



Deloitte TaxMax – the 41st series

The Arena of Tax Unveiled – The unknown operational intricacies in business tax and tax controversies

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Speakers:

- Sivaram Nagappan, Malaysia Airlines Berhad
- Manvinder Singh, Felda Global Venture Holdings Berhad
- Chee Pei Pei



Manvinder Singh

Felda Global Venture Holdings Berhad



Sivaram Nagappan

Malaysia Airlines Berhad



Chee Pei Pei

Deloitte Tax Services Sdn Bhd



“Like all talk and no action, strategy is useless without implementation.”

“By announcing our KPIs and targets, we are now held responsible to keep to our promises. I have often joked that it is akin to being made pregnant with no other alternative but to deliver!”

Idris Jala

Source: Business News, The Star Online, 26 October 2015

“My garden has a fence, the earth, the sky, but the thoughts of a taxman has no boundaries.”

Unknown

Tax Planning

Tax Technology

Tax Technology

Tax Compliance Solutions

Corporate Tax

- Tax Computation
- E-Filing
- Provisional Tax & Estimated Tax Payable
- Deferred Tax
- Customised Tax Reports

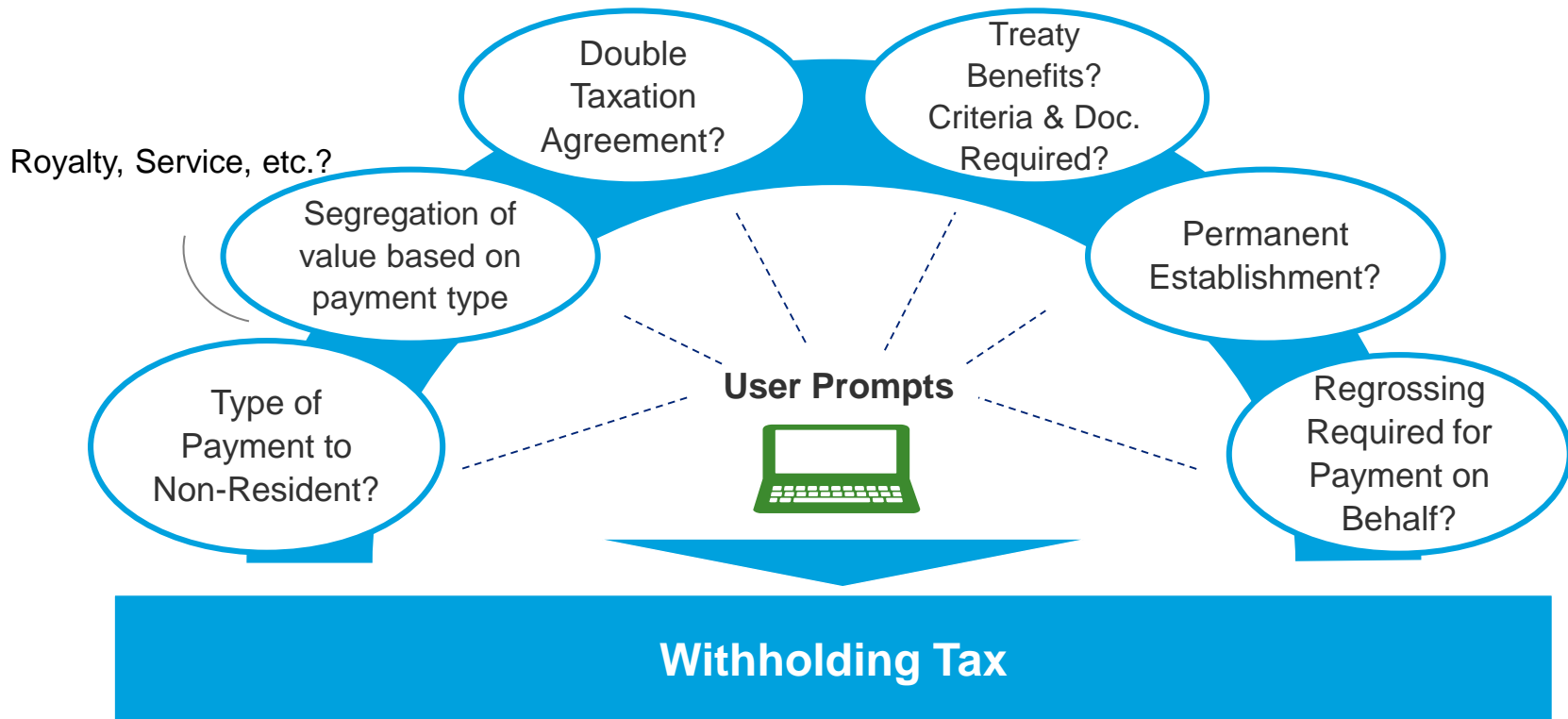


Individual Tax

- Expat Tax Filing
- Tax Equalisation
- Transfer / Secondment Management
- Payroll Management
- Customised Tax Reports

Tax Technology

Withholding Solutions



Tax Planning

Realigning / Relooking

At Supply Chain

Activities

Tax Planning

Realigning / Relooking at Supply Chain Activities



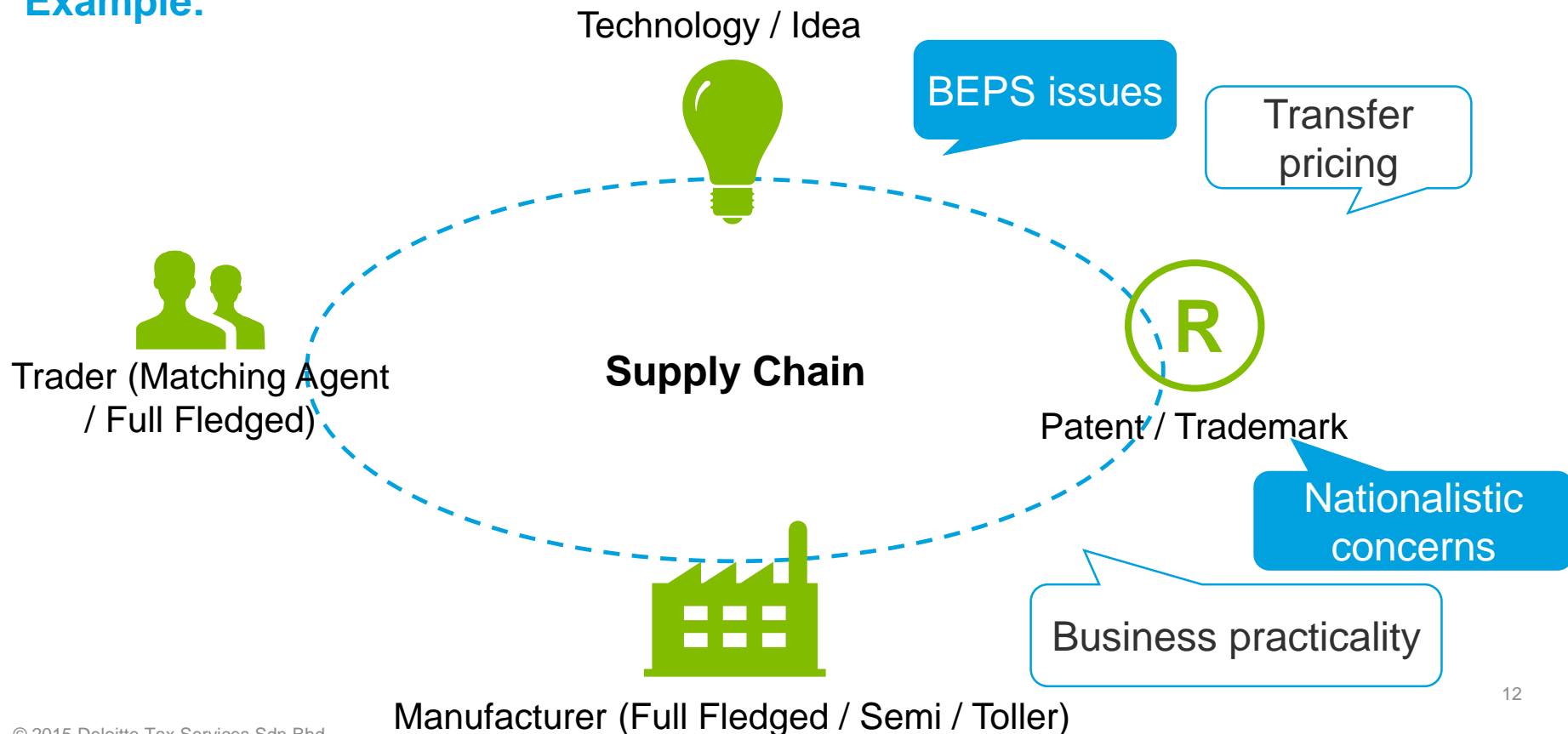
Google	Starbucks	Amazon
Turnover of £395m in the UK in 2011.	UK sales of £398m in 2011.	UK sales of £3.35b in 2011.
Reported a loss after tax of £24.1m	Reported losses for 14 out of 15 of the previous years.	Stated profit of £74m.
Employs 1,500 in the UK.	Employs 8,500 staff in UK.	Employs 15,000 staff in UK.
Paid £6m in corporation tax.	Paid no corporation tax.	Paid £1.8m in corporation tax.
How did they 'Allegedly' do it?		
Channelled non-US sales via Ireland, an arrangement that has allowed it to pay taxes at a rate of 3.2% on non-US profits. It also diverts some profits through Bermuda.	Made royalty payments at 6% of gross revenue to a sister company in the Netherlands for the use of the brand. Overall effective tax rate on royalties to its Dutch subsidiary averaging 16 per cent, well under the 25 per cent official Dutch corporate tax rate.	Amazon reported European sales through a Luxembourg-based unit which allowed it to pay a rate of less than 12% on foreign profits, less than half the average corporate income tax rate in its major markets.

Tax Planning

Realigning / Relooking at Supply Chain Activities

For some companies especially MNCs, a product's supply chain is typically not just in one location, it is located internationally. How much should the various entities be remunerated for the value adding activities along the supply chain?

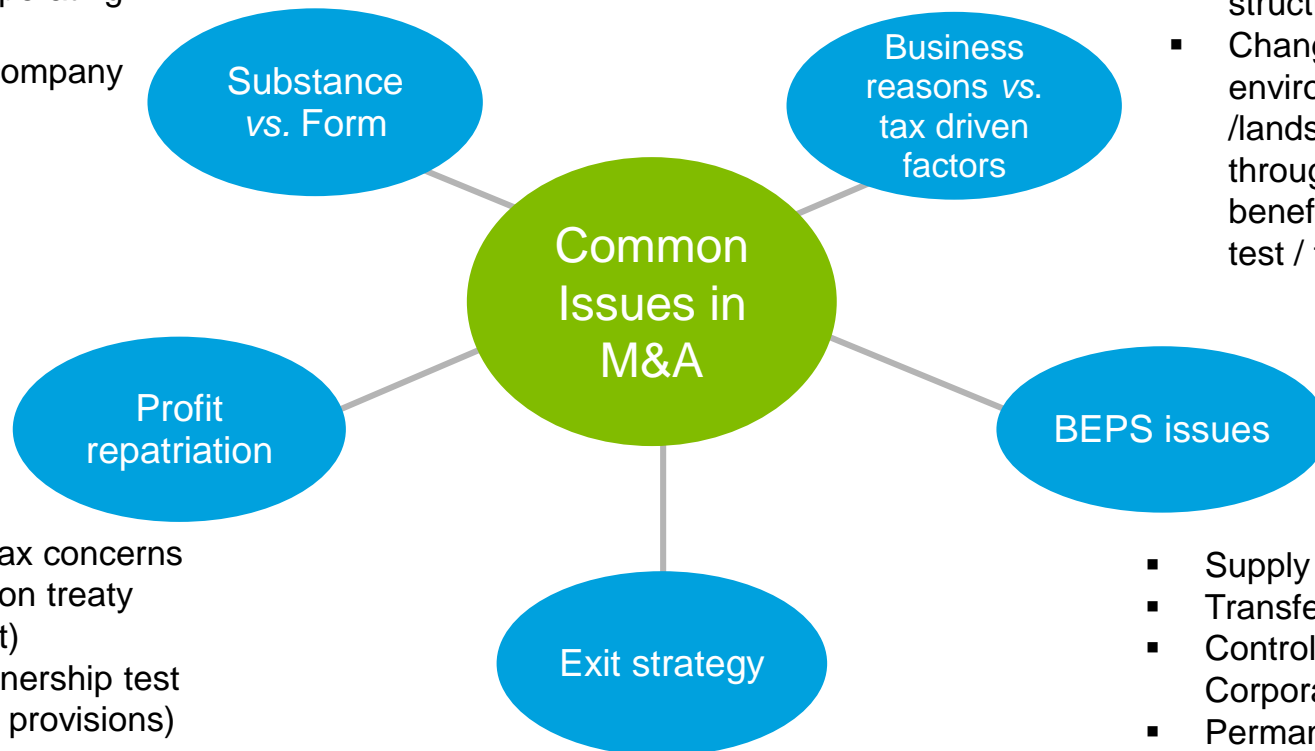
Example:



Tax Planning

Realigning / Relooking at Supply Chain Activities

- Target company (tax haven / operating entity)
- Holding company structure



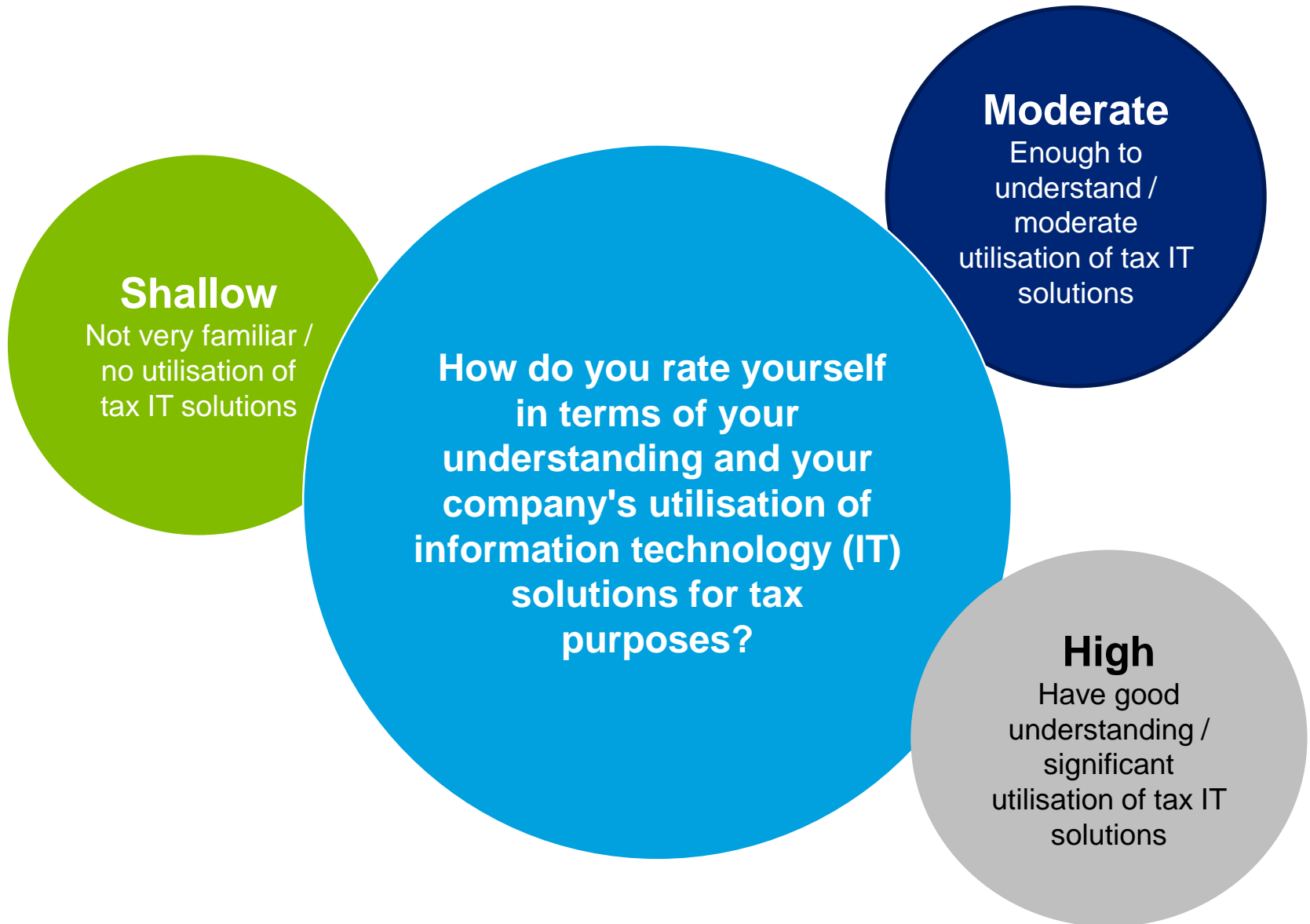
- Practicality and sustainability of structure
- Changing tax environment /landscape (look through provisions / beneficial ownership test / treaty benefits)

- Withholding tax concerns
- Double taxation treaty (treaty benefit)
- Beneficial ownership test (look through provisions)

- Look through provisions (indirect disposal of shares)
- Double taxation treaty (taxing principles; taxing right; treaty benefit; tax relief)

- Supply chain
- Transfer pricing
- Controlled Foreign Corporation (CFC) rules
- Permanent establishment mitigation (proper segregation of functions and risk)

Question 1



Taxation of Malaysian Employees

Taxation of Malaysian Employees

Taxation of employment income

Income accrued in or derived from Malaysia, or received in Malaysia from outside Malaysia would be taxed

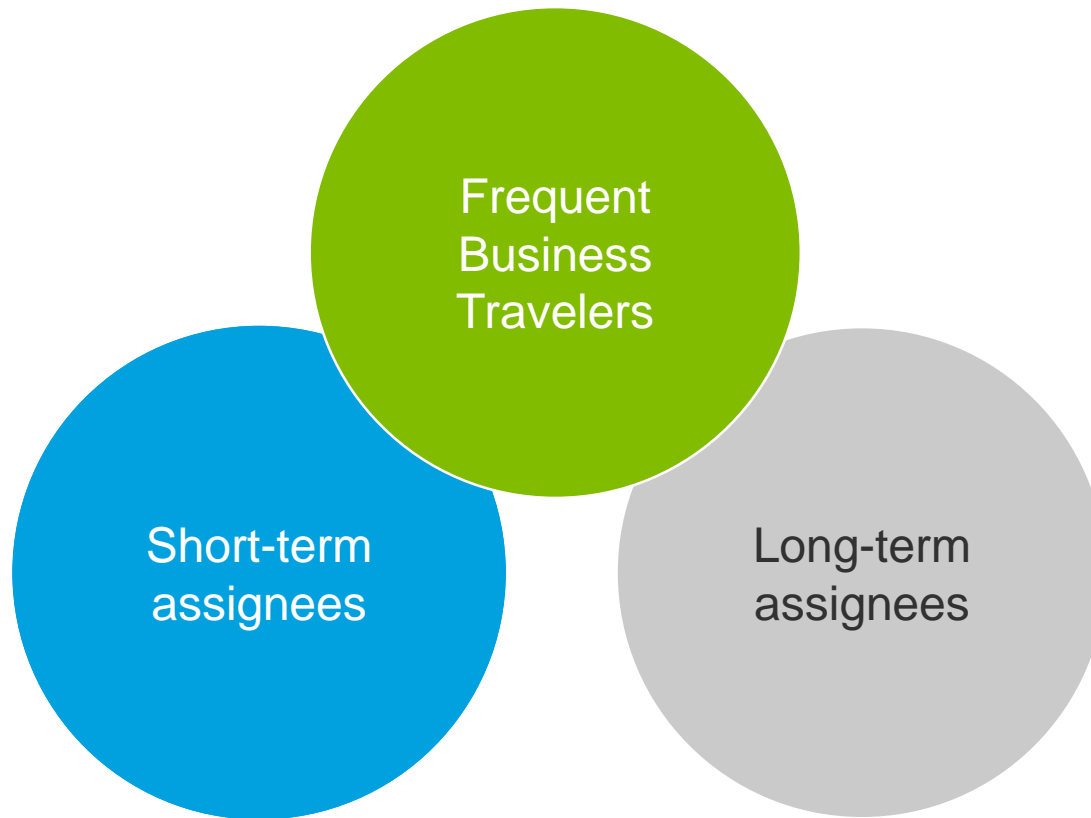
Deemed derived from Malaysia (territorial scope)

...the employee performs outside Malaysia duties incidental to the exercise of the employment in Malaysia

Exemption on foreign sourced income (Paragraph 28(1) of Schedule 6 of the Income Tax Act, 1967)

Taxation of Malaysian Employees

Types of Malaysian employees exercising employment overseas and its challenges faced



Taxation of Malaysian Employees

Determination of incidental duties – PR1/2011

Exercise of the employment in Malaysia

- An employer-employee relationship exists.
- The employee exercised his employment (performed services) with the employer in Malaysia prior to being seconded overseas.

Nature of overseas duties

- Duties performed outside Malaysia are connected with or are part of the employee's regular duties in Malaysia.

Taxation of Malaysian Employees

Determination of incidental duties – PR1/2011

Purpose of Overseas Duties

- Duties carried out within the same employer-employee relationship and to further the purpose of the employer in Malaysia despite the duties in Malaysia and outside Malaysia may not be the same.

Temporary Nature of Overseas Duties

- Where the employee resumes work in Malaysia after completion of the overseas duties, the overseas duties are considered **temporary in nature** and incidental to main employment.

Taxation of Malaysian Employees

Determination of incidental duties – PR1/2011

Place from where the duties are directed and controlled

- Incidental if control and direction lies with the employer in Malaysia.

Control means setting standards, measuring actual performance and taking corrective action based on the reports received.

Payment for Services Performed

- Employer in Malaysia enjoys the benefits from the overseas duties and bears the cost of the employee's remuneration during the overseas secondment.

Taxation of Malaysian Employees

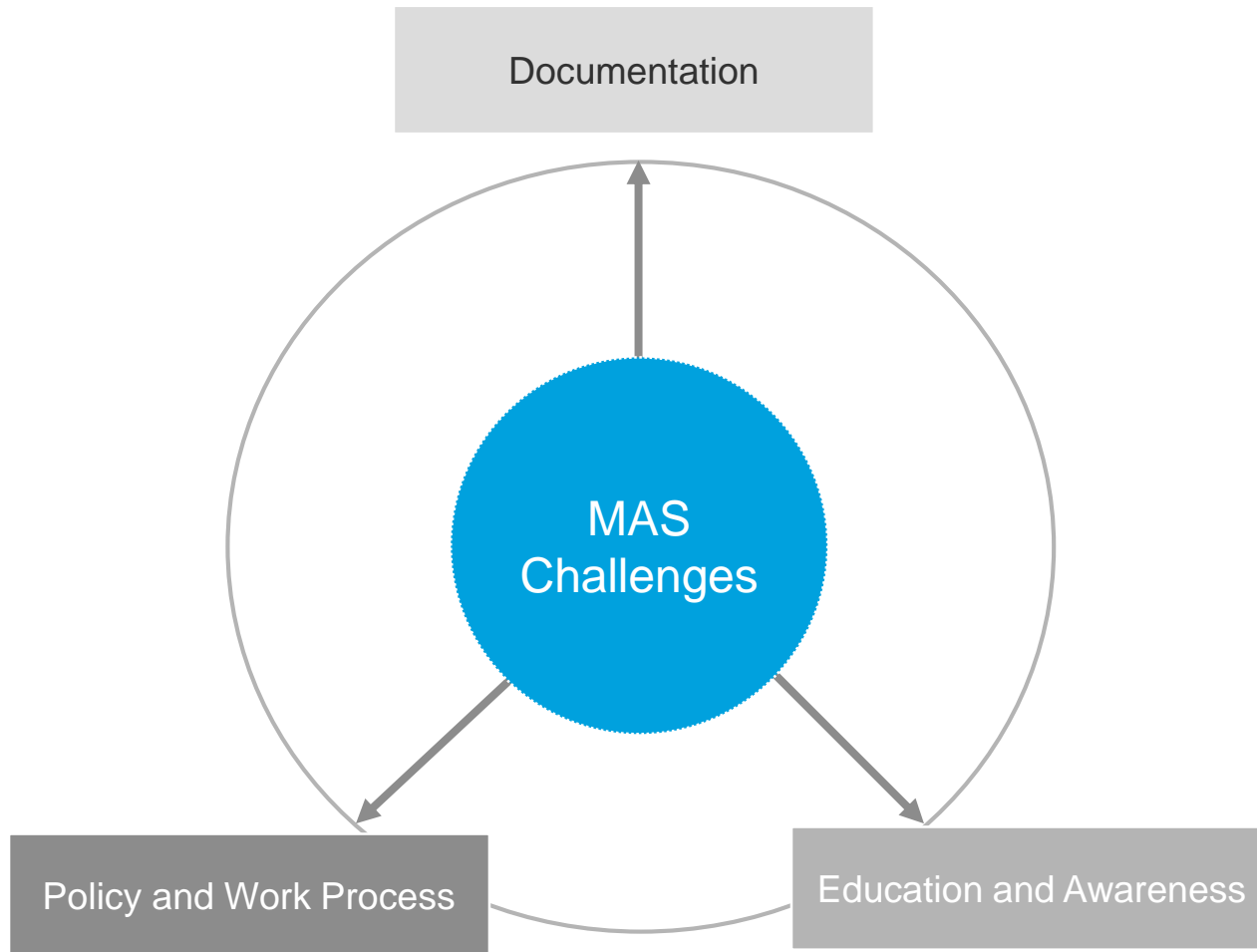
Determination of incidental duties – PR1/2011

Commercial Reality

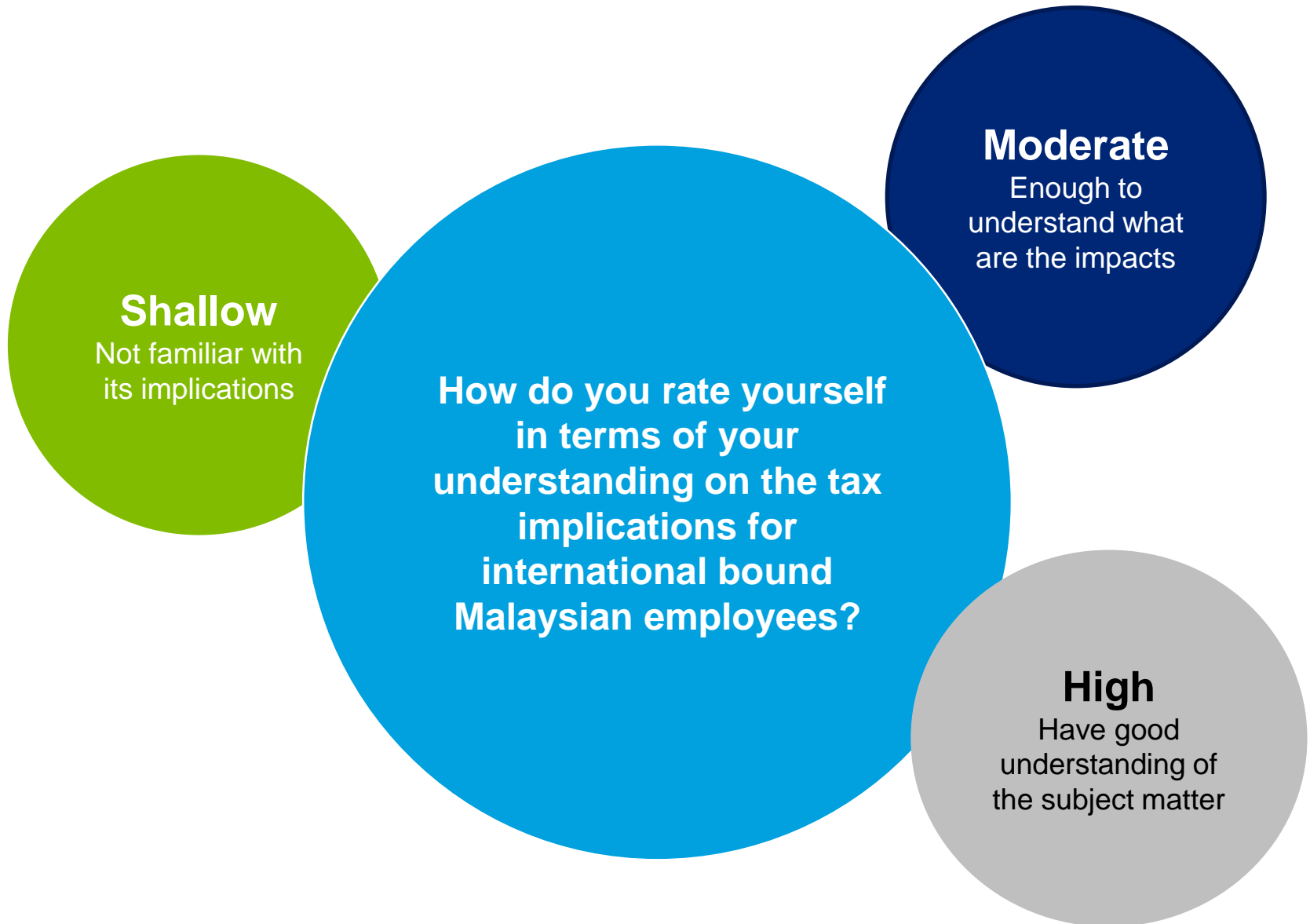
- Employer in Malaysia bears the risk and directly enjoys the economic benefits from the performance of the overseas duties by the employee

Taxation of Malaysian Employees

MAS Challenges



Question 2



Foreign Account Tax Compliant Act FATCA

FATCA

Overview

- Requires foreign financial institutions (FFIs) to report to the US Internal Revenue Service (IRS) information about financial accounts held by specified US persons or by non-financial foreign entities (NFFEs) with substantial US owners.
- A 30% withholding tax on US-source payments made to:
 - *FFIs that do not enter into an agreement with the IRS*
 - *NFFEs that do not disclose substantial US owners*
 - *Recalcitrant account holders*
- If an FFI Agreement is entered into, the FFI agrees to:
 - *Identify US account holders and report information to the IRS*
 - *Apply the 30% withholding tax on certain payments of US source income and sales proceeds paid on/after 1 January 2014*
 - *Verify initial and on-going compliance*
- Subject to applicable IGA

FATCA Implementation

Signed – Model 1 IGA

Australia	Denmark	Italy	Poland
Bahamas	Estonia	Jamaica	Portugal
Barbados	Finland	Jersey	Qatar
Belarus	France	Kosovo	Romania
Belgium	Georgia	Kuwait	Singapore
Brazil	Germany	Latvia	Slovak Republic
British Virgin Islands	Gibraltar	Liechtenstein	Slovenia
Bulgaria	Guernsey	Lithuania	Spain
Canada	Holy See	Luxembourg	South Africa
Cayman Islands	Honduras	Malta	South Korea
Colombia	Hungary	Mauritius	Sweden
Costa Rica	Iceland	Mexico	Turkey
Croatia	India	Netherlands	Turks and Caicos Islands
Curacao	Ireland	New Zealand	United Arab Emirates
Cyprus	Isle of Man	Norway	United Kingdom
Czech Republic	Israel	Philippines	Uzbekistan

Signed – Model 2 IGA

Austria	Japan
Bermuda	Moldova
Chile	Switzerland
Hong Kong	

Reached Agreement – Model 1 IGA

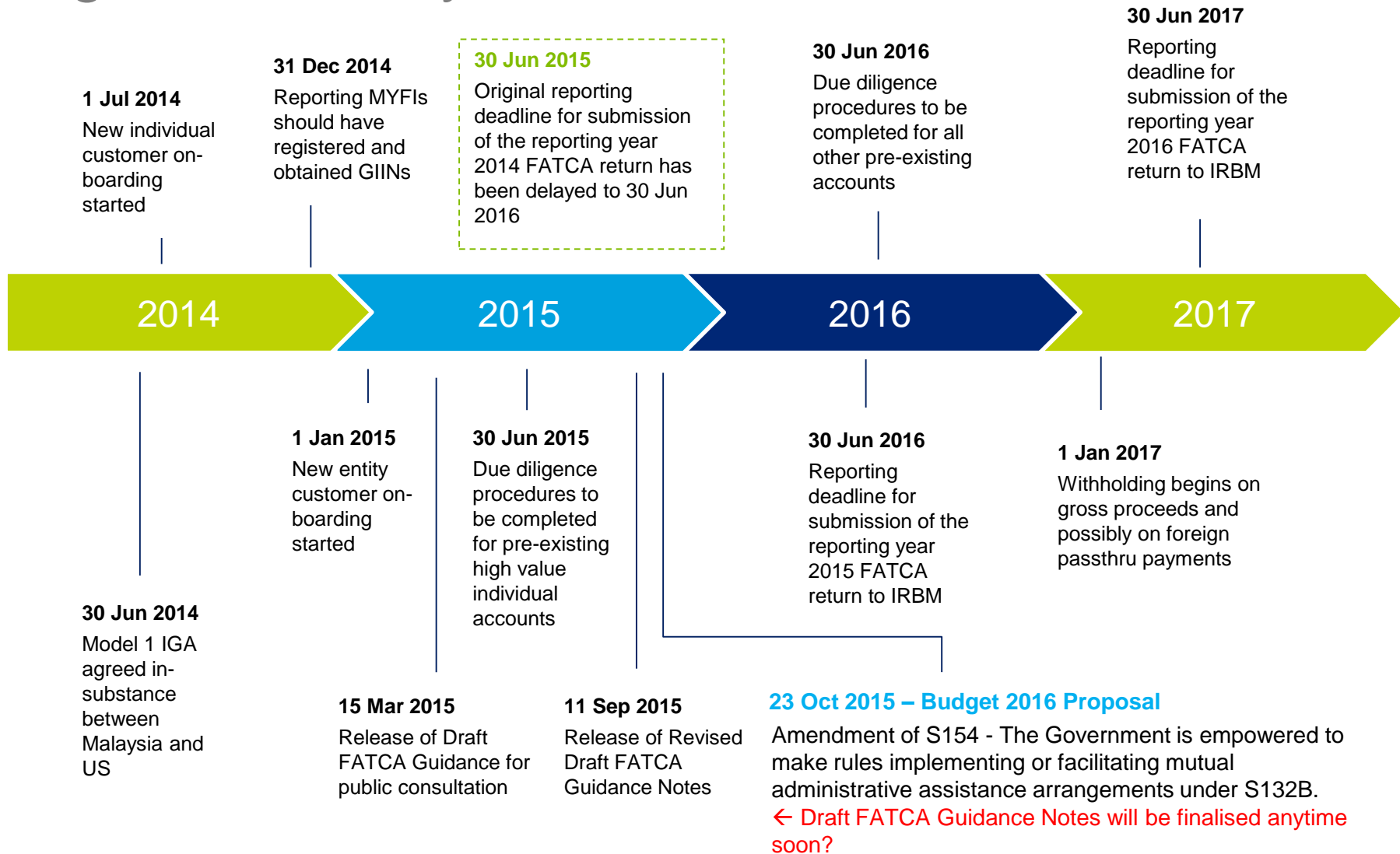
Algeria	Dominican Republic	Montserrat	Trinidad and Tobago
Angola	Greece	Panama	Tunisia
Anguilla	Greenland	Peru	Turkmenistan
Antigua and Barbuda	Grenada	St. Kitts and Nevis	Ukraine
Azerbaijan	Guyana	St. Lucia	
Bahrain	Haiti	St. Vincent & the Grenadines	
Cabo Verde	Indonesia	Saudi Arabia	
Cambodia	Kazakhstan	Serbia	
China	Malaysia	Seychelles	
Dominica	Montenegro	Thailand	

Reached Agreement – Model 2 IGA

Armenia	San Marino
Iraq	Taiwan
Nicaragua	Macau
Paraguay	

FATCA timelines

Progress in Malaysia



Introduction to CRS

The way towards AEOI

9 April 2013

G5² announced pilot project for worldwide FATCA

21 July 2014

Release of OECD Commentaries and reporting schema

4 June 2015

Multilateral agreement signed by 7 additional jurisdictions at the Global Forum Meeting in Berlin

13 February 2014

Release of Model CAA³ and CRS⁴



20 July 2013

G20 mandated OECD to develop a worldwide standard for AEOI

29 October 2014

Multilateral agreement signed by 51 jurisdictions at the Global Forum Meeting in Berlin

6 May 2014

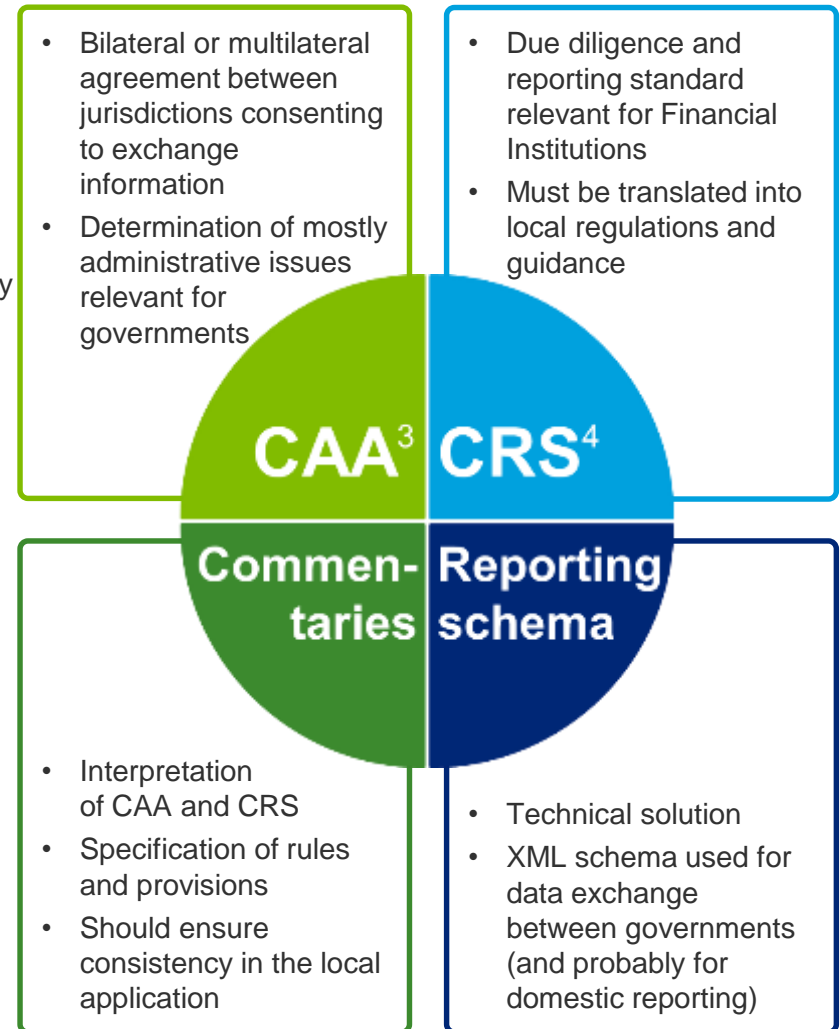
OECD members endorsed a declaration committing to the AEOI (including 13 non-members)

¹ AEOI: Automatic exchange of information

² G5: France, Germany, Italy, Spain, and the United Kingdom

³ CAA: Competent Authority Agreement

⁴ CRS: Common Reporting Standard

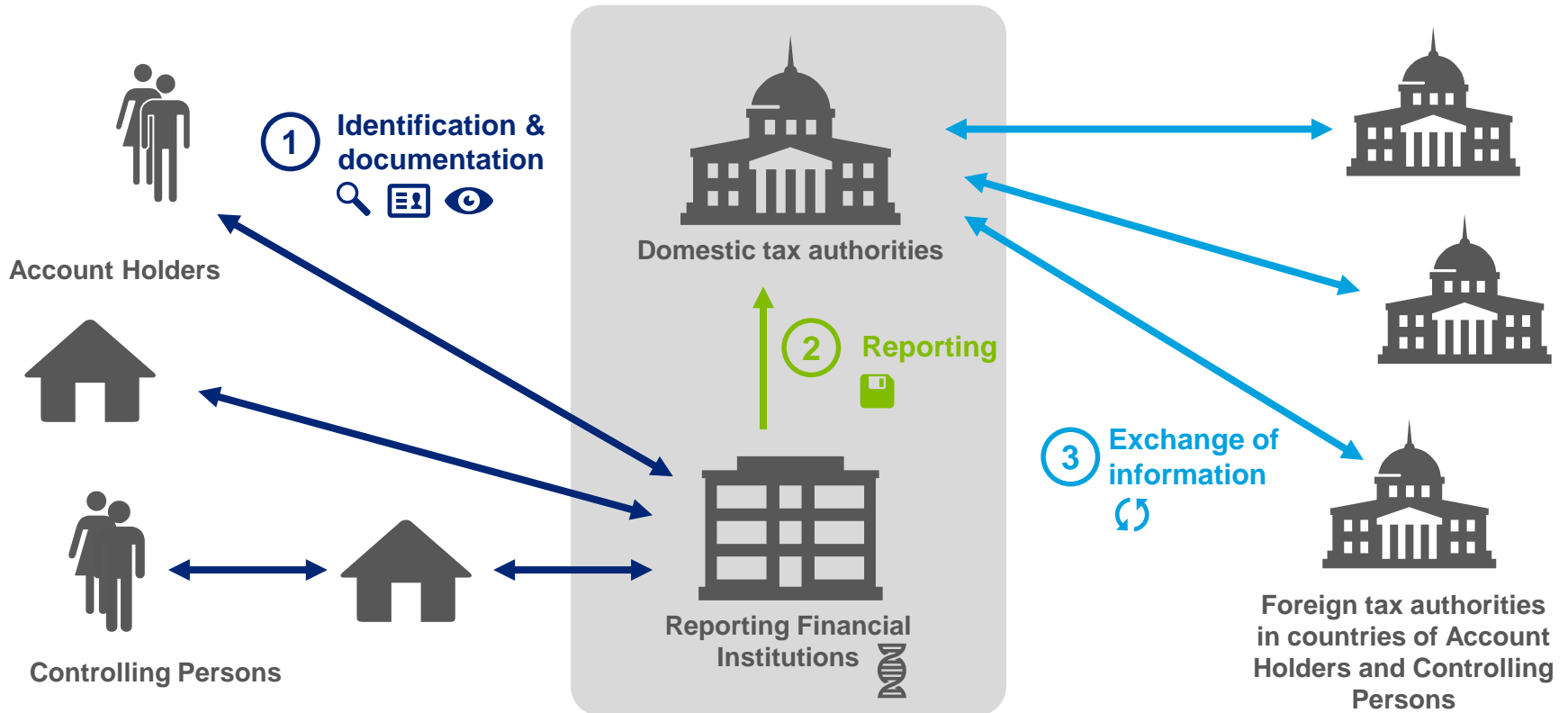


AEOI – How it works



Overview – The Automatic Exchange of Information (AEOI) Requirement

- Aims to identify **resident** persons trying to avoid tax obligations in their **countries of residence** by holding assets in structures and products located in other countries



AEOI implementation in Malaysia

- All obligations of a Malaysia Financial Institution will be created and governed by Malaysia law and guidance.
- Practically financial institutions will need to identify the tax residency of all of their customers.

More than 90 countries to implement the Standard

Signed (50)

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

2017

Committed (7)

Barbados	Niue
Bulgaria	Trinidad and Tobago
Dominica	Uruguay
Greenland	

Signed (12)

Albania	Costa Rica
Aruba	El Salvador *
Australia	Ghana
Austria	Indonesia
Canada	New Zealand
Chile	Switzerland

2018

Committed (26)

Andorra	Macau (China)	Samoa
Antigua and Barbuda	Malaysia	Saudi Arabia
Bahamas	Marshall Islands	Singapore
Belize	Monaco	Turkey
Brazil	Qatar	United Arab Emirates
Brunei Darussalam	Russia	
China	Saint Kitts and Nevis	
Grenada	Saint Lucia	
Hong Kong (China)	Saint Maarten	
Israel	Saint Vincent and the Grenadines	
Japan		

*announcement of signing made – date not released.

Question 3

The Malaysian government will negotiate FATCA and CRS away from Malaysia.

In your opinion, what would be the direction of FATCA and CRS development in Malaysia?

FATCA and CRS will not be fully implemented in Malaysia. It will be somehow embedded in the current Malaysian legal landscape.

Since Malaysia is half way through in implementing FATCA, FATCA will be implemented. However, Malaysia will not implement CRS.

FATCA and CRS will definitely be implemented in Malaysia, it is just a matter of time.

Contact us



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