



# Unequal Exchange

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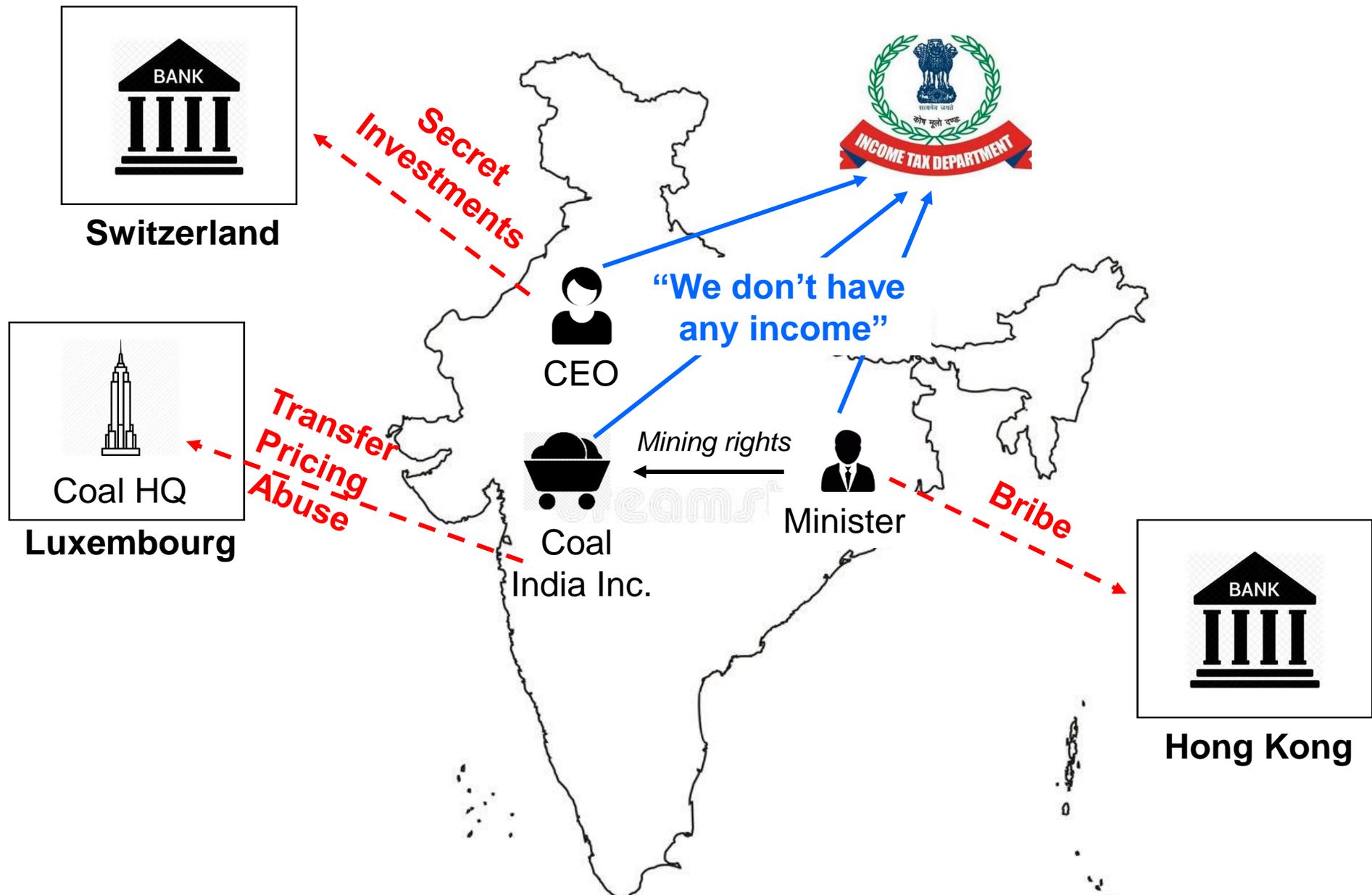
Centre for Budget and Governance Accountability - August 29<sup>th</sup>, 2018

with the support of



# **WHY IS EXCHANGE OF INFORMATION IMPORTANT?**

**BECAUSE ILLICIT FINANCIAL FLOWS  
OPERATE GLOBALLY**



# IS THIS POSSIBLE?

**Hey Luxembourg, is any Indian company engaging in abuse of transfer pricing to shift (Indian) profits to Lux?**

**Hey Hong Kong, Switzerland: could you tell me if any Indian resident is hiding their money in your Banks?**



## PRE-REQUISITE

1) INTERNATIONAL TREATY WITH “COUNTRY A”, THAT ALLOWS EXCHANGE OF INFORMATION

[Example of International Treaties:

-Double Tax Agreement/Convention (DTA/DTC);

-Tax Information Exchange Agreement (TIEA); or

-Amended Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Tax Convention)]

## IN PRACTICE

2) “COUNTRY A” ACTUALLY COLLECTS THAT INFORMATION

3) “COUNTRY A” EXCHANGES THE INFORMATION ON TIME

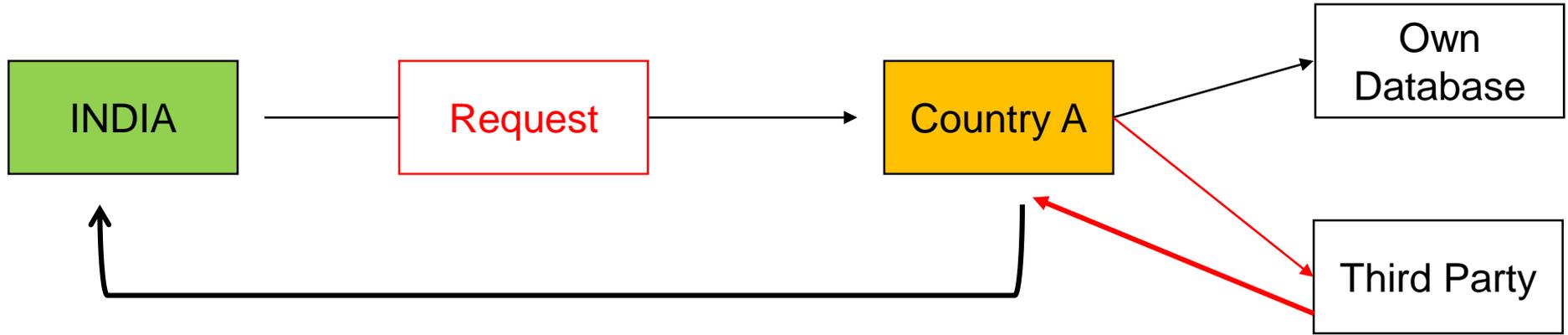
# METHODS TO EXCHANGE INFORMATION

-UPON REQUEST

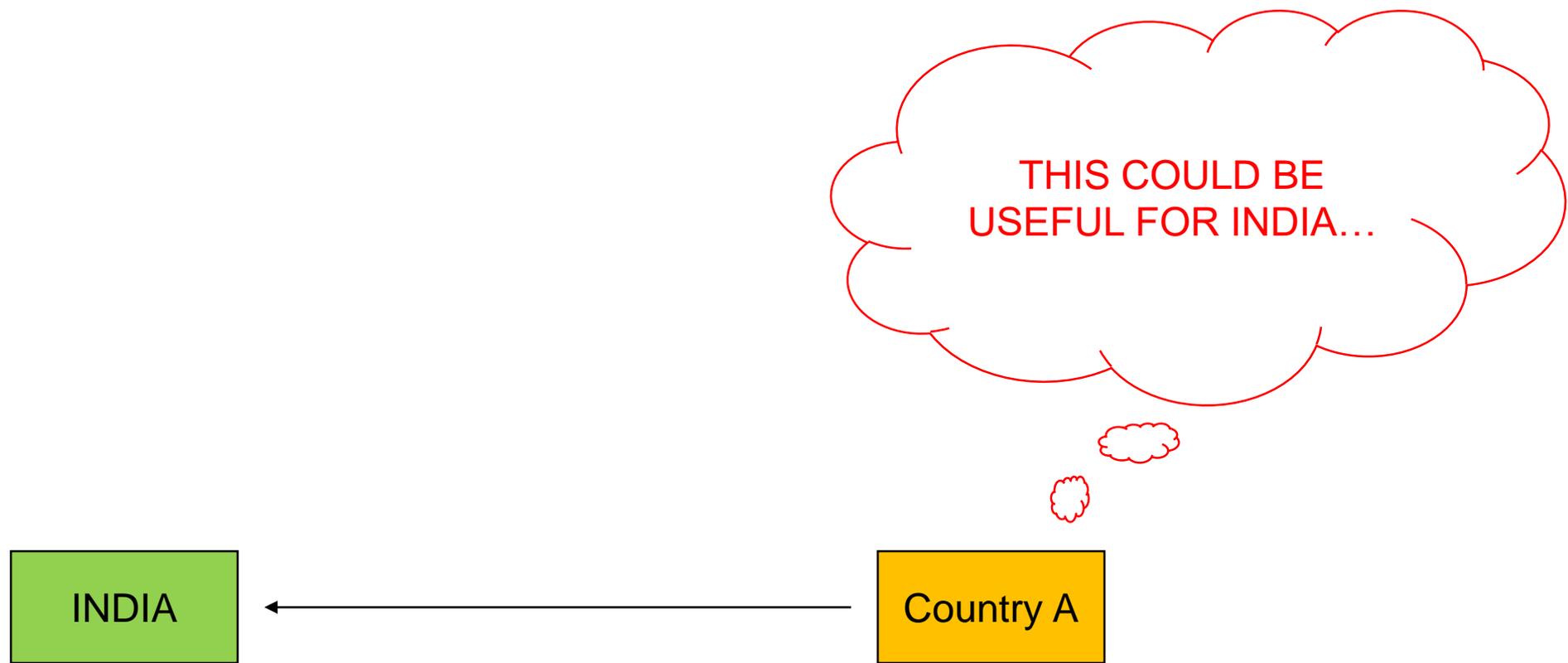
-SPONTANEOUS

-AUTOMATIC (AEOI)

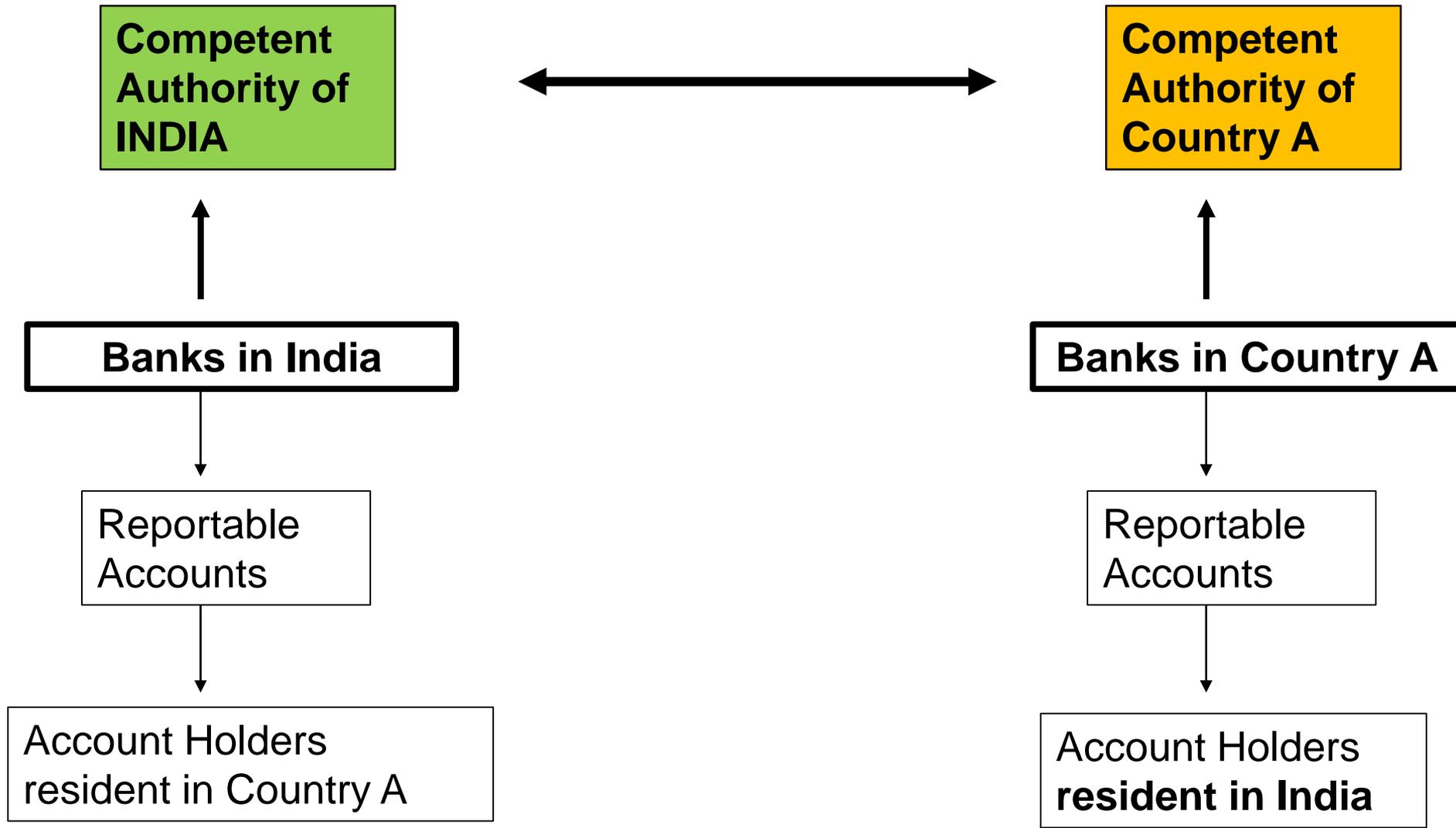
# UPON REQUEST



# SPONATENOUS



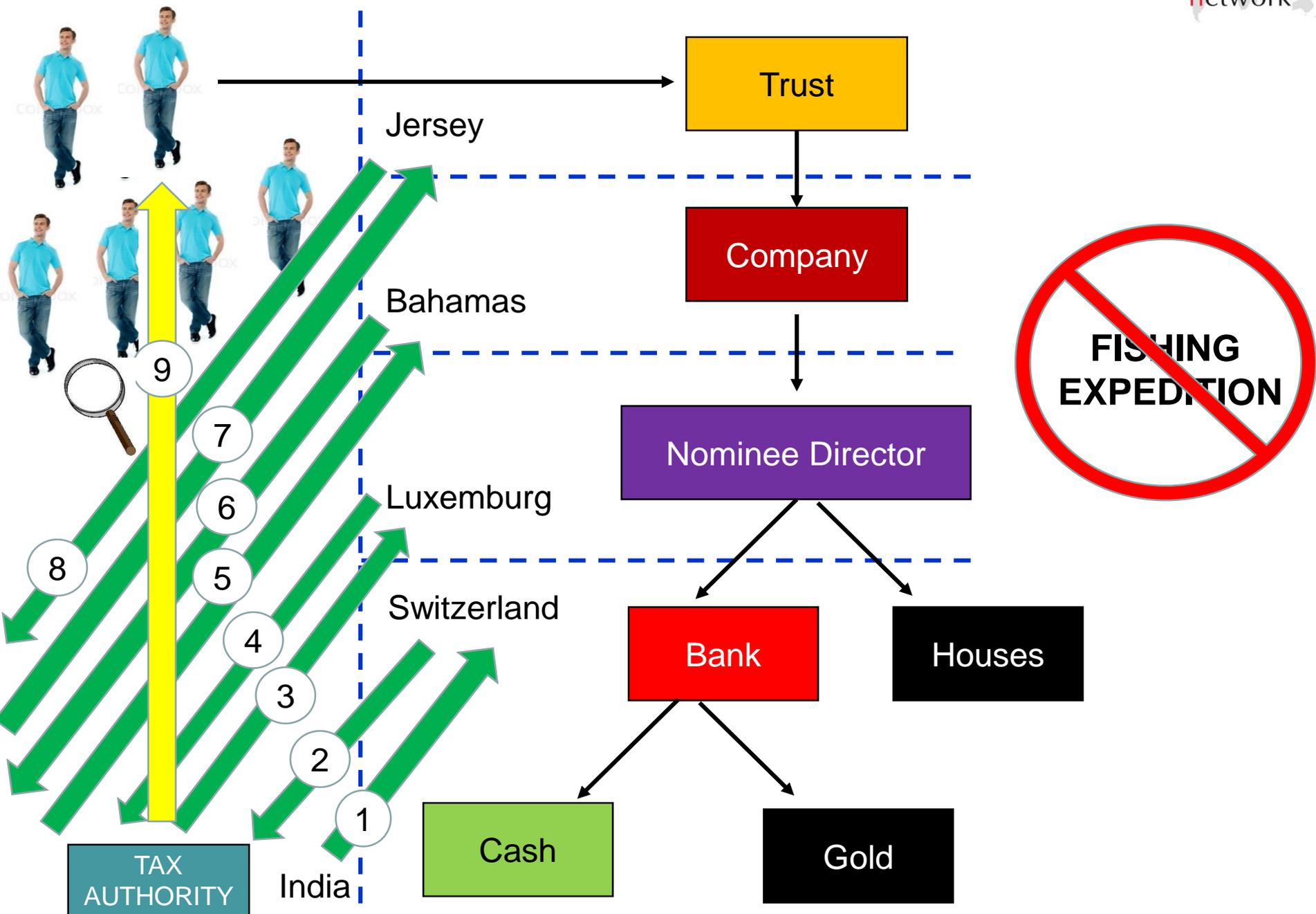
# AUTOMATIC EXCHANGE OF BANKING INFO (OECD's CRS/FATCA)



## PART A

# **AUTOMATIC EXCHANGE OF BANK ACCOUNT INFORMATION (TAX EVASION)**

# “UPON REQUEST” STANDARD



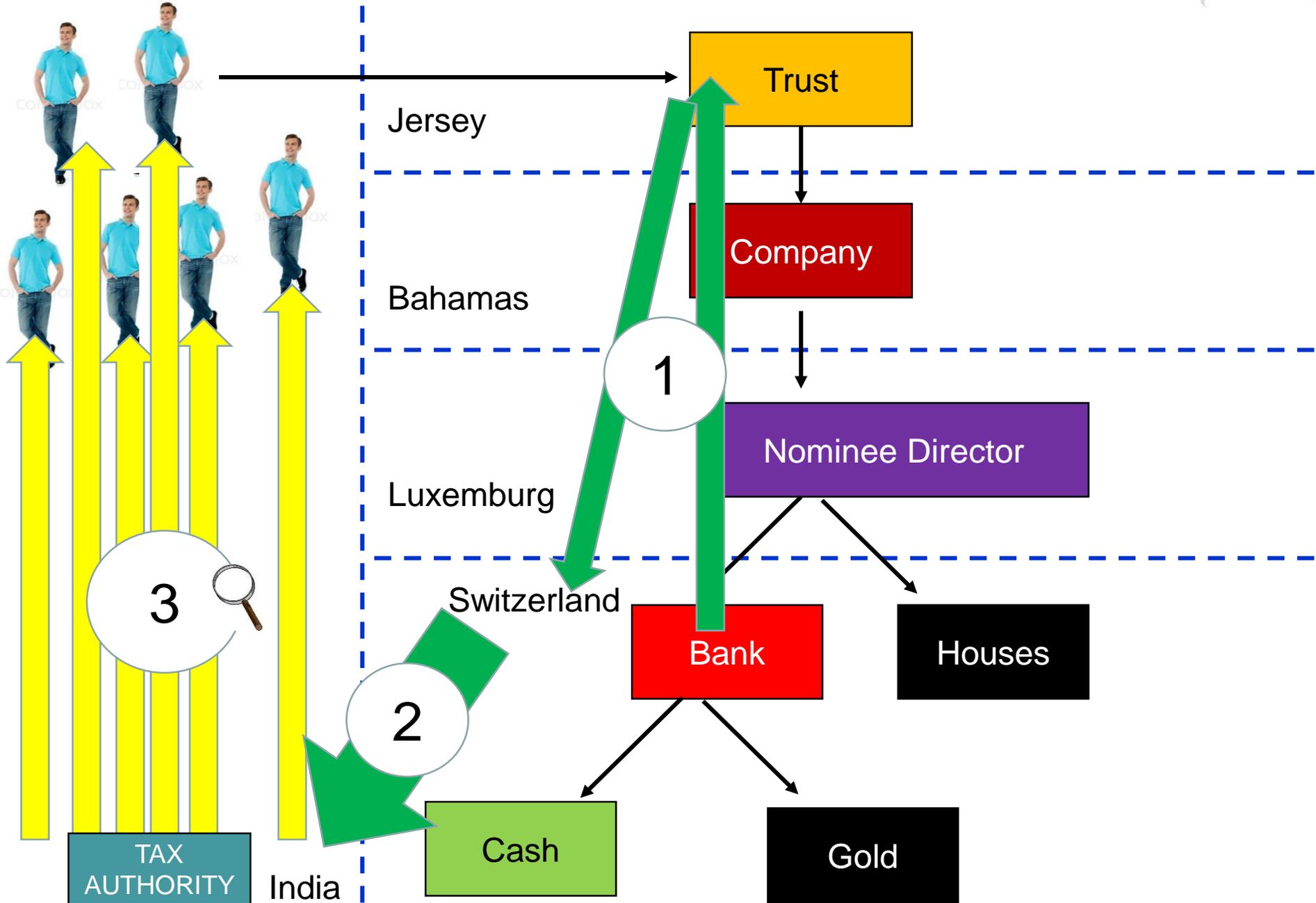
## Niegan a la justicia argentina datos sobre cuentas en Suiza

El departamento de justicia y policía de ese país afirmó que el reclamo no tenía fundamentos sólidos

*Martín Kanenguiser* LA NACION | MIÉRCOLES 16 DE MARZO DE 2016



# AUTOMATIC INFORMATION EXCHANGE – OECD'S CRS



# HOW DID WE GET HERE?

# POLITICAL CONTEXT

US: Qualified Intermediary (QI) – anonymous & for foreigners

**Abused by Americans to evade taxes...**

- UBS

- CREDIT SUISSE

US: FATCA (30% WTH)

G5: “we also want information”  FATCA IGA 1 (A or B) & 2

2013 G20: “we endorse AEOI as the new global standard on EOI; OECD will design it (**neither UN nor developing countries**)”

-Feb 2014: OECD publishes CRS and CAA (based on FATCA IGA 1 A)

-Jul 2014: OECD published Commentaries to CRS

-June 2018: 106 jurisdicciones committed to CRS (**except for the US!**)

### **JURISDICTIONS UNDERTAKING FIRST EXCHANGES IN 2017 (49)**

Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus<sup>2</sup>, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, United Kingdom

### **JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018 (53)**

Andorra, Antigua and Barbuda, Aruba, Australia, Austria, Azerbaijan<sup>3</sup>, The Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Curacao, Dominica, Ghana,<sup>3</sup> Greenland, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Kuwait, Lebanon, Macau (China), Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, Niue, Pakistan<sup>3</sup>, Panama, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay, Vanuatu

### **JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2019/2020 (4)**

Albania (2020), Maldives (2020), Nigeria (2019), Peru (2020)

### **DEVELOPING COUNTRIES HAVING NOT YET SET THE DATE FOR FIRST AUTOMATIC EXCHANGE (43)**

Armenia, Benin, Botswana, Burkina Faso, Cambodia, Cameroon, Chad, Côte d'Ivoire, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Former Yugoslav Republic of Macedonia, Gabon, Georgia, Guatemala, Guyana, Haiti, Jamaica, Kazakhstan, Kenya, Lesotho, Liberia, Madagascar, Mauritania, Moldova, Mongolia, Montenegro, Morocco, Niger, Papua New Guinea, Paraguay, Philippines, Rwanda, Senegal, Serbia, Tanzania, Thailand, Togo, Tunisia, Uganda, Ukraine

**SO WHY DOESN'T EVERYBODY (e.g. DEVELOPING COUNTRIES) IMPLEMENT AUTOMATIC EXCHANGE OF INFO?**

# LEGAL BASIS TO IMPLEMENT CRS

(1) TREATY THAT ALLOWS EXCHANGE OF INFO

(2) TREATY THAT DETERMINES HOW TO  
IMPLEMENT CRS (THE “CAA”)

[BUT ONLY IF THERE’S **RECIPROCITY!!!!**]

# (1) LEGAL BASIS TO EXCHANGE INFO

## -BILATERAL

- \* DOUBLE TAX AGREEMENT (DTA)

- \* TAX INFORMATION EXCHANGE AGREEMENT (TIEA)

## -MULTILATERAL

- \* MULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

# (2) LEGAL BASIS TO IMPLEMENT CRS

## -BILATERAL

\* BILATERAL COMPETENT AUTHORITY AGREEMENT (BILATERAL CAA)

## -MULTILATERAL

\* MULTILATERAL COMPETENT AUTHORITY AGREEMENT (MCAA)

# SUMMARY

	<b>(1) LEGAL BASIS TREATY</b>	<b>(2) IMPLEMENTATION TREATY</b>
<b>BILATERAL</b>	DTA/TIEA	BILATERAL CAA
<b>MULTILATERAL</b>	MULTILATERAL TAX CONVENTION	MCAA

# AEOI: MULTILATERAL APPROACH

[Multilateral Tax Convention (107) + MCAA (102)]

-SIGN & RATIFY MULTILATERAL TAX CONVENTION; **and**

-SIGN MCAA **and**

**-CONVINCE** COUNTRIES TO CHOOSE YOUR COUNTRY UNDER THE “DATING SYSTEM”

\* COMPLIANT WITH CONFIDENTIALITY PROVISIONS

\* COMPLIANT WITH LEGAL FRAMEWORK

\* POLITICAL WILL

# “CRS-TAX HAVENS”

- U.S.A.:** We will not implement the CRS, but only our FATCA standard (the U.S. receives more info than what it sends back, e.g. Beneficial Ownership level)
- Switzerland:** AEOI with developing countries only if close political ties, promising for Swiss financial industry, have amnesty programs for tax evaders, and if developing country, then it will start in 2019 at the earliest
- Originally: **Bermuda, Hong Kong, Panama, Singapore:** only bilateral CAAs

# IS FATCA THE SAME AS THE CRS?

## other country's obligations

## US' obligations

Beneficial Owner

a) In the case of [FATCA Partner] with respect to each U.S. Reportable Account of each Reporting [FATCA Partner] Financial Institution:

(1) the name, address, and U.S. TIN of each Specified U.S. Person that is an Account Holder of such account and, in the case of a Non-U.S. Entity that, after application of the due diligence procedures set forth in Annex I, is identified as having one or more Controlling Persons that is a Specified U.S. Person, the name, address, and U.S. TIN (if any) of such entity and each such Specified U.S. Person;

(2) the account number (or functional equivalent) in the absence of an account number;

(3) the name and identifying number of the Reporting [FATCA Partner] Financial Institution;

(4) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;

(5) in the case of any Custodial Account:

(A) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

(B) the total gross proceeds from the sale or redemption of property paid or credited to the

appropriate reporting period with respect to which the Reporting [FATCA Partner] Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

(6) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and

(7) in the case of any account not described in subparagraph 2(a)(5) or 2(a)(6) of this Article, 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 [FATCA Partner] 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.

b) In the case of the United States, with respect to each [FATCA Partner] Reportable Account of each Reporting U.S. Financial Institution:

(1) the name, address, and [FATCA Partner] TIN of any person that is a resident of [FATCA Partner] and is an Account Holder of the account;

(2) the account number (or the functional equivalent in the absence of an account number);

(3) the name and identifying number of the Reporting U.S. Financial Institution;

(4) the gross amount of interest paid on a Depository Account;

(5) the gross amount of U.S. source dividends paid or credited to the account; and

(6) the gross amount of other U.S. source income paid or credited to the account, to the extent subject to reporting under chapter 3 of subtitle A or chapter 61 of subtitle F of the U.S. Internal Revenue Code

# CRS RELATIONSHIPS

From jurisdiction :	Select All ▼
To jurisdiction :	India (86) ▼

From jurisdiction	To jurisdiction	Legal instrument
Sweden	India	CRS MCAA activated
Switzerland	India	CRS MCAA activated
Turks and Caicos Islands	India	CRS MCAA activated
United Arab Emirates	India	CRS MCAA activated - in force from 01 September 2018
United Kingdom	India	CRS MCAA activated
Uruguay	India	CRS MCAA activated

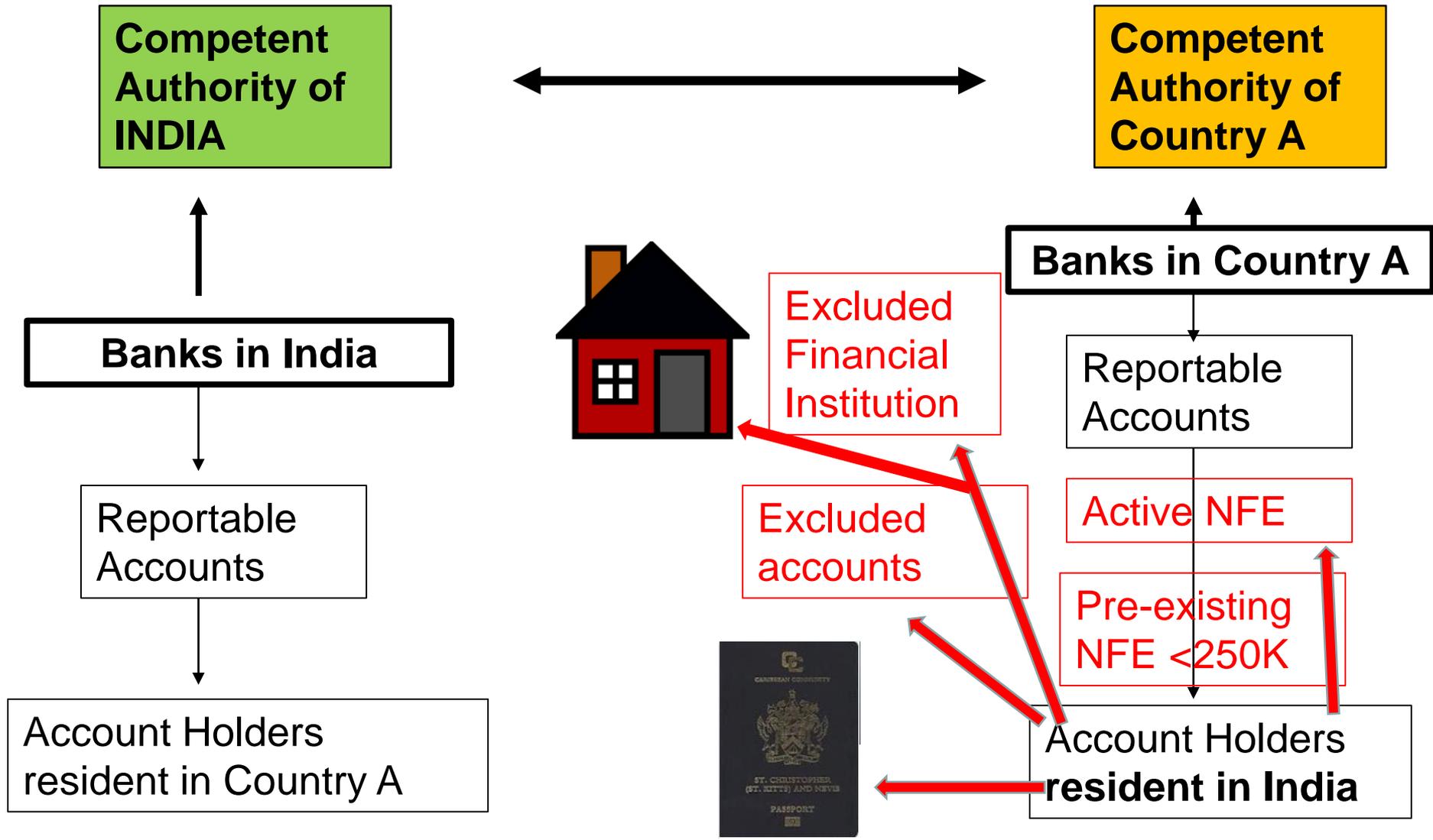
1 2 3 4 5 6 7 8 9

**SUPPOSING ALL COUNTRIES COULD  
ENGAGE IN AUTOMATIC EXCHANGE OF  
INFO WITH EACH OTHER, HOW  
EFFECTIVE WOULD IT BE?**

# LOOPHOLES

- ONLY COVERS FINANCIAL ACCOUNTS, NOT: REAL ESTATE, GOLD/ART IN FREEPORTS, DIRECTOR'S FEES, ETC.
- BENEFICIAL OWNER NOT ALWAYS REPORTED (ONLY IF THE ENTITY HOLDING THE BANK ACCOUNT IS CONSIDERED "PASSIVE")
- TAX HAVENS' GOLDEN VISAS ("FAKE" RESIDENCY CERTIFICATES) + "VOLUNTARY SECRECY"
- MANY EXCLUSIONS (e.g. ACCOUNTS HELD BY ENTITY BEFORE CUT-OFF DATE, WITH BALANCE UPTO USD 250.000)
- NO SANCTIONS FOR NON-COMPLIANCE (& FOR NON-PARTICIPATION)

# AUTOMATIC EXCHANGE OF BANKING INFO (OECD's CRS/FATCA)



# SOLUTIONS / PROPOSALS

1- GLOBAL FORUM PILOT  
PROGRAMS

2- AGGREGATE STATISTICS OF CRS  
DATA

3- SANCTIONS AGAINST USA &  
OTHER TAX HAVENS

# 1- GLOBAL FORUM PILOT PROGRAMS

- NON-RECIPROCITY
- **HOW, WHEN, WHAT?**
- WHO? Colombia, Albania, Morocco, Pakistan, the Philippines and Uganda

# 2- AGGREGATE STATISTICS OF CRS DATA

Australia!

Jurisdiction of Residence (of Account Holder/CP)	Type of [German] Financial Institution 	Total Accounts (Individual + Entity)	
		Value	Income
 Argentina	Custodial Institutions		
	Depository Institutions		
	Investment Entities (a)		
	Investment Entities (b)		
	Insurance Companies		
	Total [in Germany]		
 Austria	Custodial Institutions		
	Depository Institutions		
	Investment Entities (a)		
	Investment Entities (b)		
	Insurance Companies		
	Total [in Germany]		
[all other jurisdictions]	...		

# 2- AGGREGATE STATISTICS OF CRS DATA

Liabilities to Foreigners Reported by Financial Firms in the United States (Table 3.17) <sup>1</sup>

Payable in U.S. Dollars  
Millions of dollars, end of period

Item	2014	2015	2016	Oct 2017	Nov 2017	Dec 2017/r	Jan 2018/r	Feb 2018/r	Mar 2018	Apr 2018/p
70 Latin America	251,598	258,393	258,972	278,312	266,825	253,758	265,311	254,828	244,327	254,490
71 Argentina	11,673	12,446	13,374	16,274	16,938	13,830	15,815	14,982	13,647	17,190
72 Brazil	48,838	46,607	52,594	62,421	58,477	53,552	57,242	55,317	52,144	52,952
73 Chile	24,192	22,328	24,294	24,382	22,523	22,741	23,888	23,962	23,578	22,713
74 Colombia	11,359	7,922	8,730	9,074	9,000	9,331	9,123	9,956	9,200	9,725

Other currencies	United Arab Emirates	Argentina
Other currencies	Other currencies	Other currencies
Banks in Switzerland <sup>M</sup>	Banks in Switzerland <sup>M</sup>	Banks in Switzerland <sup>M</sup>

2008	1,735,305,343	40,114	23,040	473,730	32,205	460,822	6,975,661	4,287,283
2009	1,335,979,847	55,420	14,162	369,646	25,653	389,299	6,949,091	6,269,799
2010	1,349,236,744	36,045	22,813	1,131,754	14,060	300,796	8,423,809	5,169,524
2011	1,403,790,265	59,665	24,235	2,134,991	22,739	395,498	9,361,385	5,619,478
2012	1,290,083,066	114,483	16,798	2,265,299	66,772	498,506	10,325,976	5,706,434

	2014	2015	2016	2017
USA	11,673	12,446	13,374	13,830
Switzerland	6,530	5,732	5,255	3,531

# 3- SANCTIONS AGAINST USA & OTHER TAX HAVENS

Scenario	Condition for EU WHT: not sharing enough information with ...	Direct target for WHT	Implementation
<b>1. Ideal</b>	EU and any 'fit' developing country.	Financial institutions located in any recalcitrant financial centre. Option to target also financial institutions located in a non-financial centre that has signed a FATCA IGA	Unilateral (e.g. Directive) for all.
<b>1b. Ideal, but softly-softly on US</b>	As above.	As above.	Unilateral (e.g. Directive), except for the U.S., where IGAs are renegotiated.
<b>2. EU self-interest</b>	EU first (with 'fit' developing countries later)	As above.	As any of the above.
<b>3. US-EU initial focus</b>	EU first (with 'fit' developing countries later)	U.S. financial institutions, until the U.S. provides CRS-equivalent levels of information exchange.	As any of the above.

## PART B

# **AUTOMATIC EXCHANGE OF COUNTRY- BY-COUNTRY REPORTING INFORMATION (TAX AVOIDANCE)**



# COUNTRY-BY-COUNTRY

**Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction**

Name of the MNE group: Fiscal year concerned:														
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)											
			Research and Development	Holding/managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant
	1.													
	2.													
	3.													
	1.													
	2.													
	3.													

<sup>2</sup> Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.

# Tax Justice Network's Proposal



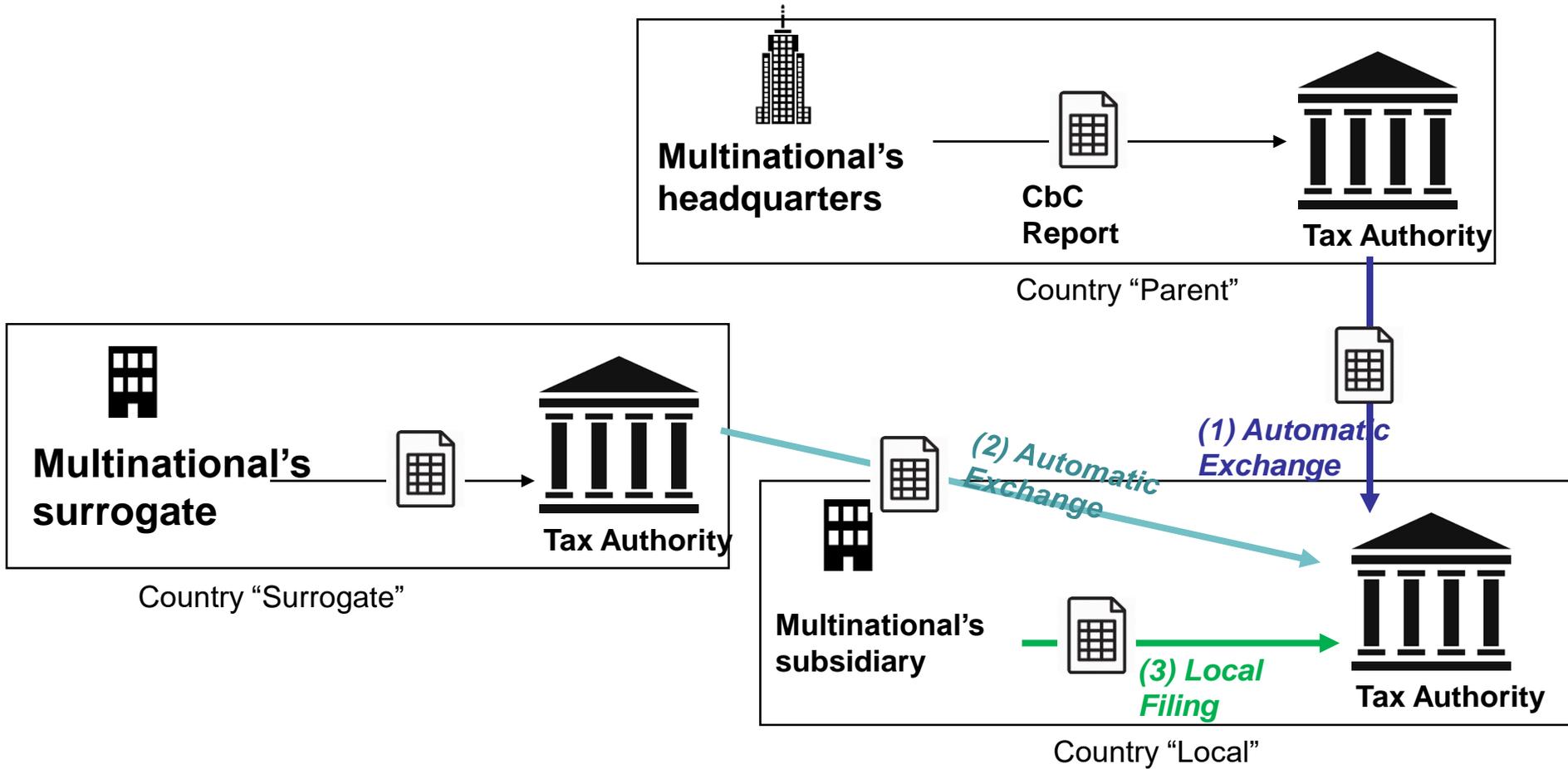
**Multinational's  
headquarters**



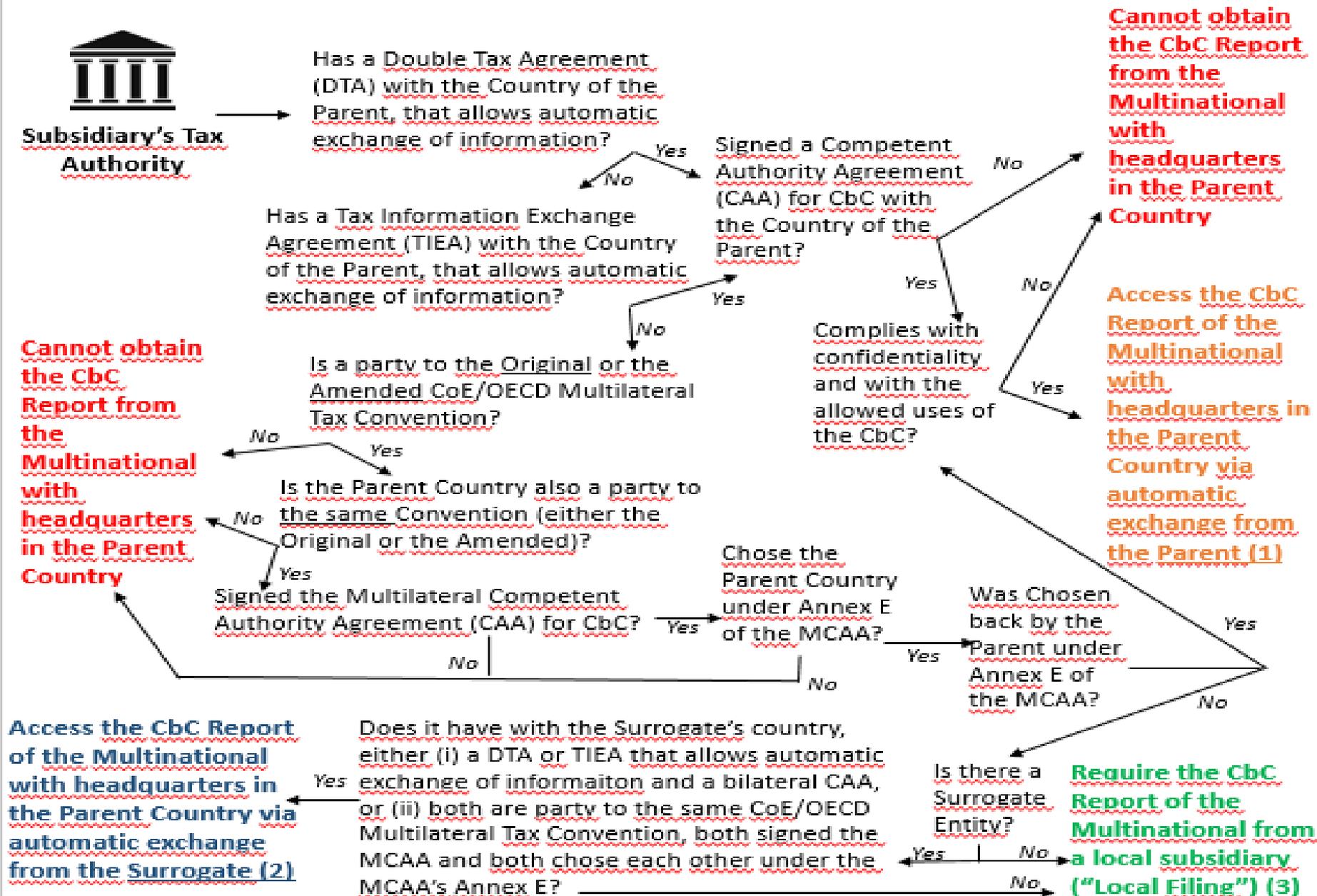
*publish on their  
own website*

**CbC Report  
public and for all (tax  
authorities, NGOs,  
journalists) at no cost**

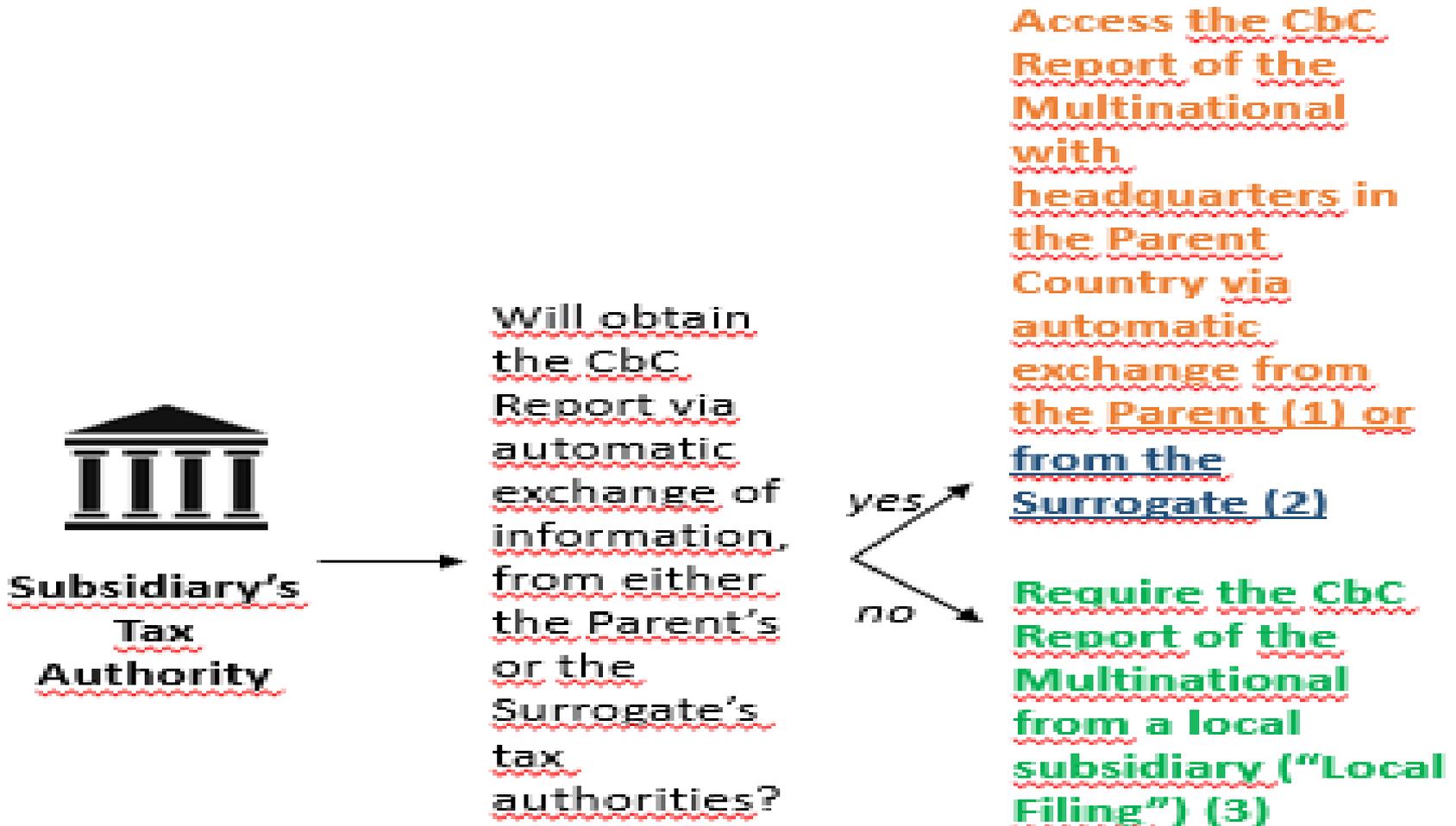
# OECD: BEPS ACTION 13



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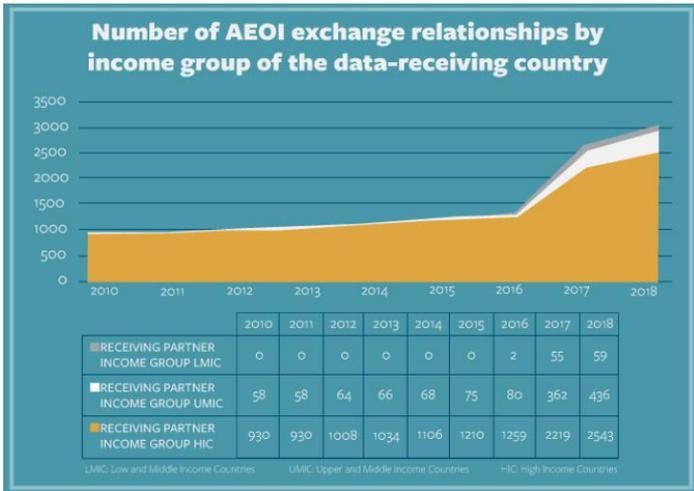


# TJN's IMPROVED OECD APPROACH



# THANK YOU

<https://financialtransparency.org/unequal-exchange/>



# MORE INFO

- “What the new OECD/Global Forum peer reviews on automatic information exchange must not miss”, TJN, March 2017, in: [https://www.taxjustice.net/wp-content/uploads/2013/04/TJN\\_AIE\\_ToR\\_Mar-1-2017.pdf](https://www.taxjustice.net/wp-content/uploads/2013/04/TJN_AIE_ToR_Mar-1-2017.pdf)
- “Findings of the 2nd TJN Survey on Automatic Exchange of Information (AEOI)”, TJN, January 2017, in: [https://www.taxjustice.net/wp-content/uploads/2013/04/Knobel2017\\_AEOI-Survey-Report.pdf](https://www.taxjustice.net/wp-content/uploads/2013/04/Knobel2017_AEOI-Survey-Report.pdf)
- “country-by-country reporting: how restricted access exacerbates global inequalities in taxing rights”, TJN, December 2016, in: <https://www.taxjustice.net/wp-content/uploads/2016/12/Access-to-CbCR-Dec16-1.pdf>
- “OECD’s Handbook for Implementation of the CRS: TJN’s preliminary observations”, Knobel, TJN, September 2015, in: <http://www.taxjustice.net/wp-content/uploads/2013/04/OECD-CRS-Implementation-Handbook-FINAL.pdf>
- “The end of bank secrecy”? Bridging the gap to effective automatic information exchange- An Evaluation of OECD’s Common Reporting Standard (CRS) and its alternatives“, Knobel, Meinzer, November 2014 TJN, in: <http://www.taxjustice.net/wp-content/uploads/2013/04/TJN-141124-CRS-AIE-End-of-Banking-Secrecy.pdf>
- “Automatic Exchange of Information: An Opportunity for Developing Countries to Tackle Tax Evasion and Corruption”, Knobel, Meinzer, TJN, June 2014, in: <http://www.taxjustice.net/wp-content/uploads/2013/04/AIE-An-opportunity-for-developing-countries.pdf>; 24.7.2014