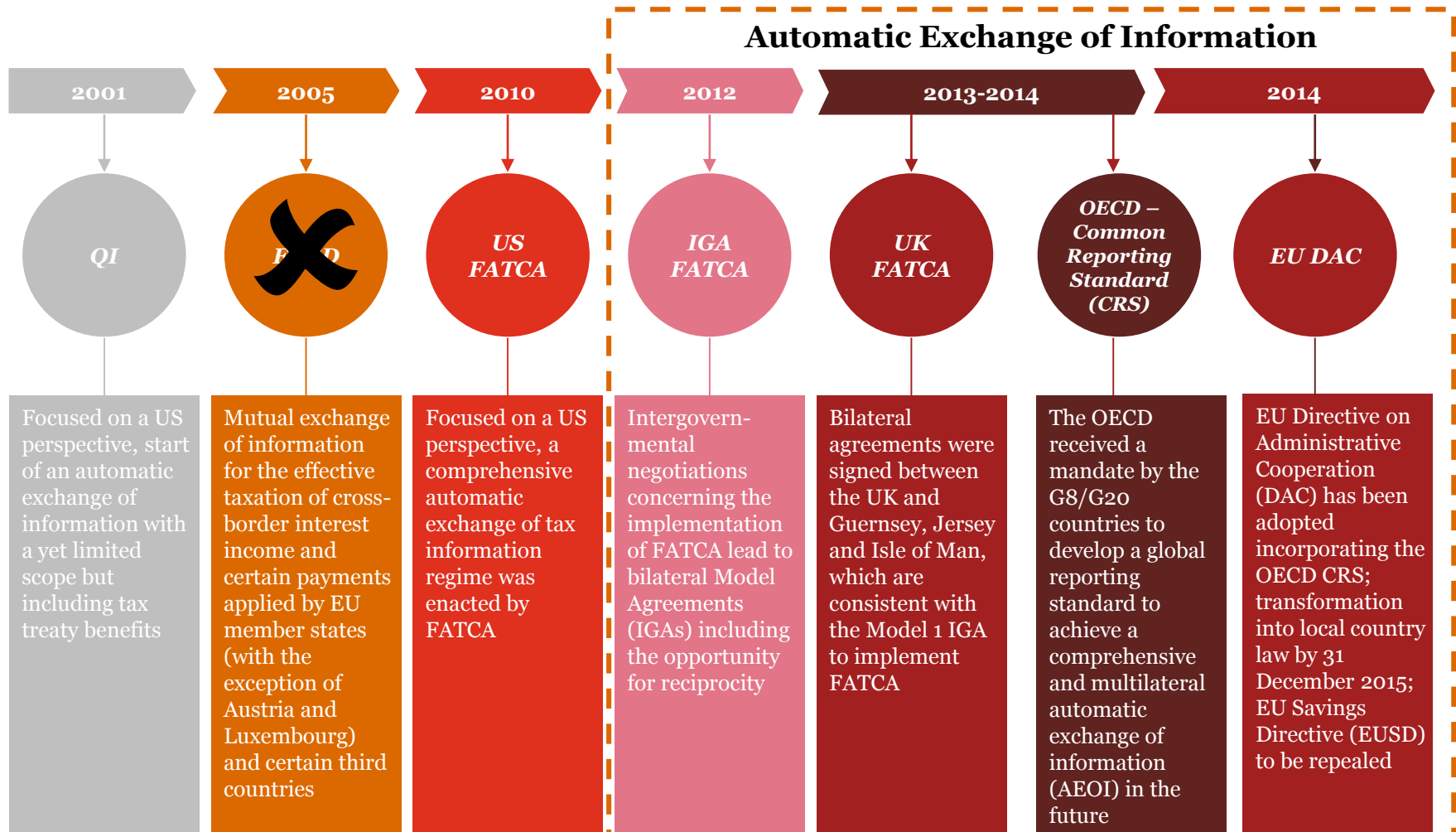
03000 589 244

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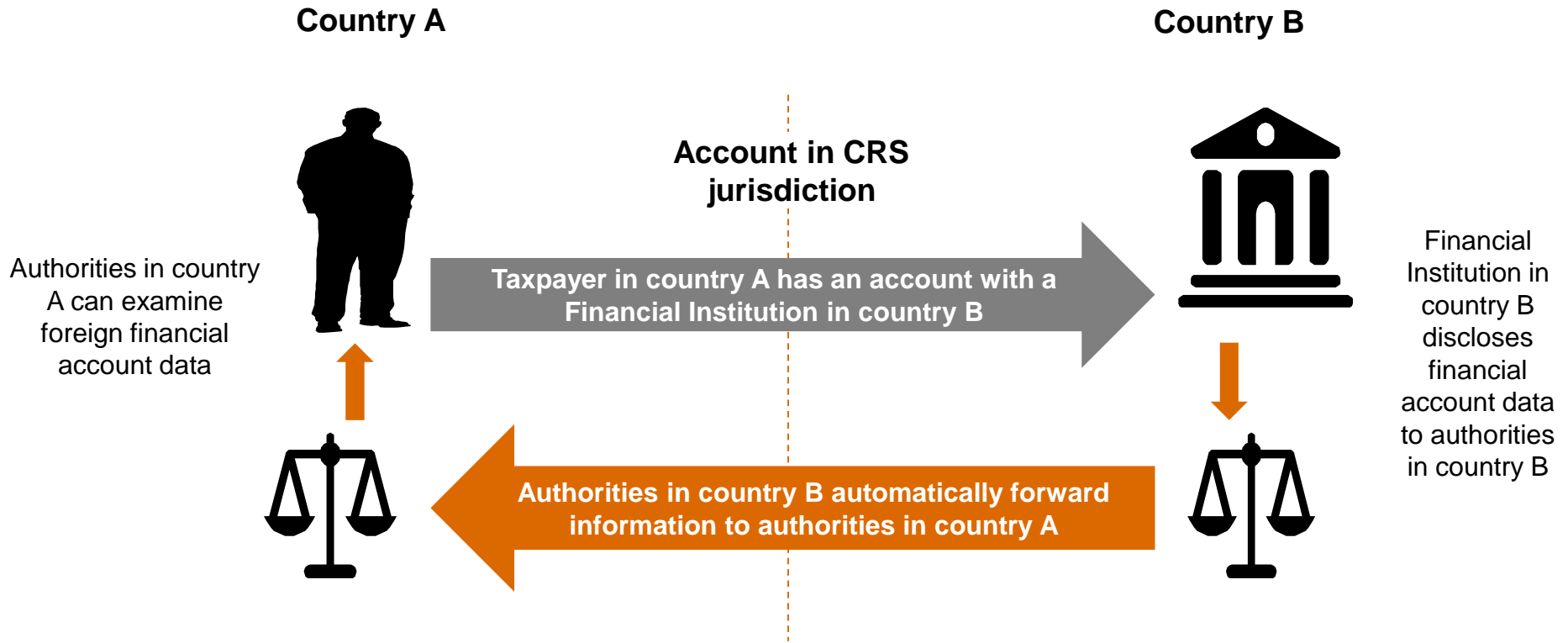
Practical approach to complying with Automatic Exchange of Information

CRS is the next wave of increasing global standards on Tax Information Reporting

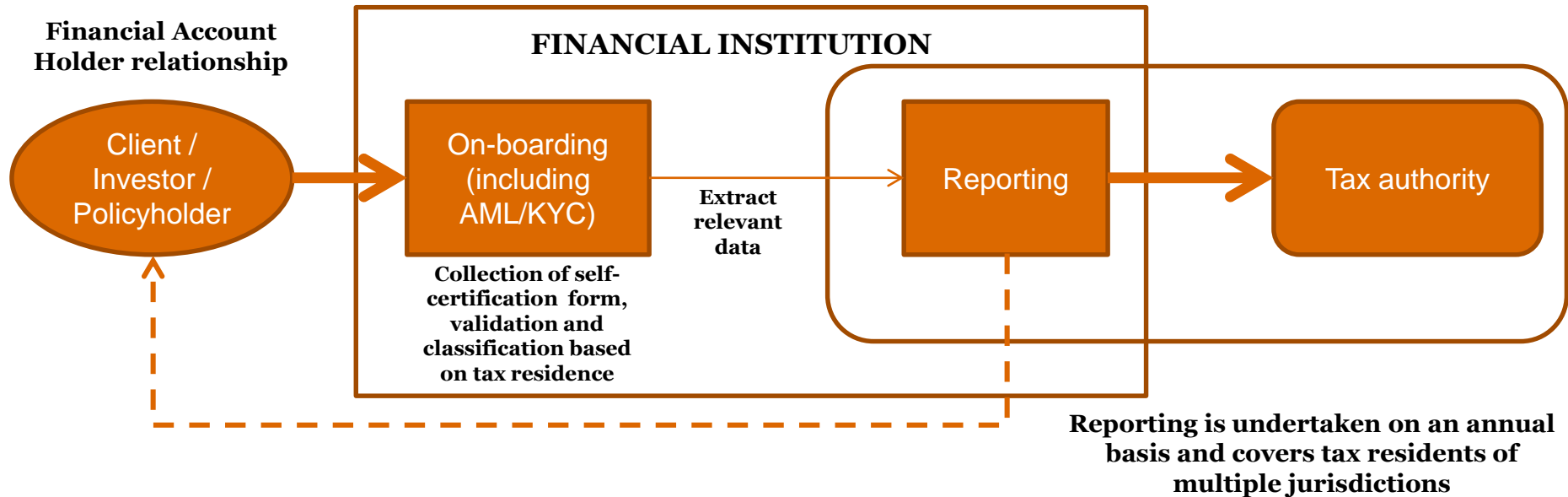
*UK FATCA legislation was passed in Gibraltar on 12 November 2015



CRS – the basics



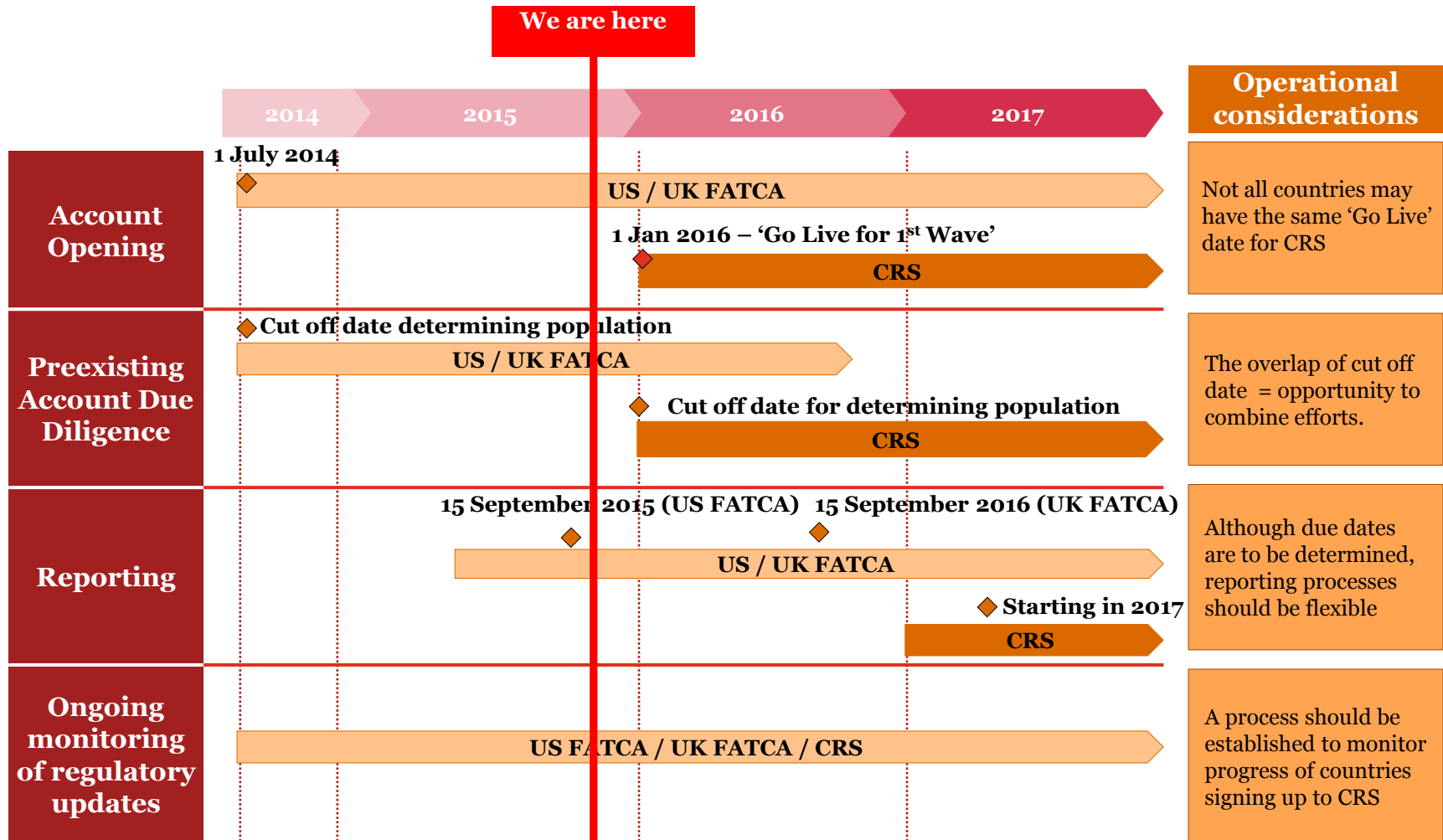
CRS – the detail



Reporting - Information required for each Reportable Account:

- Name
- Address
- TIN
- Date of Birth
- Place of birth (where required to obtain and report it under domestic law) (including for entities with Controlling Persons that are Reportable Persons)
- Account balance
- Gross interest, dividends and other income paid or credited to the account
- Gross proceeds from sale or redemption of property paid or credited to the account (for custodial accounts)
- Total gross amount paid or credited to Account Holder, including aggregate amount of redemption proceeds (for equity or debt interests, cash value insurance contracts)

Automatic Exchange of Information - timeline



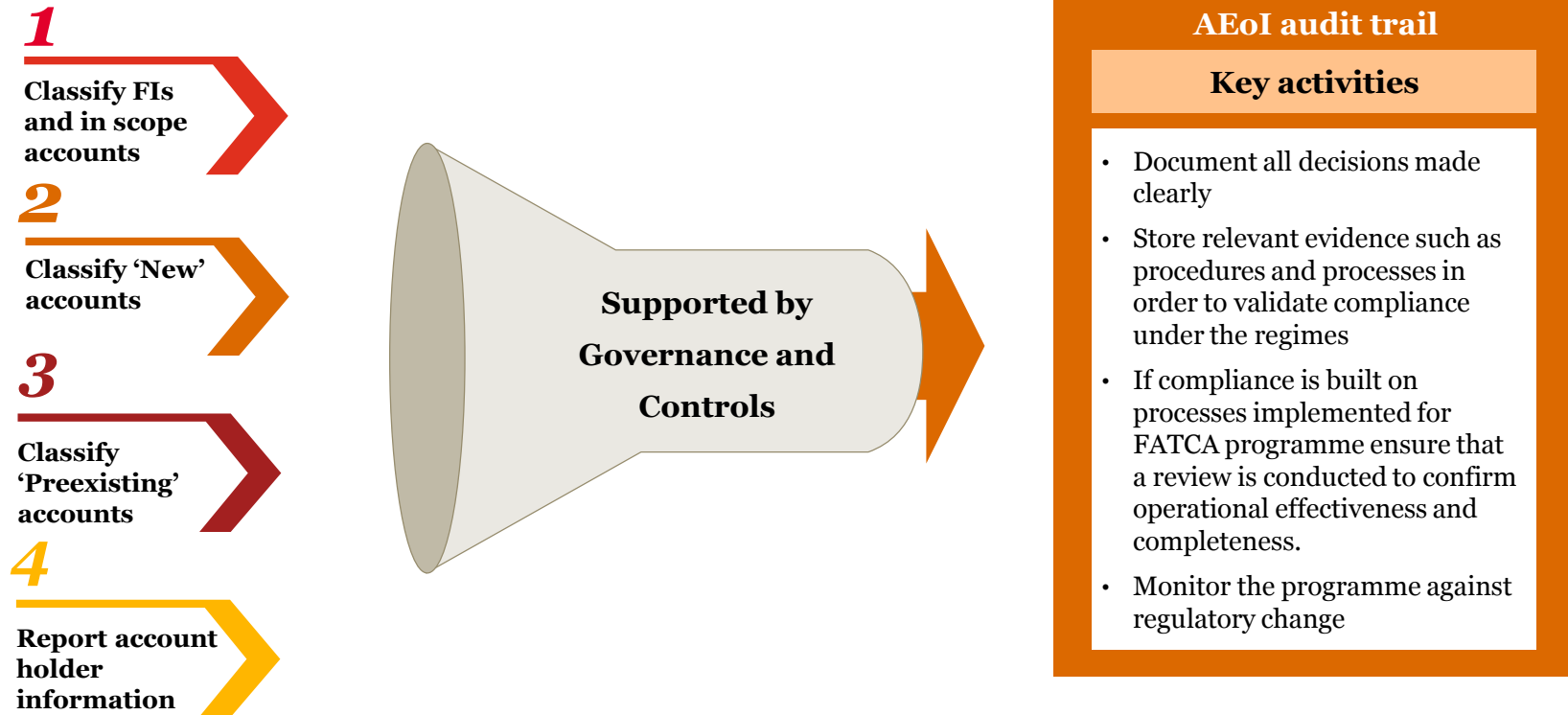
CRS Adopters

	CRS First Wave New Procedures 2016 ¹ - Reporting 2017	CRS Second Wave New Procedures 2017 - Reporting 2018	CRS Committed Timeline TBD	Non-CRS
Signed IGA	<ul style="list-style-type: none"> Austria¹ (P: Oct 2016, R: 2018) Barbados Belgium Bermuda British Virgin Islands Bulgaria Cayman Islands Colombia Croatia Curaçao Cyprus Czech Republic Denmark Estonia Finland France Germany Gibraltar Guernsey Hungary Iceland India Ireland Isle of Man Italy Jersey Latvia Liechtenstein Lithuania Luxembourg Malta Mauritius Mexico Montserrat Netherlands Norway Poland Portugal Romania San Marino* Slovak Republic Slovenia South Africa South Korea Spain Sweden Turks and Caicos Islands United Kingdom 	<ul style="list-style-type: none"> Australia Bahamas Brazil Canada Chile Costa Rica Hong Kong (China) Israel Japan New Zealand Qatar Saint Kitts and Nevis Saint Vincent and Grenadines Singapore Switzerland Turkey United Arab Emirates 	(none)	<ul style="list-style-type: none"> Algeria Belarus Cambodia Georgia Holy See Honduras Jamaica Kosovo Kuwait Moldova Philippines Uzbekistan
Agreed in Substance IGA	<ul style="list-style-type: none"> Anguilla Dominica* Greece Greenland Seychelles Trinidad and Tobago* 	<ul style="list-style-type: none"> Antigua and Barbuda China Grenada Indonesia Macao (China) Malaysia Panama Saint Lucia Saudi Arabia 	<ul style="list-style-type: none"> Bahrain 	<ul style="list-style-type: none"> Angola Armenia Azerbaijan Cabo Verde Dominican Republic Guyana Haiti Iraq Kazakhstan Montenegro Nicaragua Paraguay Peru Serbia Taiwan Thailand Tunisia Turkmenistan Ukraine
Non-IGA	<ul style="list-style-type: none"> Argentina Faroe Islands Niue* 	<ul style="list-style-type: none"> Albania Andorra Aruba Belize Brunei Darussalam Cook Islands Ghana Marshall Islands Monaco Russia Samoa Sint Maarten Uruguay 	<ul style="list-style-type: none"> Nauru Vanuatu 	(all other jurisdictions)

What are the key steps to achieving compliance?

What are the key steps towards complying with AEOI?

Key components of AEOI compliance



Classify entities that are Financial Institutions

Entities must determine their status to understand what (if any) obligations they have under AEOI



Selected challenges	Considerations
<ul style="list-style-type: none"> Definition of an FI is broad and can bring into scope a range of different businesses 	<ul style="list-style-type: none"> Categories of FI include: <ol style="list-style-type: none"> Depository Institutions Custodial Institutions Specified Insurance Companies; and Investments Entities Other types of entities can also be caught including, trusts, certain holding companies, SPVs and Nominee structures. FIs should maintain a clear audit trail of decisions made with regards to classification in the event of future challenge on compliance
<ul style="list-style-type: none"> FIs need to determine how to register with the IRS 	<ul style="list-style-type: none"> FIs can register in a number of ways depending on their classification and whether they offer compliance services to clients (e.g. acting as professional trustee)
<ul style="list-style-type: none"> Maintaining and monitoring entity data on an ongoing basis 	<ul style="list-style-type: none"> Maintain and monitor existing entities in case business activity changes or regulatory / guidance updated impacts the FATCA status.

Classify clients with 'New' Financial Accounts

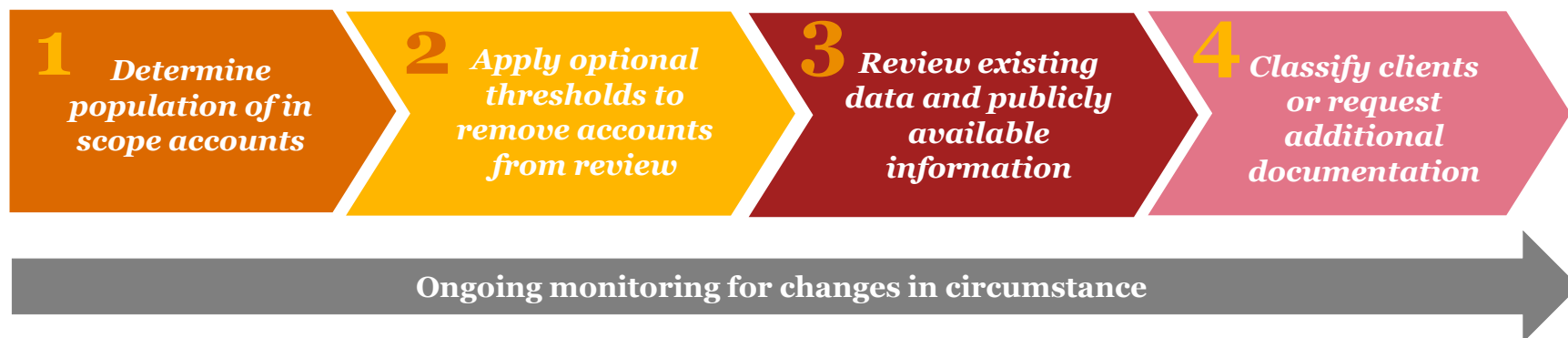
FIs must identify if the account is in scope for AEOI and collect documentation to classify clients



Selected challenges	Considerations
<ul style="list-style-type: none"> Definition of a Financial Account can be broad 	<ul style="list-style-type: none"> Account type typically driven by entity classification (e.g. Depository Institution maintaining Depository Accounts) Financial Accounts can include interests held by settlors and beneficiaries in trusts
<ul style="list-style-type: none"> Obtaining information from clients 'upon account opening' can be challenging 	<ul style="list-style-type: none"> Local country implementation rules may provide guidance on the practicalities of obtaining this information (e.g. within 90 days) Alignment with existing processes (e.g. AML / KYC) may impact when and how this information is obtained
<ul style="list-style-type: none"> Client 'experience' may suffer as a result of information requested 	<ul style="list-style-type: none"> Design of forms can be difficult and US forms are not appropriate for CDOT or CRS Clients can find technical language hard to follow and lead to incomplete forms being provided back.
<ul style="list-style-type: none"> Not all countries may have the same 'Go Live' date for CRS 	<ul style="list-style-type: none"> FIs may be required to 'switch on' new client onboarding processes at different times to capture the required information

Classify clients with 'Preexisting' Financial Accounts

FIs must identify in scope accounts that were in existence before AEOI regimes went live and classify clients.



Selected challenges	Considerations
<ul style="list-style-type: none"> Requirements vary between AEOI regimes in terms of applying 'de minimis' thresholds 	<ul style="list-style-type: none"> Under CRS no thresholds exist for individual accounts and FIs who have applied thresholds for FATCA and CDOT should assess feasibility of monitoring different requirements FIs that have applied thresholds for entities must monitor to confirm whether account balance exceeds \$1m for FATCA and CDOT and \$250k for CRS
<ul style="list-style-type: none"> Quality of information held on clients may vary 	<ul style="list-style-type: none"> Inability to confirm status using existing data or publicly available information may result in requesting additional information from account holders
<ul style="list-style-type: none"> Clients may be unresponsive to additional information requests 	<ul style="list-style-type: none"> Response rate can vary and communications accompanying requests for information can impact the probability of receiving a response
<ul style="list-style-type: none"> Not all countries may have the same 'Go Live' date for CRS 	<ul style="list-style-type: none"> The population of Preexisting Accounts may vary by jurisdiction and FIs may need to manage the impact of varying cut-off dates .

Reporting information on account holders

FIs should report information on reportable persons under AEOI to the relevant tax authority on an annual basis



Selected challenges	Considerations
<ul style="list-style-type: none">Reporting deadlines can vary by jurisdiction	<ul style="list-style-type: none">FIs should monitor local country requirements to ensure that they are able to report information to the relevant tax authority in a timely and accurate manner
<ul style="list-style-type: none">Countries may choose to implement different reporting formats	<ul style="list-style-type: none">FIs should be able to convert data into the relevant scheme depending on the country in which the FI is resident

Questions

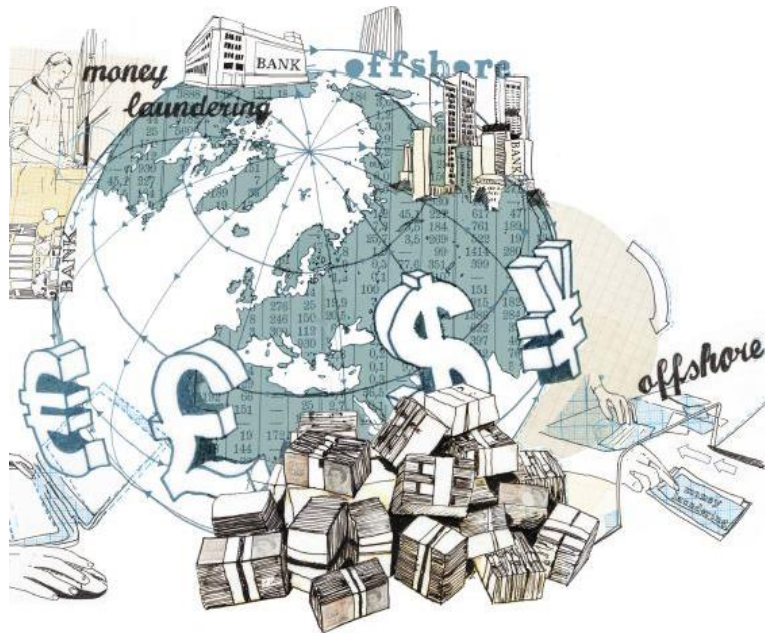
*The UK's proposed corporate
criminal offence of failure to prevent
facilitation of tax evasion*



HM Revenue
& Customs

A new corporate criminal offence for failure to prevent the criminal facilitation of tax evasion

December
2015



Jennie Haslett

Policy Adviser

Centre for Offshore Evasion Strategy

Corporate Criminal Offence of Failure to Prevent Facilitation of Evasion

The consultation put forward an offence with three elements. For the corporation to be liable under the new offence, there must have been:

- **Stage one:** criminal tax evasion by a taxpayer (either an individual or an entity) under the existing law
- **Stage two:** criminal facilitation of this offence by an agent of the corporation, as defined by the Accessories and Abettors Act 1861
- **Stage three:** the corporation failed to prevent its agent from committing the criminal act outlined at stage two.
- **Stage four:** the corporation may choose to put forward a defence (on the balance of probabilities) of having put in place reasonable procedures to prevent the action at stage two.



Areas of consultation

How should “*agent*” be defined? i.e. whose conduct should a corporation be liable for?

How should “*corporation*” be defined? i.e. who should be liable under the new offence

Should the offence cover the criminal facilitation of all taxes, or should it be restricted to certain taxes?

The geographic scope of the offence

The nature of a reasonable procedures defence and its interaction with existing due diligence procedures

The guidance for such a defence and its interaction with existing guidance



Predicate offences

- the common law offence of cheating the public revenue (or conspiring to cheat the public revenue);
- section 106A of the Taxes Management Act 1970 (TMA), which introduced an offence of fraudulent evasion of income tax;
- section 72 of the Value Added Tax Act 1994; and
- sections 2-7 of the Fraud Act 2006



The geographic scope of the offence

The consultation document proposed the new offence applied in the following three situations:

- Where a UK based corporation fails to prevent its agent(s) from criminally facilitating a UK tax loss
- Where a non-UK based corporation fails to prevent its agent(s) from criminally facilitating a UK tax loss
- Where a UK based corporation fails to prevent its agent(s) from criminally facilitating a tax loss overseas, where the jurisdiction suffering the tax loss has the equivalent laws in place, i.e. where there is dual criminality.





HM Revenue
& Customs

Thank you

... any questions?

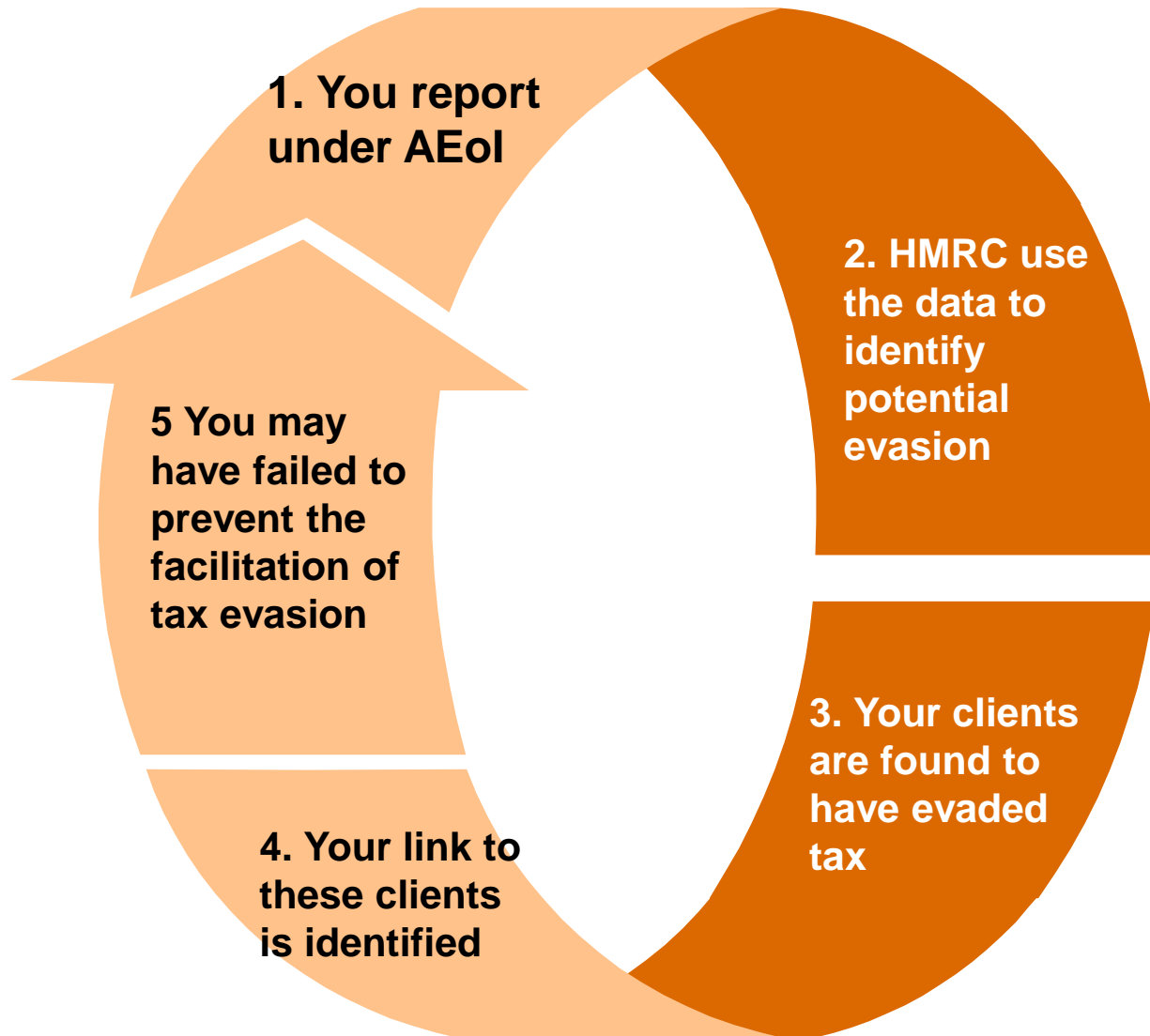
HM Revenue & Customs
100 Parliament Street,
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SW1A 2BQ

03000 557 864
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*The UK's proposed corporate
criminal offence of failure to prevent
facilitation of tax evasion*

PWC LLP

A glimpse into the future



A glimpse into the future

Date [REDACTED] 2015
Our ref
Your ref

Web www.gov.uk

Dear [REDACTED]

I am writing to you because you recently came to an agreement with HM Revenue & Customs to settle your previously undeclared tax liabilities.

We are keen to understand what involvement any third parties might have had in relation to your previously undisclosed liabilities, and if they influenced your decision not to declare tax that was due.

I would like to arrange a time to visit you at home, along with a colleague, to discuss this further, and suggest [REDACTED]. If you are not available at this time, or if you would like to arrange an alternative date, please contact me.

We have informed your advisor that we have made contact with you to arrange a visit, and it may be that you wish them to attend the meeting.

Yours sincerely

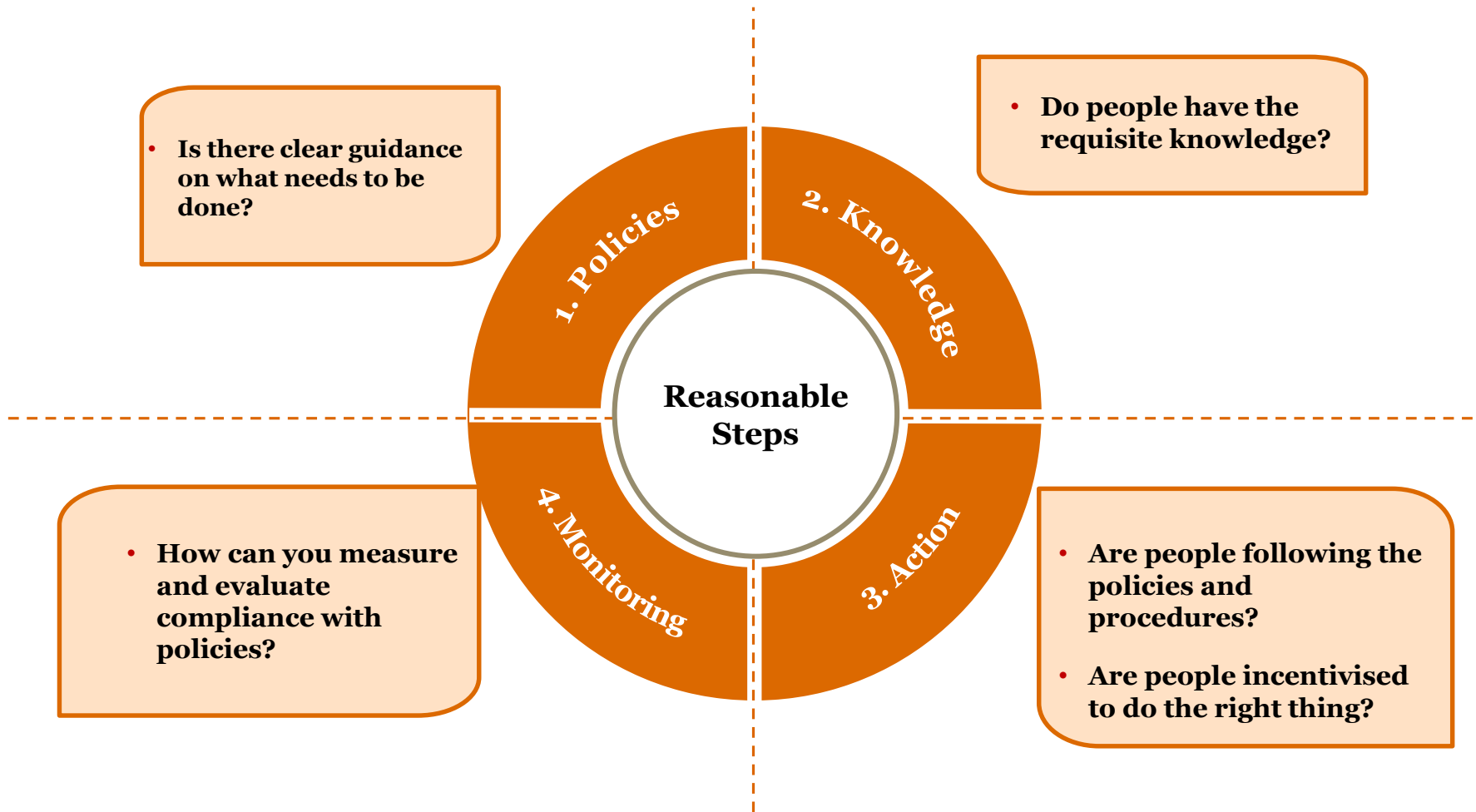
Key Points

- Which financial institutions are impacted?
 - UK organisation
 - Non-UK organisation where UK tax evaded
- Deliberate evasion
- Ownership within the organisation
- Need for a risk-based approach
- Building on existing policies & controls

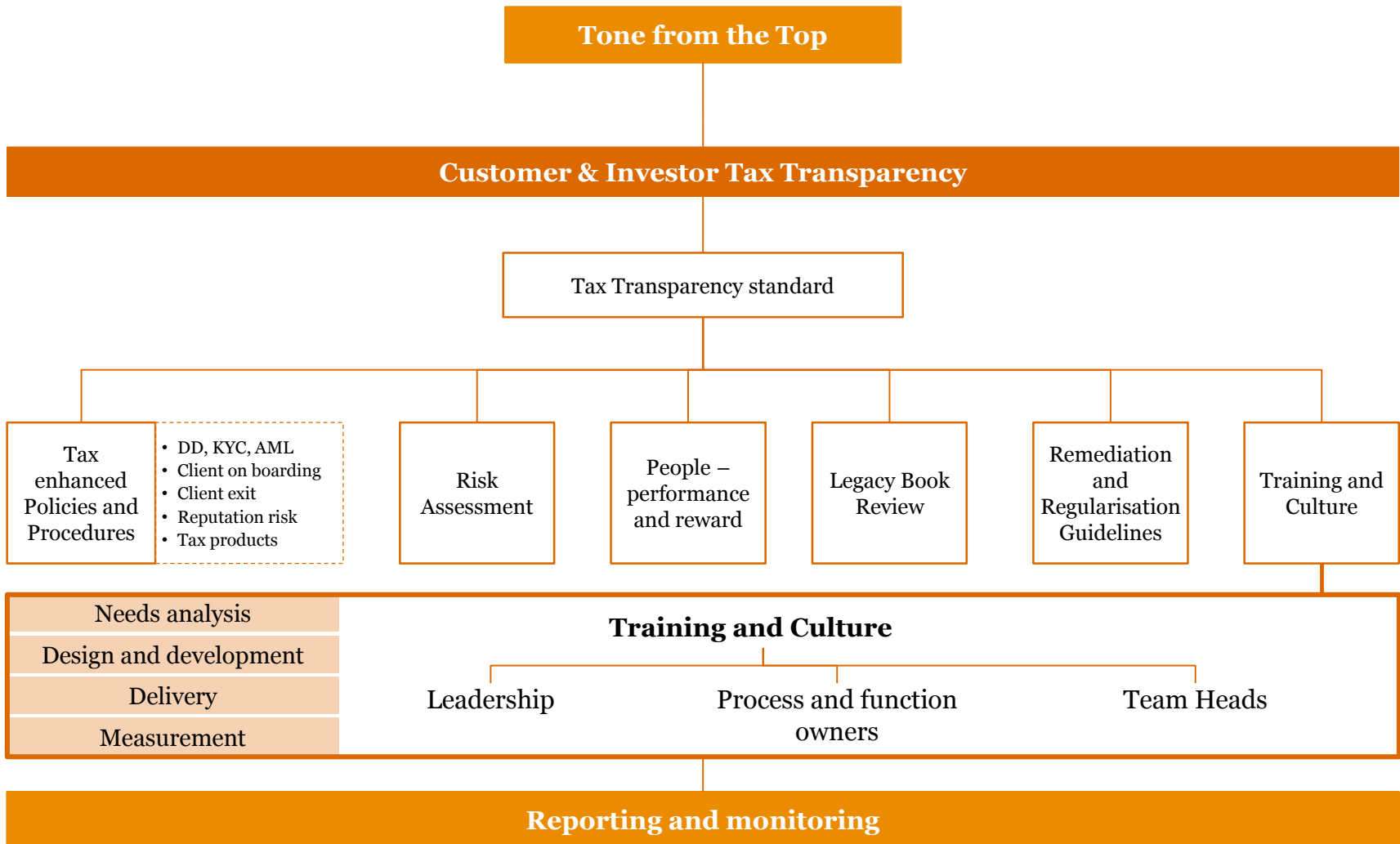
De-Risking the Customer Base

	Examples of what we have seen
The past	<ul style="list-style-type: none">• File reviews• Third party verification
Client Onboarding	<ul style="list-style-type: none">• “Tax enhanced” KYC/CDD• Tax Returns/Advice• Self – certification
Annual/On-going	<ul style="list-style-type: none">• “Tax enhanced” KYC/CDD• Tax Reports• Accounts

Adequate Procedures – things to consider



A potential Tax Transparency Strategy



Autumn Statement & other announcements

Recent Announcements

Head line	Detail
Residential Property	<ul style="list-style-type: none">• From April 2016 – 3% additional SDLT on “second homes”• From April 2019 – 30 days to pay Capital Gains Tax
Offshore Evasion	<ul style="list-style-type: none">• Civil and criminal sanctions in the Finance Bill 2016• Consultation on additional requirement to correct non-compliance
Beneficial Ownership Register	<ul style="list-style-type: none">• UK Government commitment to:<ul style="list-style-type: none">• register of settlors, beneficiaries, trustees• Multilateral information exchange
Non Dom Changes-	<ul style="list-style-type: none">• No announcements, we wait for draft legislation on the measures announced in the July Budget.

Questions