

Federal State Autonomous Educational Institution
of Higher Education
“Siberian Federal University”

School of Economics, Management and Environmental Studies
Basic Department of Sberbank of Russia

Confirmed by
the Head of the Basic Department
of Sberbank of Russia
_____ Igor V. Tonkoshkurov
Date _____ 2018

MASTER'S DEGREE THESIS
COMMERCIAL BANK AS CROSS-BORDER TAX
INTERMEDIARIES OF THE INTERNATIONAL EXCHANGE OF
INFORMATION

38.04.08 Finance and Credit
Academic Course Code and Title

38.09.08.02 Banking
Master's Degree Program Code and Title

Academic supervisor _____
signature, date position, degree Name, surname

Graduating student _____
signature, date Name, surname

Reviewer _____
signature, date position, degree Name, surname

Krasnoyarsk, 2018

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INTRODUCTION

International tax planning in one form or another existed for almost the entire history of world economic relations. Many nations and countries in their desire to get as much profit as possible from increased international trade have created in their territories favorable tax environment for economic activity. This subsequently led to a problem such as the erosion of the tax base. To eliminate this effect, countries all over the world came together. The Organization for Economic Cooperation and Development has succeeded in this task more than others. It was OECD who was created such thing as international automatic exchange of financial and tax information. With its advent and adoption of international legal acts for Russian banks as cross-border tax intermediaries, responsible for collecting and transmitting the information of participants in this mechanism, there was a question about the organization of this process. Since the mechanism of automatic exchange of information is young and the process of its formation has only begun consideration of the relevance of the work of this mechanism and its accompanying regulations is of great value for both individual banks and the OECD on a global scale.

The object of the study will be commercial banks as cross-border tax intermediaries for automatic information exchange.

The purpose of this paper is to investigate the mechanism of international automatic exchange of information in order to determine the role of commercial banks in it and improve its effectiveness.

For the purpose of this work is necessary to perform the following tasks:

- 1 Identify the development stages of the automatic information exchange regulation system.
- 2 Examine and compare the mechanisms of FATCA and CRS in order to reveal their advantages and disadvantages for further improvement of the CRS mechanism.

3 To develop measures to enforce the obligations of information transfer within the framework of automatic information exchange.

4 Development of a method for assessing the effectiveness of the effect of automatic exchange on the effect of erosion of the tax base.

The work consists of an introduction, three chapters and a conclusion.

The first chapter explains what the erosion of the tax base, is described by the automatic exchange of tax information, as part of BEPS plan highlighted the stages of development of the international exchange of information, describes the mechanism of action of the Law "Foreign Account Tax Compliance Act" and the mechanism of automatic exchange of information, the role of banks in these mechanisms.

The second chapter examines the current state of the automatic exchange of tax information, considered banking secrecy as an obstacle to the implementation of an automatic exchange, analyzes the impact of sanctions on the international exchange project, an analysis of the feasibility of the project of automatic exchange of information, the problem of measuring the extent of the erosion of the tax base for assessing the effectiveness of the automatic mechanism exchange of information, analyzes the costs of banks on the realization and maintenance of the project of automatic exchange of information.

The third chapter provides guidelines and directions for improving the process of international exchange of tax information.

In conclusion summarizes the information from the previous chapters, the conclusion about the bank's role as a facilitator of cross-border taxation of automatic exchange of tax and financial information provides guidelines and directions for improving the process of international exchange of tax and financial information.

1 Legal regulation of international exchange of tax and financial information

1.1 The international exchange of tax and financial information as part of the plan BEPS

International tax planning in one form or another existed for almost the entire history of world economic relations. Many nations and countries in their desire to get as much profit as possible from increased international trade have created in their territories favorable tax environment for economic activity.

In ancient times, Greeks were particularly successful in this regard. When in Athens, a two-percent tax on exports and imports has been introduced, visionary Greek merchants began to bypass the capital side and "spend" their products through small island near Athens.[1] Thus it appeared the first prototypes of modern offshore. On these islands goods imported without any duties, and then smuggled to the Athens markets.

This practice has been followed in the Middle Ages - tax-free offshore companies were the Italian city of Trieste and Livorno, as well as the Balkan city of Sibenik. A little later tax-free territory became Gibraltar and Bangkok.[2][3]

However, the greatest dawn international tax planning has reached in the 20th century. Already in the 1930s, the offshore sector began to take shape in Luxembourg, Switzerland, Panama, the Bahamas and in some US states.[4] In the second half of the 20th century British banking elite lobbied creation of a whole network of "British offshore." These small quasi-state entities - the former British colony, crown dependencies or dependent territory, according to its popularity very quickly eclipsed all competitors in the offshore business.

By the beginning of the 21st century, international tax planning has taken a huge scale that according to experts from the International Organization for Economic Cooperation and Development or OECD the total losses of high-tax

countries in the form of under-paid taxes amounted to about 200-250 billion dollars annually. These data relate only to the losses from perfectly legitimate tax planning schemes, which are not formally violate any rules.[4]

Not wanting to put up with the loss of such huge sums, developed countries agreed to declare such schemes "aggressive tax planning" and began to actively struggle with them.

Now among the tools to combat "aggressive tax planning" is worth noting:

- The introduction of local laws rules on controlled foreign companies (CFC rules)
- Implementations of mechanisms for international automatic exchange of information on financial accounts for tax purposes
- Establishment of mechanism for automatic exchange of information on beneficial ownership of companies and trusts, beneficiary.
- Active international promotion "BEPS Plan".

The latter stands for "Base erosion and profit shifting." The abbreviation BEPS is mentioned when describing tax planning schemes, applying international group of companies that artificially derive their income from highly developed countries (where they are generated) in countries with low or zero taxation. In other words BEPS considering tax planning strategies that use gaps and inconsistencies of taxation principles for artificial movement arrived in the area with low taxes or territory does not charge taxes, which are characterized by low levels of economic activity or its absence, as a result of which the profit tax is not charged or charged, but in a small amount.

This project was developed within the framework of the OECD with the active support and high interest of the G20 countries or "Big Twenty" as BEPS is important for developing countries because of their acute depending on the corporate profits tax, in particular, the tax paid by multinational companies.

The essence of the project is the international cooperation in the fight against the above-mentioned cross-border tax planning schemes and to develop a set of

recommendations for national authorities and their subsequent implementation in national legislation. Thus, the basic idea is not to punish taxpayers and a radical change in the principles themselves and the tax system.

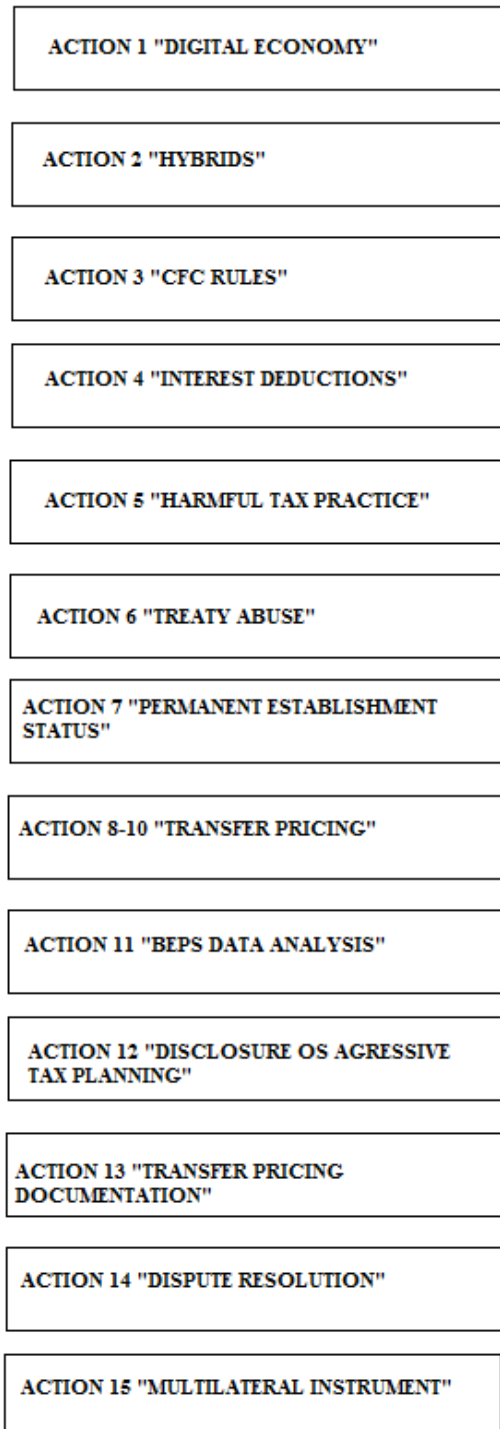


Figure 1 - 15-point of the plan BEPS

Basics "BEPS Project" was laid in 2012, when the leaders of the Big Twenty appealed to the OECD experts to develop a plan of action to resolve the problems of the erosion of the tax base and the withdrawal of income from taxation. Already in 2013, the OECD presented its first report on this issue and proposed the "Action Plan for the erosion of the tax base and the withdrawal of income from taxation" or the abbreviation "BEPS Plan". Under this plan fifteen points, each of which is a description of individual tax problems and suggested ways of solving that need to implement in domestic legislation and international treaties between them (Figure 1) have been developed[5].

Each item of the Plan is detailed explanations of the problems of the erosion of the tax base and the withdrawal of income from taxation, as well as proposed solutions to this problem. As noted earlier, these measures should provide a tool of the state, ensuring that the tax is levied on profits within the territory where the economic activity is carried out, ensuring profits and create value. At the same time, and also provides a higher level of accuracy and certainty, thus reducing the number of disputes on the application of international tax principles, since it directed the relevant requirements into a single standard.

Nevertheless, despite the fact that each of the points of the steps is very important, there are a number of key areas of work, which focused the attention of the OECD and the Big Twenty countries:

(1) Firstly, the exclusion of the so-called "double no taxation". In other words, situations where due to mismatches of tax laws in different countries, does not fall under the income taxation in any of them. One example is the problem of "hybrid instruments", that is of such schemes, which are classified differently for tax purposes in the various countries.

(2) So let us assume that certain payments are made abroad are recognized as interest in the country of residence of the payer, and therefore should be included in the cost. In this case, it happens that the income in the country of the

recipient of income location in accordance with local laws considered as dividends, and therefore falls under the tax exemption applicable to dividends.[5]

As conceived by the authors of the Plan BEPS such situations should be avoided by a coordinated introduction of unified regulations governing taxation in such a situation, the tax legislation of all countries concerned, as well as tax treaties. The solution proposed by the OECD as the core, is as follows: the payer should refuse to include payment in expenses if the payment is not included in the taxable income of the recipient. Fallback: the country of the recipient refuses to release income tax payer in the country if the payment is considered to flow.

These rules are embodied in EU legislation. Directive of 2014 was amended in the directive on parent companies and subsidiaries. According to these changes, dividends from a subsidiary in another EU country are exempt from tax at the location of the recipient only if they are not to be included in the cost at the location of the paying company.

(3) Second, with the exception of situations where the profit is attributed not to the jurisdiction where major operations aimed at obtaining this profit.

So intellectual property (a patented invention, a computer program, etc.) can be created in one country, and then made out to a company in another country where taxes are lower. Thereafter, in the form of license fees revenues it receives low-tax company.

At the same time, in some jurisdictions, tax regimes are specifically aimed at attracting such "mobile" (not tied to a particular place) activities, such as receiving income from intellectual property. This practice of the OECD said "malicious".

The solution proposed plan BEPS is that such preferential treatment (e.g., with regard to intellectual property) may be granted only under certain conditions. Namely, the company concerned must have a sufficient connection with the country, which receives a rebate, that is, there is a significant lead activities aimed at obtaining a given income. Do not meet this rule, preferential treatment should be abolished or amended.

Following these recommendations, a number of countries have already abolished or revised some of its tax benefits. So, Luxembourg announced the cancellation of preferential tax treatment for income from intellectual property, and Cyprus - a modification of a similar regime with increased requirements in terms of income due to Cyprus.[6]

(4) Third, increase information transparency, contributing to counteract undesirable patterns from the tax authorities.

Number of items BEPS plan provides for measures to enhance the exchange of tax information between countries. Thus, in the framework of improving the requirements for documentation of transfer pricing multinationals, that is a group of companies operating in different countries will have to submit certain reports.[5]

In particular, the home country of its head office, they will apply the so-called "report by country", which contains summary information about the income, taxes paid, etc. in different countries around the world. As conceived by the authors of the plan, these reports can then be obtained in the framework of information exchange and other countries in which the multinational operates. To this end, countries should take on certain obligations of confidentiality of information, which implies the conclusion of certain international agreements. Such a separate agreement may be concluded in the framework of the already existing international agreement, such as the bilateral convention on avoidance of double taxation; a bilateral agreement on the exchange of tax information; finally,

The most straightforward is as the last option, which is the conclusion of an additional agreement on information exchange under the Multilateral Convention of 1988. It was such an agreement was signed January 27, 2016.[7]

This agreement is known as the multilateral agreement of the competent authorities for the exchange of reports by country (abbreviated CbC MCAA). It should not be confused with the previously mentioned agreement concerning the exchange of information on bank accounts (CRS MCAA). Discussed agreement

involves an automatic exchange between the countries of the annual reports received at the place of the head office of the transnational corporation is located.

Having received the necessary information from the head office of the country where the corporation tax authorities at the location of units of the corporation in other countries will be able to effectively tax corporate income, taking into account the overall picture of its worldwide activities.

For the purpose of this work is given the two unique mechanisms of international exchange of information. Developed by the OECD to combat the erosion of the tax base and output gains from taxation under automatic exchange of tax and financial information is a common exchange standard and the United States developed earlier information exchange mechanism - FATCA. Therefore, in this paper we will focus on the known mechanisms of the international exchange of information on how they work, who are the main decision-makers and how this mechanism can be improved.

For this we consider the historical aspect of the development of international exchange of information.

1.2 Development of the system of regulation of international information exchange

It is considered a very common opinion that the exchange of tax information, questions began to appear in the list of global problems of states only in recent years the world community. However, in reality it is the opinion of more than a mistake. Understanding the importance of this kind of mechanisms to ensure compliance with the tax laws of its economic importance and there was quite a long time. On the other hand, the very notion of financial market participants in the world of the limits of banking secrecy, the role of financial institutions and of the limits of intervention of other states in this sphere were a few others, and has begun to change recently. In fact, back in 2008. When there is already a legal

regulation of the international exchange of information developed for the most part of the OECD and EU, no one would even think to declare that,

The starting point for a radical change of the world community views on the financial and tax spheres can be considered exposing the machinations of the Swiss bank «UBSAG» in 2008, which two years later gave birth to one of the crucial mechanisms for the exchange of tax information and the fight against tax evasion -. The Law about "Foreign Account Tax Compliance Act" (FATCA). In the future, the initiative was taken up by the OECD, developed on the basis of the Intergovernmental Agreement Models 1 to FATCA General Accounting Standards which is today signed by over 100 countries.

As already noted, the understanding of the importance of tax information exchange arrangements appeared a long time ago. Documentary in early 1963 the text of the OECD Model Convention was developed in respect of taxes on income and capital, Article 26, which regulates the issues of information exchange on this day.[8] Its first official version was released in 1977, and three years later, on this basis has developed the Model Convention of the United Nations[9].

It states that information can be presented only "on request" of the State, and the spontaneous and automatic exchange is not provided. This type of tax data exchange mean that tax information is requested by the competent authority of the state in the authorized body of the partner State in respect of a particular taxpayer (specific operation). This involves exclusively bilateral nature of the mechanism, that is, in fact, "falling out" of it in developing countries, which, however, to the greatest extent suffer from the "capital flight" and, therefore, interested in sharing information.

In order to overcome the shortcomings of bilateral tax information exchange, in 1988. OECD Multilateral Convention was developed jointly with the Council of Europe "On mutual administrative assistance in tax matters"[10]. Despite its name, the Convention Article 6, though provides for automatic exchange of information, but only through the conclusion of additional agreements between the competent

authorities. This leads to problems related to the limited exchange of information is only a network of bilateral relations between some states. Only in 2014 (after the events of 2008., As well as the adoption of the US Law "Foreign Account Tax Compliance Act"), 51 states had signed the Multilateral Agreement between the competent authorities.

Developed by the OECD in 2002 Model Agreement "Concerning the exchange of information in the tax area", is similar to the Model Convention of 1963 limitations.[11] Despite the fact that the Agreement was more detailed instrument devoted exclusively to the exchange of information, as well as more suitable for application to offshore companies (as the provisions on the exchange of information and agreements on avoidance of double taxation with respect to offshore companies are inefficient), some experts called it "useless." This statement was based on the fact that "on-demand" exchange provided for in this Agreement information is presented to the states high demands: to obtain the desired information, you need to know exactly what information is needed and have proof (not suspicious) of that there is a tax offense. The agreement also did not contain an automatic exchange of capabilities until 2015 when the OECD has developed a Model Protocol to the Agreement on the exchange of information. The agreement can also be a model for bilateral agreements and multilateral instrument. The latter, however, does not imply a multilateral exchange of information in the truest sense of the word, but rather the basis for the creation of a network of bilateral agreements (i.e. when ratifying multilateral version of the agreement party indicates in its relations with some countries it wishes to apply its provisions), which, of course, It should be attributed to the shortcomings of this model. The agreement can also be a model for bilateral agreements and multilateral instrument. The latter, however, does not imply a multilateral exchange of information in the truest sense of the word, but rather the basis for the creation of a network of bilateral agreements (i.e. when ratifying multilateral version of the agreement party indicates in its relations with some countries it wishes to apply its provisions),

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It is also important to note that the initial exchange of tax information were aimed at creating the technical basis for the standards because this is not possible without fixing, sharing and processing of information, the receiving State. These questions were developed at the OECD level, starting with a standard size of paper in the future by going to the standard magnetic format, and then to more advanced standard messaging format using XML language.

In 2003, it was adopted by the EU Council Directive "On taxation of savings income in the form of interest payments", which was in essence the first multi-program automatic exchange of information[12]. It seems that the shape of the directive has been chosen by chance, as it involves a lot of flexibility, rather than regulation, in fact, does not constitute a possible compromise for both notes GP Tolstopyatnenko[13]. Adopted for its implementation standards were based on the STF format developed by the OECD. In addition to taking STF format at the EU level technical requirements in order to guarantee good quality of transmitted data have been developed. However, multilateral exchange of information within the directive was not free from drawbacks: in addition to the obvious limitations of the territorial scope of application (only within the EU).

As previously mentioned, a radical change in the system of international exchange of information were provoked a scandal in connection with the exposure of the activities of the Swiss bank «UBS» of complicity in the evasion of US tax residents from US taxes.[14]

The so-called "Case of the bank UBS» began in 2008 when the United States

Federal Tax Service (IRS) has initiated an investigation against US residents, suspected of concealing US laws taxable income to offshore bank accounts in UBS.[14] In May 2008, US prosecutors detained and questioned the UBS top managers Martin Liechty and Bradley Birkenfeld. They were accused of assisting UBS clients in tax evasion.

In July 2008, the US government ordered to the US Federal Court in Florida has requested the bank UBS data on 19,000 American holders of offshore accounts. The request was based on the existence of evidence that these customers are likely to evade US taxes.

In February 2009, after receiving an emergency authorization from the Swiss banking supervisory authority FINMA UBS bank issued US names of 300 of the 19,000 customers-US citizens who according to Swiss law and the Agreement on exemption from double taxation concluded between the United States and Switzerland have committed tax fraud. UBS bank also paid a fine of 780 million dollars. However, this did not stop, and later, the IRS filed a lawsuit to obtain information on 52,000 clients. This right of access to the United States this information outside the procedures expressly provided for the US-Swiss agreement was contested in court UBS Bank.

As a result, interventions both sides of the case was suspended and only the August 12, 2009 the US Government and Switzerland to court information that the parties have come to a final agreement. In accordance with this agreement, UBS bank was supposed to reveal the names of 4,450 of its 52,000 US customers no later than August 24, 2010. In turn, the US tax service had to give up civil and criminal prosecution and return to the regular exchange of information procedures, in accordance with the US-Swiss agreement.[14]

This case was one of the first among the plurality of subsequent scandals in which banks were accused of helping their clients in tax evasion.

As the RA Shepenko, namely from the beginning of 2008 the exchange of tax information, questions began to occupy a significant place in the international

political agenda.[15] They are dealt with in such documents as the Declaration of the Summit on Financial Markets and the World Economy, the Declaration on strengthening the financial system, the statement of the leaders of the "Big Twenty" in St. Petersburg, etc. The most drastic measures have been taken in the state, which was directly affected by the illegal activities referred to foreign banks - the US. It is these measures have become a new step towards a complete change in the perception of all participants in the global economy of tax information exchange system.

As mentioned earlier, a strong impetus for further development tax information exchange mechanisms are changes in U.S. law, which brought perception tax information exchange to a new level. It is therefore necessary to consider this step in more detail. Initially, the US Internal Revenue Service tax information received outside the US jurisdiction by means of bilateral agreements and other agreements with foreign countries (the so-called "system of qualified mediators."

March 18, 2010 adopted the Law "Foreign Account Tax Compliance Act" (included in the four new articles of the Code of Internal Revenue US), which uses a new mechanism to obtain this kind of information, radically different from the "historical approach".[16] Its aim is to increase tax revenue by obtaining the necessary information about the American taxpayers, who could potentially evade US taxes by using foreign bank accounts and / or investments. "On Foreign Account Tax" for the understanding of the process of exchange of tax information system is important to a more detailed examination of the mechanism of functioning of the law.

This previously carried out by the purpose of FATCA requirements for foreign financial institutions, as well as some non-financial foreign entities to provide information to the IRS on foreign income and assets of persons who are tax resident in the United States. IRS, in turn, compares the received information with the tax declarations of the persons concerned, in order to identify arrears. In

other words, banks are reporting US taxpayer accounts, and the last report on the presence of their foreign assets in form 8938. A comparison of these values leads to a rather effective identification of tax evasion.

According to the FATCA foreign financial institutions as a general rule should enter into an agreement with the IRS to collect and transmit information to the IRS about accounts owned by US tax residents. If a foreign financial institution enters into an agreement with the IRS, it acquires the status of "a participating financial institution."

Disagreement financial organizations to cooperate with the IRS (i.e. the refusal to disclose the requested information, etc.) has serious consequences, because in addition to the disclosure obligations Law "Foreign Account Tax Compliance Act" requires foreign financial institutions to retain a tax equal to 30% from any "transit fees", implemented by the financial institution in favor of "a defiant account holder" or in favor of a foreign financial institution that fails to comply with requirements of the law "FATCA"[16]

Thus, it is possible the beaten two main situations withholding tax:

(1) When she is obliged to withhold tax foreign financial institutions in the implementation of her "transit fees" for the benefit of: (a) the defiant account holders; or (b) defiant foreign financial institutions; and

(2) When the hold is made in respect of a foreign financial institution (if it does not fulfill its obligation to provide information, withholding tax, etc.). In this case, the US tax agent (in which role and other foreign financial institution can act) holds 30% of the "withholding of payment." Some non-financial foreign entities are also affected by this sanction if they do not disclose information about persons holding more than 10% of the capital of the non-financial foreign entity.

At this stage, the most complete understanding of the mechanism of action of the law is necessary to define the basic concepts.

"Transit fees", from which the deduction is any "withhold payments." "Withholding Payment", in turn, means of payment specified or determinable

annual or periodic income, the source of which is the United States and the gross proceeds from the sale or other disposition of the property, which may give rise to the payment of interest or dividends, which are so FDAP income, the source of which are USA[16].

"Clean account holder" is the account holder who

(1) is not provided at the request of foreign financial institution information to enable it to determine whether it is the US taxpayer, or

(2) is not provided at the request of foreign financial institution rejection of the law, without which a foreign financial institution may not transfer information into IRS the laws of the state. It should be noted that the law requires foreign financial institutions to close or block the accounts of "defiant owners", subject to point two of the above definition. As discussed below, intergovernmental agreements such claims do not contain.[16]

Tax agent is any person acting in any capacity that monitors, receives, stores or pays any "withhold payments." Thus, the person may be a resident of the United States and foreign residents. Tax agent performs "withheld payment" in respect of a foreign financial institution or non-financial foreign entity must, or receive from this organization form W-8BEN-E, testifies to the fact that in respect of it does not apply retention or deduct from the payment of 30% of its value. The foreign organization must determine its status as a financial or non-financial. This distinction is important because the foreign financial institution must meet a wide range of criteria (relative to the collection, information transmission, etc.) to avoid the withholding tax from payments that it receives. Criteria for non-financial institutions are also less extensive.[16]

Another important obligation imposed on foreign financial institutions, is to carry out due diligence in order to identify account holders with signs of US tax resident. Some non-financial institutions are also required to identify the US tax residents holding more than 10% of their capital.

From the above-described mechanism of functioning of the law, we can conclude that despite the fact that the law itself FATCA use the term "tax", established by this Law payment by its nature is not a tax, but rather a fine. Its aim is to force foreign financial institutions to report information on accounts whose owners have signs US tax resident. Recovery of 30% of revenue, the source of which is the United States is carried out only in certain cases previously described, not on a continuous basis.

Thus, three main stages can be distinguished, each of which foreign entities have different obligations in accordance with the Law FATCA. First, they are required to carry out due diligence on the presence among the owners of US tax resident accounts. Secondly, they may in certain circumstances be required to withhold tax, established by the Law "Foreign Account Tax Compliance Act". Third, foreign financial institutions must report to the IRS the information listed in the Act.[16]

FATCA adoption by the US Congress initially caused widespread debate and criticism from foreign governments and the private sector.[17] Law "Foreign Account Tax Compliance Act" was a serious expansion of extra territorial validity of US law and taxation. Adoption of the law has led to considerable difficulties for foreign financial institutions. The main problem was the contradiction of established US law obligations national law states (e.g., confidentiality and data protection). As a result, financial institutions could be subject to sanctions established by the law only because they comply with the law of its country of location.

In view voiced by many foreign financial institutions and governments concerns about the protection of information, the US Treasury has developed several models on the basis of which the State may enter into agreements with the United States, intergovernmental agreements, determining the order of execution on their territory, the provisions of this Act, to be consistent with their national legislation. It is important to note that the intergovernmental agreements usually

establish a more "gentle" treatment to foreign financial institutions, rather than one that is FATCA prescribed by law (for example, intergovernmental agreements establish less onerous obligations on taxes).

In fact, these agreements are agreements on the exchange of information necessary for the purposes of the Law "Foreign Account Compliance Act" by already existing agreements on avoidance of double taxation agreements on the exchange of information between the state of the resident foreign financial institutions and the United States. In turn, the United States undertake not to levy the previously mentioned tax of 30%. To date, the US Treasury has developed two main types of such agreements: Model 1 and Model 2[16].

Soon after the move of the American legislator (i.e. the adoption of FATCA and related agreements) against the backdrop of the global financial crisis began to be perceived as a significant political impetus to create a global automatic exchange of information. Already in 2012 the five largest EU member states and OECD (the United Kingdom, France, Spain, Italy and Germany) entered into an agreement with the United States on the mutual exchange of information referred to in FATCA, in accordance with intergovernmental agreements (for Models 1) which were concluded between the United States and each of the five states. In July, 2012. OECD Secretary-General Angel Gurría expressed his support for "collective and multilateral approach, which is based on a model agreement."

It is important that the Model 1 of the intergovernmental agreement contains an obligation to cooperate with the concerned jurisdictions, the OECD and, if necessary, with the EU to adapt the provisions of the Intergovernmental Agreement "to the general model for the automatic exchange of information, including the development of data transmission standards and due diligence for financial institutions." In the future, the number of countries to join the negotiations with the United States has increased.

To understand the fundamental differences existing between these agreements models, it seems necessary to compare the agreement between the US

Government and the Government of Great Britain 2012 (Compiled from Model 1) and the Agreement between the United States and Switzerland 2013 (Compiled by Model 2).

Before proceeding directly to the obligations established by the Law "Foreign Account Tax Compliance Act", it is necessary to conduct an analysis of the scope of the Law: in other words, to determine the range of subjects that need to fulfill these obligations.

This issue is regulated in detail in Annex II of each considered in this work of intergovernmental agreements. It contains a list of financial institutions and products that are exempt from some or all of the obligations due to the fact that they represent a low risk of tax evasion. Compilation of the list is one of the most difficult tasks for the state, leading the negotiations for the conclusion of the intergovernmental agreement.

The requirements established by the US-UK and the US-Swiss intergovernmental agreement shall apply to financial institutions in Switzerland and the UK, respectively.

Definition of a financial institution is identical in both agreements and is broad enough to the depository institution, credit institution, investment firm or insurance company.

The financial institution is considered to be British (or, respectively, the Swiss), if it is a "resident of the United Kingdom" ("established under the laws of Switzerland"). The definition does not include branches of financial organizations based outside the United Kingdom (Switzerland), and located in the United Kingdom (Switzerland) branch organization is not a "resident of the United Kingdom" (not "a Swiss") residency test applicable under the laws of the State (for example, in the UK it is a test or a test of incorporation of the central management and control of the organization). Therefore, in intergovernmental agreements traced some terminological differences ("a resident") and "established by law.

As mentioned earlier, some of the organizations covered by this definition, are exempt from duty under the intergovernmental agreement. Appendix II intergovernmental agreements lists the two main categories are not reporting to the IRS financial institutions:

- (1) liberated beneficial owners and
- (2) recognized by the relevant financial institutions.

To the release of the beneficial owner (for the purposes of Article 1471 of the Code of Internal Revenue US) include government agencies, the Central Bank (Bank of England, Swiss National Bank), representatives of international organizations, and the British (Swiss) pension funds. In respect of them are missing any of the IRS requirements for registration or transfer of information in respect of all financial accounts, which they have. Moreover, other foreign financial institutions are not obliged to provide information in relation to accounts whose owners are exempt beneficial owners.

To acknowledge relevant financial institutions (for the purposes of Article 1471 of the Code of Internal Revenue US) both agreements include non-profit organizations and financial institutions with a local customer base. This applies to organizations that meet a number of criteria, one of which is the fact that the owners of 98 percent of the bills in the value of non-EU member state. US agreement with Switzerland has some of the features that will be discussed in the next section.

Moreover, the US-UK, and the US-Swiss agreement in Annex II determines the list of accounts and products that do not apply the requirements of the Law "Foreign Account Tax Compliance Act" (i.e., they are not considered financial accounts for the purposes of the FATCA Law). These include certain retirement accounts or products are endowed with some tax benefits accounts or products. The composition of the latter in the United Kingdom, for example, includes the trusts on the child's name, tax-free savings plans, etc.

Thus, the overall range of subjects who are subject to the requirements of the agreement is similar to the UK and Switzerland and stored in Appendix II to the agreement.

It follows from the above that meet certain criteria, foreign financial institutions are required to perform certain tasks in accordance with the provisions of the Law "Foreign Account Tax Compliance Act".

The most important for achieving the goal of this law is to exchange information. Its mechanism is fundamentally different in consideration in this work of intergovernmental agreements, as will be demonstrated in the next section.

However, there are some similarities. So, the first step for a foreign financial institution is its registration to the IRS. Although financial institutions are the UK do not conclude agreements directly with the IRS, and act through the Revenue Service and the Customs, they must be registered with the IRS. A similar requirement to register is available and in respect of Swiss financial institutions.

Each dealt with in this work agreements in Appendix I lists the obligations of the respective financial institutions to conduct due diligence to identify US accounts.

Both agreements also allow the financial institution to apply the requirements of Annex 1 are not, and orders of the US Treasury, which, however, are more onerous.

Both agreements also no requirement for financial institutions to close the accounts of those who refuse to comply with the requirements of the FATCA Law (as opposed to the provisions "Foreign Account Tax Compliance Act" of the law).

Due diligence procedures in the two intergovernmental agreements vary according to the category of object to be inspected. There were four:

- (1) pre-existing accounts of individuals;
- (2) new accounts of individuals;
- (3) account of preexisting organizations;
- (4) new accounts of organizations.

For some pre-existing accounts, both individuals and organizations cannot carry out checks and not to provide information, for example, if an individual account balance as of December 31, 20XX year did not exceed \$ 50,000, or if the account balance of the organization as at December 31, 20XX year did not exceed \$ 250,000 (in the latter case, the test will only be conducted from the moment when the balance exceeds 1,000,000 dollars later, even if at that date did not exceed \$ 250,000).[16]

Obligations to verify the individuals pre-existing accounts vary depending on the assigned there by the category of low-cost (whose balance exceeds \$ 50,000 but does not exceed 1,000,000 dollars as of December 31, 20XX) or high cost (the balance of which exceeds 1,000,000 dollars as of December 31, 20XX).

For a low cost individual accounts of the first procedure is to search for the electronic records of the financial institution for signs of US residency (nationality, address, phone number, etc.). If such signs are absent then a further check is made (until there is a fundamental change of circumstances). If any of the symptoms was found, the account holder is considered to be a resident of the United States, hence in relation to the accounts in foreign financial institution appear obligation to transfer information.

For high-value accounts of individuals search for electronic records of financial organizations is complemented by searching for paper records (in cases where the electronic databases do not contain all the information listed in paragraph 2. II.D. 3. Appendix I of the Intergovernmental Agreement).

Audit the accounts of pre-existing procedures of the Organization in sufficient detail described in Section IV of Annex I to the intergovernmental agreement, which is transferred to the list of parameters, which the organization must satisfy to its holdings in a financial institution subject to the requirements by sharing information.

When you open new accounts for individuals and organizations (open from January 1, 2014 inclusive) the financial institution must obtain a so-called self-

certification: a new customer must fill out a form specifying the information with which the financial institution will be able to establish whether it is a tax resident of the United States.

Thus, financial institutions imposed very onerous obligations to identify amid their entire customer base those potentially being tax residents of the United States. Further, based on the number of such persons, the financial institution to decide whether it should comply with the provisions of the Law of the United States or it is economically advantageous to be regarded as "defiant financial institution", in respect of which the sanctions (which will be discussed later) can be applied.

As mentioned earlier, the Law "Foreign Account Tax Compliance Act" imposes an obligation on foreign financial institutions to withhold tax at the rate of 30% of the "held-payments", and if they do not fulfill their obligations according to the law, the tax agents (including other foreign financial organizations) will withhold tax from the "held-payments" in favor of the former (i.e. not fulfilling the obligations of financial institutions).[16] Earlier in this paper two main situations withholding tax have been identified:

- (1) When withholding tax is required to own a foreign company
- (2) When the hold is made in respect of a foreign financial institution (if it does not fulfill its obligation to provide information, withholding tax, etc.).

The intergovernmental agreements retention mechanism considerably simplified (and what was the purpose of the conclusion of these agreements). Thus, the first of these situations, the general rule is eliminated: the financial institutions in Switzerland and the United Kingdom is not required to withhold from payments to defiant account holders need only provide the IRS required information about them. The obligation to withhold tax only arises in the case where a financial institution has taken the responsibility to be a qualified intermediary, foreign withholding taxes for foreign partnership or a trust holding tax.

If a financial institution has incurred these obligations it must pass the

information to the payer that it, in turn, could withhold the tax established by the Law "Foreign Account Tax Compliance Act".

With regard to the second situation, equally exempt from withholding financial institutions like the United Kingdom, and Switzerland if they are to fulfill their obligations under the intergovernmental agreement, it will be considered as fulfilling the requirements " Foreign Account Tax Compliance Act » Act and will not be subjected to these sanctions. Moreover, even if they do not fulfill their obligations sanctions will not be applied until the IRS has not included this financial institution in the list of non-participating financial institutions (which IRS publishes for the general accessibility). Before the IRS includes the organization in the list, IRS notifies the competent public authority of the state partner of a material default by the organization of its obligations.

Both considered the agreement also eliminates the requirement of the law "Foreign Account Tax Compliance Act" on the accounts closing defiant account holders, if the financial institution informs the information specified in the intergovernmental agreement.

Thus, when comparing these arrangements Intergovernmental greatest similarity manifests itself in terms of legal obligations to implement checks. The greatest number of differences is in terms of the obligations under the exchange of information, due to selected States diametrically opposed approaches to dealing with the IRS.

As can be seen above them, the UK and Switzerland have chosen different approaches to dealing with the IRS. United Kingdom, being the first country to sign an intergovernmental agreement on the implementation of FATCA provisions followed the path of the so-called Model 1. In the framework of the indirect effect of information transmission mechanism: the legislation of a foreign country partner amends binding partner of a foreign state makes changes that require foreign financial institutions to transfer the information necessary for the purposes of the Law " Foreign Account Tax Compliance Act " to the competent authority of their

state (in UK so is Revenue Service and Customs).

The competent public authority, in turn, transmits this information to the IRS based on existing information-sharing mechanisms (for example, the United Kingdom and the United States in 2001 signed the Convention on the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital, references to which are contained in the text of the considered real work of the intergovernmental agreement between the US and the UK). Thus, there is no need to enter into a separate agreement between the financial institution and the IRS, all activity takes place through the mediation of the Service Revenue and Customs.

Due to the fact that financial institutions United Kingdom, in accordance with national law now carry the obligation to transmit certain information to the Revenue and Customs service for the purposes of the Law " Foreign Account Tax Compliance Act ", the law on data protection (the Law "On Protection of Information" in 1988, implementing the provisions of Directive number 95/46 / EC of the European Union "on the protection of individuals with regard to processing of personal data and on the free movement of such data), they do not break.

The selected model for the United Kingdom implementing the provisions of the Law " Foreign Account Tax Compliance Act " imposes a heavy burden on the State of the partner, which should not only appropriate to change its own legislation but also to ensure its observance, and to send this information to IRS.

Switzerland has chosen Model 2 of the intergovernmental agreement. In accordance with it, Switzerland is to provide conditions to its financial institutions have the opportunity to become a "participating financial institutions" by entering directly from the US Treasury a special agreement, according to which these organizations undertake to directly send the reports in the ISR of their account holders and beneficial owners with ties to the United States. In other words, based on this model is the mechanism of the Law "Foreign Account Tax Compliance Act" and the involvement of government agencies in Switzerland to exchange

information (as a general rule) is not required.

It should be noted that the need for an agreement with the United States appeared due to the fact that Swiss law (namely Article 271 (1) of the Criminal Code of Switzerland) states that "a person who carries out activities on behalf of a foreign State without lawful authority" is committing a crime. This provision would put financial institutions in Switzerland with a choice: violate or Swiss law and the Law "Foreign Account Tax Compliance Act". Through Article 4 of the Agreement Swiss financial institutions have received the assurance that they will not be held liable when transmitting banking information to the IRS.

It follows from the above administrative burden on partner-country to sign an intergovernmental agreement on the Model 2 is lower than in the presence of an agreement on a Model 1. However, certain obligations imposed on the State a partner in cases where financial institutions cannot obtain the consent of the owners of accounts transfer of their personal information. This mechanism will be discussed in the next section.

Thus, the main difference in the exchange of information procedure is that in the UK financial institutions transmit it to the Revenue Service and Customs (which subsequently forwards the information to the IRS), while the Swiss financial institutions interact directly with the IRS (subject to agreement with US Treasury).

From the above mentioned differences in order to provide information follows another: while the Swiss financial institution must obtain the consent of the account holder, so that it can send a specific bank information directly to the IRS, in the UK the consent of the account holder is not required (because the information is not transmitted directly to the public authority of another country, and through the mediation of the Service Revenue and Customs UK).

Therefore, in the intergovernmental agreement between the US and Switzerland is there a mechanism for group requests. As will be seen from the description of its operation, eventually the result will be the same as in Model 1

and Model 2 with the intergovernmental agreement, the only difference is the time when specific account information will be brought to the attention of IRS.

Mechanism multicasting turned on when the account holder refuses to give its consent to the transfer of information directly to the IRS. In this situation, the financial institution cannot fulfill Model 2 its obligations under the exchange of information as this would mean a direct violation of Swiss laws on banking secrecy which continues to operate in spite of the existence of an agreement with the United States. Therefore, in IRS reported a number of accounts (without personal data) relating to the "not subordinate to the account holders."

Further, by IRS directions multicasting may seek full information on the "defiant account holders." This possibility is provided by Article 5 of the agreement with Switzerland, which refers to the provisions of an agreement on the avoidance of double taxation, which contains more detailed regulation.

IRS sends group requests directly to the Federal Tax Administration of Switzerland in accordance with the procedure referred to in Article 26 of the agreement on the avoidance of double taxation (including the changes made by the Protocol of 23 September 2009).

Thus, the IRS may eventually get the full information (which financial institution would be granted to her in the presence of the account holder's consent), but with a time delay and with the assistance of the Federal Tax Administration in Switzerland. Essentially, the result of this two-stage information exchange scheme similar to that achieved with the direct process of information exchange.

Another feature of the agreement between Britain and the United States is the nature of the obligations on information exchange: the two versions of the model 1 of the intergovernmental agreement the UK chose the first provides for the mutual exchange of information.

However, the range of information to be transferred to state bodies USA UK government agencies, much narrower than the one that should provide the United Kingdom under the intergovernmental agreement.

Refusal of Switzerland from requesting information from IRS for tax resident of Switzerland is due to the peculiarities of the Swiss legislation on banking secrecy.

Summarizing the above, it should be said that the mechanisms that the UK and Switzerland have chosen to interact with the IRS and the fulfillment of obligations under "Foreign Account Tax Compliance Act" law are diametrically opposed. Britain has taken the path of an existing scheme of exchange of information through the channels of state bodies, in fact only expanding the list of information to be transmitted, while Switzerland has opted for the introduction of national legislation permits financial institutions to transmit information directly to the IRS.

As mentioned earlier commitments due diligence in both considered in this work of the Agreement are essentially almost identical.

However, one of the main differences is that the UK financial institutions must meet only the requirements set by the intergovernmental agreement (the data requirements have been incorporated into national legislation). In contrast, the Swiss financial organizations should meet not only the requirements of the Intergovernmental Agreement, but also the obligations of the agreement between the financial institution and the US Treasury.

Thus, in view of the particular for banks Intergovernmental Agreement Model 1 may be more advantageous.

Another difference of the Agreement with Switzerland on the Agreement with the UK is that the financial institutions the UK decided not to apply the requirements of Annex 1 to the intergovernmental agreement and the orders of the US Treasury can then change your mind in favor of the former. Swiss same financial institutions who chose to follow the orders of the US Treasury during the due diligence can no longer follow the requirements of Annex 1 to the Agreement, unless the disposition of the US Treasury were not significantly changed.

For convenience, it must be reiterated that previously discussed, are the two

main situations withholding tax:

(1) When withholding tax is required to own a foreign financial institution in the implementation of her "transit fees" for the benefit of: (a) the defiant account holders; or (b) defiant foreign financial institutions; and

(2) When the hold is made in respect of a foreign financial institution (if it does not fulfill its obligation to provide information, withholding tax, etc.)

Although the first of these situations, the general rule is eliminated for financial organizations of Great Britain, and Switzerland, the exemption for the last one also depends on the conditions (in addition to the general obligation to exchange information). This condition occurs in situations when the IRS sends the group requests for defiant account holders. Retention is not made before the expiry in 8 months from the receipt of the request group. If at the end of the relevant information has not been transferred to the IRS by the Federal Finance Administration in Switzerland, the financial institution will have to withhold tax from payments to these defiant accounts.

The second situation, as mentioned earlier arises when a financial institution as a result of substantial non-performance of its obligations is recognized not involved. However, the deadline for elimination of significant violations (before the ISR will make the organization of the list of non-participating) is different: for financial institutions the UK it is 18 months in Switzerland - 12 months.

Thus, the agreement of the Swiss financial institutions directly from US Treasury impose on these financial organizations greater burden, since their exemption from the obligation to retain not only depends on their own actions but also on the willingness of public authorities to pass IRS information by responding to the group request. Because of these features for the states may be more appropriate to conclude an intergovernmental agreement on Models 1.

To ensure the execution of financial institutions of their obligations UK public authorities apply national legislation (including sanctions for violations) in relation to financial institutions that IRS has identified as a significant way to

fulfill its obligations. If, after 18 months, a significant failure to fulfill obligations has not been eliminated by the IRS can place a financial institution in the list of non-participating. For a financial institution, this means that some of the payments in its favor other participating financial institutions tax will be charged.

For Switzerland, the basic function of control over the implementation of bank obligations imposed on them is carried out IRS. IRS informs the Swiss Federal Tax Administration in the event that the bank does not substantially comply with the requirements of the Agreement with the IRS. There is provided a shorter period for the elimination of a significant default (12 months), after which the IRS can put the bank in a list of non-participating.

It is also important to note that foreign banks have entered into an agreement with the US Treasury hereby consent to the jurisdiction of US courts in the event of a dispute, as applicable to the agreement, the right is the right of the United States. British same banks do not enter into agreements directly with the IRS and a need to comply with national legislation (which as mentioned above has been changed), so they remain in the jurisdiction of the UK courts.

Thus, in the presence of an intergovernmental agreement on Models 1 obligation to ensure fulfillment of the obligations imposed by banks in the first place in the State where they are. In this connection, this option may be more beneficial to banks, as they interact with their own national authorities. For the partner countries, this model also offers greater transparency and the possibility of control over the implementation by banks of the provisions of its obligations. On the other hand, the implementation of Model 1 may be costly administrative and budgetary resources.

In conclusion, it is important to note that this Model 1 of an intergovernmental agreement to FATCA because of its advantages mentioned previously was the basis for further development in the direction of greater exchange of tax information to the multilateral format.

While FATCA and was received very aggressively by the international

community, after the state realized the advantages of such a mechanism for the exchange of tax information. Some States have published similar FATCA national legislation (e.g., the United Kingdom, the Russian Federation). Over time, increased awareness that the multilateral framework is the more justified in order to minimize the financial and administrative costs. At this stage, to promote this idea took the momentum from the "Group of Twenty."

And the so-called impulse on the part of the Group of Twenty really happened. Realizing the importance and necessity of the interference state leaders "Big Twenty" at the VII Summit expressed support for the activities of the Organization for Economic Cooperation and Development (OECD) in the field of prevention of erosion of the tax base and deriving profits from under nalogooblozheniya¹⁹ June 2012 adopting the Final Declaration, as well as directly approved the report which OECD provided a "Group of twenty", which bears the heading "[18] Automatic exchange of information: what it is, how it works, benefits, what else should be done." Last summarized the main features of an effective model for the automatic exchange. Among the main success factors of effective automatic exchange report listed the following:

- (1) The general agreement on the scope of reporting, information sharing, and related due diligence procedures. To restrict the ability of taxpayers to bypass model of information exchange by moving assets in an organization or investing in facilities that are not covered by the model, the information transfer mode should be broad and include three dimensions: scope of most of the transmitted information (relative to interest, dividends and other similar types of income, also taking into account situations where the taxpayer hides capital in respect of which tax has not been paid (for example, through information on the account balance inquiries)); the number of account holders, subject to the requirement to provide information (not only physical, but also legal entities, the obligation of financial institutions to look through the "empty" companies, trusts, etc.); the number of

financial institutions subject to the transmission of information requirements (not only banks, but also brokers,

(2) Legal basis and confidentiality. The standardized model of multilateral automatic exchange requires a legal basis for the establishment of national legislation the obligations of reporting and for further exchange of information. Automatic exchange of information can be based on various existing mechanisms, including bilateral agreements, incorporates Article 26 of the OECD Model Tax Convention and the Convention on Mutual Administrative Assistance in tax matters.

All information exchange mechanisms include strict requirements of confidentiality of transmitted information, and limit the range of persons to whom it is available, as well as set goals of its use. OECD Guidelines was released on Privacy "Keeping security", which sets out best practice in this respect. The OECD emphasizes that prior to the agreement on the automatic exchange of information, the conclusion of the state should provide the legal framework and administrative capacity to ensure the confidentiality of information.

(3) General technical solutions. The development of the general technical solutions for information exchange is the most important element of the standardized multi-exchange system. Standardization will reduce overall costs for countries and financial institutions to its implementation. Firstly, it concerns the technical information transfer formats. Secondly safe and compatible data transmission encryption techniques must be developed.

In fact the OECD report concluded the practice is gaining prevalence of use of automatic information exchange as an effective means of combating tax evasion. The impetus for its appearance, as previously mentioned was US FATCA law for the implementation of which a large number of states have made commitments to fulfill its position on the basis of intergovernmental agreements on the Model 1. It shows that the state saw in this approach is the most effective

mechanism for combating the abuse, which also it allows you to reduce costs for both countries, as well as for financial institutions.

"Group of Twenty" has shown an increased interest in developing a global standard system of automatic exchange of information, and filed a formal request in September 2013 OECD to develop a common reporting standard including technical conditions necessary for the conduct of the fight against tax evasion. It should be clarified that the OECD activities continued throughout all these periods, however, the activities of the "Group of Twenty" allocated as a separate period, since they have become an important impetus for the further intensification of activities of the OECD in this area and served as an important pillar without which is probably the work of the OECD on this direction would not have conducted such an active (due to uncertainty about whether it will receive a response among the nations of the world).

In response to a request from the "Group of Twenty" by February 2014. the OECD agreement was reached on the text of the General Standard Reporting.[19] In May, followed by the Declaration of 47 countries (including 34 OECD member state) in which they have previously agreed to implement this standard. July 15, 2014 the final version of the CRS including comments and XML scheme was approved by the Council of the OECD, and the "Group of Twenty" was confirmed in September 2014.[19] The standard requires the jurisdiction of that they receive the information from the financial institutions in their territory, and to automatically exchange this information with other jurisdictions on an annual basis. The standard sets out the types of account information to be exchanged, the types of financial institutions that is subject to the requirement of submission of reports,

Since the beginning of the development of CRS OECD Global Forum on transparency and information exchange in tax sphere has initiated the process of engaging its members. In December 2014 the EU adopted the text of the Standard was through amendments to the Directive on administrative cooperation.

Both OECD and the Global Forum are playing an active role in ensuring the CRS timely and uniform implementation throughout the world. Permanently organized a series of seminars for government officials in the course of 2015 and has been providing technical assistance in the implementation of standards in a large number of jurisdictions.

In addition, in the August 7, 2015 the OECD published three new reports in order to assist States and financial institutions in the application of global standards for automatic exchange of information: Model Protocol to the Agreement on exchange of information[20], based on which the state can expand the exchange of financial information (by the introduction of automatic or spontaneous exchange); Updating the program of voluntary disclosure of offshore aimed at giving unscrupulous taxpayers opportunity to voluntarily report on the use of offshore schemes prior to the global application of the automatic exchange of information[21], and (perhaps most importantly) "Guidelines on the application of the general accounting standards and automated information exchange" (the Guide) which is a guide to the practice of CRS for both governments and for government agencies and financial institutions[22]. It includes a comparative analysis of the CRS and FATCA, as well as a regularly updated list of frequently asked questions. Figure 2 shows a diagram of an automatic exchange of information in accordance with the Standard.

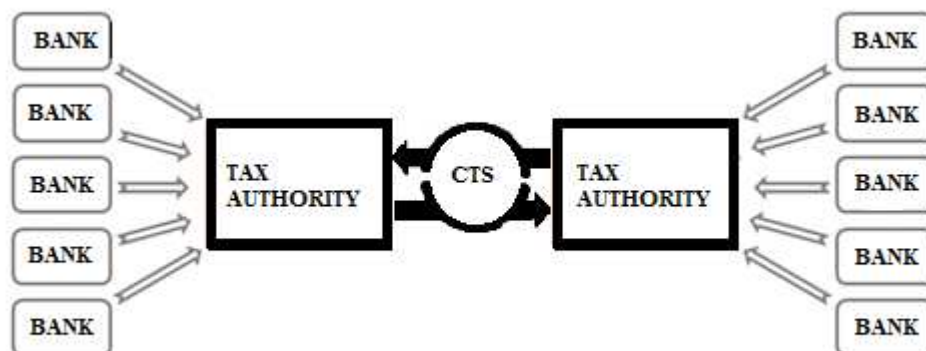


Figure 2 - Scheme of automatic information exchange mechanism

The bottom line is that financial institutions report information to the tax authorities of the State in which they are located. The information includes details of financial assets that these financial institutions hold, on behalf of taxpayers who are resident in jurisdictions with which the tax authorities of that State shall exchange information. In turn, the direct exchange is carried out on the level of the tax authorities. This is consistent with the approach adopted in the framework of Model 1 intergovernmental agreements pursuant to FATCA requirements.

This process requires the rules on the collection and reporting of information by financial institutions; technical and administrative capacity to obtain information and sharing; legal instruments comprising an exchange of information between jurisdictions; as well as measures to guarantee the highest standards of privacy and data protection.

Standard automatic exchange of information consists of the following elements[22]:

- 1 Total Reporting Standards, which contains requirements for financial institutions to conduct due diligence for the acquisition and transmission of information;
- 2 Model Agreement by the competent authority that binds CRS with the legal basis for the exchange of information, identifying information to be exchanged;
- 3 Comments which illustrate and interpret the CAA CRS;
- 4 Guide technical solutions including XML schema to be used for exchanging information and standards regarding data confidentiality, data transfer and encryption.

On the application of the Standard Guide has the following structure:

- 1 The first part provides an overview of the steps that should be taken by States to implement the standard: translation with the reporting requirements and due diligence and national legislation; the choice of legal basis for the

automatic exchange of information; creation of the necessary administrative and technical infrastructure; data protection.

2 The second part contains a more detailed discussion of the Standards of Chapter 6 is devoted to the use of CRS to trusts.

3 The third part includes analysis of the differences between government FATCA agreements and standards, and establishes whether the States can adopt a unified approach to both reporting systems.

4 Appendix 1 contains the answers to frequently asked questions regarding the use of CRS received from business and the delegates from the states.

The guide contains information about the rules of this Standard and describes the steps required to implement the Common Accounting Standards.

The first step is to translate the requirements for reporting and due diligence in national legislation

Standard enumerates a set of detailed rules on the conduct of due diligence and reporting to be followed by financial institutions to ensure uniformity in the amount and quality of information exchanged. These rules and are called "Common Reporting Standards" or CRS. For its implementation in a large number of jurisdictions need to make changes to the legislation. The implementation of the requirements of the intergovernmental agreements on FATCA can be held simultaneously with the introduction of additional rights standards.

Of interest is the fact that the standard provides optional approaches to enable States to choose the most appropriate. Most of these complementary approaches (in particular options from 5 to 14) provide greater flexibility for financial institutions and allow them to reduce the costs of making these approaches are attractive for states.

The second step concerns the choice of the legal basis for the automatic exchange of information.

In accordance with standard legal basis for the automatic exchange of information include:

1 Agreement on avoidance of double taxation which contain a standard article 26 of the OECD Model.

2 Multilateral OECD Convention "On mutual administrative assistance in tax matters", Article 6 of which expressly provides for the optional use of automatic exchange of information.

3 Agreement on the exchange of tax information, which provide for the automatic exchange. It is important that the OECD Model Agreement "On the exchange of information in the tax area" does not indicate an automatic exchange, so there should be special provision for its use, for example by incorporating the wording of Article 5A of the OECD Model Protocol. Another example is the regional instruments such as the EU Directive on the automatic exchange of information.

In addition to the legal basis for the exchange of information as a separate agreement between the competent authorities setting out the details as to what information when and how will be exchanged. The standard contains three types of model agreements competent authorities, each of which is suitable to different kind of circumstances (on a reciprocal basis or in the absence thereof, the multilateral or bilateral obligations, etc.)

The development of one of the models CAA October 29, 2014, 51 States had signed a multilateral CAA. MCAA is open for signature by the new states, and therefore the number of States signatories at the time of May 12 2016g.dostiglo 82. Among them are listed, including the Republic of Seychelles, Antigua and Barbuda, British Virgin Islands, Cyprus, Switzerland (legislation on banking secrecy often criticized), and more recently and the Russian Federation. This event was expected, since more of the text of the letter of the Ministry of Finance of 28 December 2015. it was possible to draw a conclusion that Russia's accession to the Multilateral Agreement is still planned, in connection with which "Russian Ministry of Finance in conjunction with concerned agencies will be developed and made the necessary changes to the legislation."

MCAA has been concluded in accordance with Article 6 of the Multilateral OECD "On mutual administrative assistance in tax matters" and, therefore, the Convention provides the most efficient way to a broad exchange of information. MCAA is a framework agreement and cannot be used until not introduced relevant national legislation and does not satisfy the requirements regarding data protection and privacy. Exchange of information begins between the two countries-signatories of MCAA, as soon as they submit a subsequent notification of its desire to start sharing with each other.

The third point is the creation of the necessary administrative and technical infrastructure, as tax administrators need both technical and administrative capabilities to properly manage the information (as when it is received and sent). Conventionally, four main areas can be distinguished in which it is necessary to take appropriate measures.

First of all it is worth noting the collection and transmission of information. In other words, the first element of technical and administrative infrastructure is to feed the financial reporting agencies in tax administration. Particular attention should be paid to the deadline for submission of reports by financial institutions (in accordance with the MCAA it should be in the interval between the end of the calendar year and the end of September of the following year). States will also have to determine the format of the reporting by financial institutions. While the standard does not specify a format for reporting on the part of financial institutions, it is reasonable for the state to use format, sets the standard for the exchange of information (i.e., in accordance with the CRS Scheme) to eliminate unnecessary work for the tax administration reformat information for its suitability to the international exchange. It is likely that the issue will be decided after consultation with financial institutions, including taking into account the maximum efficiency and the universal application of this format to other reporting requirements (both national and international). For example, CRS circuit diagram FATCA virtually identical in terms of structure and content, application XML language. It should

also be a procedure posts by financial institutions of information, for example, through the government portal, which will require the creation of safe channels through encryption and / or physical protection measures.

The following areas may be designated to obtain information for further departure. It is important to understand that before the tax authorities will get data from financial institutions should be ensured safe information storage. Ideally, security management should be in accordance with the standards of best practices, such as the latest ISO27000 series of standards of information security.

Another important aspect is the self administration of information. Interest received from financial institutions data should be processed for subsequent transmission (compilation of all received reports and sorting them according to the state, which carried an automatic exchange). Information should be sent to the State before the end of September of the year following the calendar year in respect of which served reporting. To ensure uniformity and predictability Standard specifies the transmission format information (circuit CRS, CRS schema), which is substantially identical to the scheme used for the exchange of information FATCA.

The standard establishes only minimum requirements for the transmission and encryption and does not prescribe a unique variant. Therefore, the state must in each case reach agreement on effective transmission and encryption methods for secure information exchange. To this end, they have available a sufficient amount of time since the first exchanges of information in accordance with the provisions of the Standard will begin only in 2017. It should be noted that the VCAA signed by a large number of jurisdictions includes a commitment to develop one or more communication techniques including encryption standards in order to increase standardization and reduce complexity and costs.

And finally, last but not least, it is important to obtain information. Of course, the step of obtaining information of other state financial organization must be provided with data security measures similar to those mentioned previously.

The fourth and perhaps one of the most important steps in the light of it

international automatic exchange and related to him the political incidents is data protection.

The confidentiality of information about a taxpayer in the Standard devoted a lot of positions, as it is a cornerstone in the process of exchange of tax information and refers to the three previously mentioned requirements. The legal basis is how national legislation and selected international legal instrument. It is essential that they have been established for the purpose for which it is possible to use the information and sanctions for unlawful disclosure. There should also be procedures regarding personnel (e.g., background checks and training), data protection, conducting regular risk assessments. The CAA has a position according to which the party in violation of the obligations of the guarantee of security of information, the use of CAA in relations between States the data may be suspended.

An equally important aspect of the implementation of the General Standard Reporting requirements can be considered and the verification of compliance with its rules. As previously mentioned financial institutions perform checking accounts using established criteria to identify those information which should be reported to the tax authorities of a foreign state. CRS establishes extensive rules for determining which financial institutions have to carry out these tests, which accounts they should be subjected to any account information should be reported, etc.

1.3 The role of banks in the international exchange of tax and financial information

May 12, 2016 at the OECD Forum on Tax Administration in Beijing FTS of Russia signed a multilateral agreement of the competent authorities of the automatic exchange of information on financial accounts. The first such exchange in Russia is scheduled for September 2018. This measure has been provided "The

main directions of the tax policy of the Russian Federation for 2016 and the planning period of 2017 and 2018".[23]

What does this mean for Russian taxpayers, as well as for non-residents who have accounts in Russia? What information and to what extent will be subject to automatic exchange? Who, how and with whom to share this information? These questions can be found sufficient number of different articles and a discussion on the Internet.[24] However, most of the data sources are considering the impact of the introduction of the project is the international exchange of information in the context of bank account holders, forgetting one of the most important participants in this exchange - Banking.

First of all, we should understand that it is the banks has the responsibility for the collection of information and its subsequent transfer to the Federal Tax Service. This project is entirely new and the practice of, respectively, no. And no courts on violation of or explanations on how to act in any given situation. However, in this difficult situation, uncertainty, banks have to act now, because the regulator is introducing changes in legislation now, and the reality is that the banks really have no idea of the whole mechanism of action. In this case, they can already be fined and deprived of the license after the relevant agreements on the exchange have already been concluded and entered into force.

It is worth noting that the very surface of data transmission scheme does not raise particular issues. As part of an automatic exchange of the competent (usually - tax) authorities participating jurisdictions will:

- receive from financial institutions of the country information on the accounts of individuals and legal entities - residents of other countries - MCAA members;
- annually transmit this information to the competent authorities of these countries;

– to receive from the competent authorities of other countries - participants of MCAA information about the physical and legal persons' accounts - residents of the country. Figure 3 shows a chain of data transmission.

The exchange of information will take place between the competent authorities of the member countries of MCAA (received by them from the "accountable financial institutions" in their countries) each year on an automatic basis in a standardized electronic format.



Figure 3 - Bank Place in the process of exchange of information

"Accountability of financial institutions" are any financial institution's jurisdiction participating in automatic exchange (in the first place - the banks, but also brokers, depositories, insurance and other companies.), with the exception of government agencies, international organizations, central banks, public pension funds and other legal entities, having a low risk of being used for the purpose of tax evasion.

However, banks should pay attention primarily on the differences from the automatic exchange of information exchange upon request, information that was previously used extensively and had a number of gaps that could take advantage of the bank to protect information about their clients under the auspices of bank secrecy. The following table briefly summarizes the main exchange on request Convention approved in 1988 year differences and automatic exchange of information (CRS)[10][19].

Table 1 - Differences between Convention of international exchange of information approved 1988 year and the Automatic exchange of information (CRS)

Categories	Exchange on request	Automatic exchange (CRS)
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	(1988 Convention as amended. 2010 Protocol of the year)	
The volume of information transmitted	At the request of one State to another State provides the required information on the individual (concrete) entities and operations.	Between the competent authorities of the transmitted data is not about individuals, and amounts of information on non-residents, serves financial institutions, exchange of the participating countries.
categories of information	Information to be exchanged in the framework of the Convention - is "any information that is presumed to be important for the administration and enforcement of legislation in relation to the taxes to which the Convention shall apply (paragraph 1 of Article 4).	Closed list of data to be exchanged is defined in section 1 of the Standard CRS and is only limited data on non-resident accounts at the disposal of the banks participating jurisdictions.
Format and frequency of exchange	The information is transmitted in writing in response to a query,	Information is transmitted automatically in a standardized electronic format once a year (following the reporting year)

The exchange of information for a particular calendar year only on the condition can be made between the competent authorities of the countries concerned, if:

- entered into force for MCAA these bodies;
- in their countries, and there is domestic legislation requiring financial institutions to report and accountable for such calendar year in the amount and manner prescribed by the Uniform Reporting Standard (CRS).

By signing the MCAA each state determines the month and year of the start of the exchange of information. The exchange must be made within 9 months after the end of the calendar year for which information is available.

The information to be automatically exchanged includes (f 2 v 2 MCAA.):

- for individuals: name, address, tax identification number, date of birth
- in respect of each account holder;

- for legal entities: name, address, tax identification number - for each legal person - account holder; as well as the name, address, tax identification number, date of birth - against individuals identified as part of due diligence procedures as "controlling persons" of this legal entity;
- account number (or similar in function to the equivalent);
- The name and identification number of the bank's accountability;
- on account of the end of the calendar year the balance of funds (and if the account was closed this year - at the time of closing of the account);[26]

Account of the depot:

(1) The total amount of interest, dividends or other income received in respect of assets invested in such account for a calendar year or other period;

(2) the total received on account of proceeds from the sale or redemption of assets in respect of which the financial institution accountable to the depositary, broker, agent or nominee holder of the account holder;

on deposit accounts - the total amount of interest received on account of the calendar year or other period;

for any other accounts other than those listed in subparagraphs 2, the total sum received by the account holder for the calendar year or other period.

The exchange will be subject to information as a newly opened accounts (from a certain date), as well as on existing accounts (already opened on a certain date). These dates are also indicated by each state in the annex to the MCAA they sign.

Banks transmit information about the accountable accounts to the tax authorities of the country in the calendar year following the year to which the information relates.

Before the start of the automatic exchange of all banks (and other accountability of financial institutions) of the participating countries MCAA will have to implement special procedures due diligence with respect to existing and newly opened accounts of their customers (both individuals and legal entities) in

order to "categorize" them for the purposes of the subsequent data to the tax authorities and to make up for this missing information.

This information will be identified by banks in the first place, based on existing information about them on the client, the resulting bank data received AML / KYC procedures (KYC); and secondly, on the basis of information provided by the client separately claimed.

Immediately, we note that, in speaking of the account holders, the word "entity" standard realizes not only the legal persons (corporations), but also other education, including partnerships, trusts and foundations.

CRS standard outputs from under the automatic exchange of current accounts of legal entities, the aggregate balance of the does not exceed US \$ 250,000 as of December 31 of the respective year. That is, identification, verification and transmission of information concerning such accounts will not be performed.

accountability accounts. That is, the account of which information is to be transmitted, - it accounts held by playing:

one or more "accountable person", that is, natural or legal person - resident of jurisdictions participating in automatic exchange; or

"Passive non-financial organization" (the "passive NFO"), one or more of the controlling entity which is a resident of a participating jurisdiction.

The rules for determining tax residency adopted in each of the participating countries MCAA, can be found on the website of the OECD automatic exchange in the section "Rules governing tax residence".

In this aspect, it is worth noting what the organization is "active" and some "passive" for the exchange of information.

"Passive NFO" - a non-financial organization, it is not "active".

"Active NFO" -This non-financial organization, which is a passive income for the previous calendar year was less than 50%, and the amount of assets that generate passive income or intended for their preparation, made in the same period

of less than 50%.

In addition, the standard provides a number of other features, each (any) of which will also allow the organization to include "active NFO", in particular:

- shares NFO regularly traded on organized securities markets;
- NFO is a government or an international organization, central bank, or organization, which is fully owned by any of the above organizations;
- holding NFO (under certain conditions);
- NFO until conducts activities and has no history of doing business, but invests in assets with the intention of having non-financial activities;
- NFO is in the process of liquidation or reorganization with a view to the continuation or resumption of non-financial activities;
- NFO is financing or hedging transactions with related non-financial organizations, and does not provide financial services to others;
- NFO is a non-profit organization (corresponding to a number of features).

Meaning of "passive income" should be determined on the basis of the legislation of each participating jurisdiction. According to the commentary to section VIII Standard CRS (. P 126), under passive income generally understood part of the total yield, comprising:

- dividends;
- interest;
- income comparable to interest;
- rents and royalties;
- annuities;

excess of income over losses from the sale or exchange of financial assets that generate passive income;

- excess of income over losses from any transactions in financial assets (including futures, forwards, options and similar transactions);

- excess of income over losses from foreign currency transactions;
- net income from "swap" transactions;
- amounts received under contracts of life insurance.

So, the bank must implement the following due diligence procedures (i.e. the collection or updating of information about the client):

At first, determine whether the organization is accountable person. To this end, the bank verifies the available information collected in the framework of AML/KYC procedures, to determine the tax residency of the account holder.

If, according to the available information the holder of the account is tax resident in a participating jurisdiction, then the account will be considered as "accountable" (that is, information about it the bank will have to pass the tax authority of the country), unless the account holder did not declare that he is not accountable to the face, or it will not set the bank on the basis of the information at its disposal, either from public sources.

Secondly, determine whether the organization is a "passive NFO" with one or more controlling entity being accountable entities. To do this:

1 Determine whether the account holder passive NFE. Bank questioned client to establish his status (except in cases where the bank has information that could make a reasonable conclusion that the account holder is an active NFO);

2 Determine the account holder of the controlling persons. To this end, the bank relies on the information received earlier in the AML / KYC procedures;

3 Determine whether the controlling person "accountable." Here, the bank also relies on information received earlier in the AML / KYC procedures, if the rest of the aggregate current account passive NFO does not exceed US \$ 1000000; or specifically questioned account holder or controlling person in order to determine jurisdiction in which such controlling person is a tax resident.

Speaking of "control person", Standard CRS refers to the interpretation of the term "beneficial owner", which is given in the Recommendations of the FATF (Financial Action to combat money-laundering). According to him, the beneficial

owner - a natural person (s) who ultimately owns or controls a client of his, and / or the natural person on whose behalf a transaction is being conducted.

As a result, if any of the supervisors passive NFO is "accountable person", then the exchange will be subject to not only the information about the client's account, but also about controlling it (the client) face.

To determine the membership of a bank customer's participating jurisdictions based on the information available to it sets the tax residency of the client.

The standard divides the existing accounts of individuals to:

- "Account with a low cost," the aggregate balance on which as at 31 December of the reporting year does not exceed US \$ 1,000,000; and
- "Account of high value," the aggregate balance on exceeding US \$ 1000000 as at 31 December of the reporting year, or by 31 December of any year thereafter. Gathering information about this category of accounts (and, correspondingly, the exchange of information on them) will be carried out on a priority basis.

It is important to note that the automatic exchange of information will be subject to all the individual accounts in the banks of the participating countries, as standard does not prescribe for such accounts a threshold balance amounts not exceeding the expense of which would be pissed out of automatic exchange.

Special attention should be paid to the terms due diligence for the "first stage" of the participating countries.

First of all, countries, banks embarking on automatic exchange in 2017 (for example, Cyprus, Latvia, Estonia), should:

to exercise due diligence for the purpose of exchange (in particular, to establish a tax customer residency, active / passive nature of the legal entity, and others.) for new clients (individuals and legal entities - the bank's country residents) before establishing with them a business relationship - since January 1, 2016 .;

complete due diligence of existing customers - individuals (non-residents' bank in the country), the balance of accounts which exceed US \$ 1,000,000, - until 31 December 2016;

complete due diligence of all existing clients (individuals and legal entities - non-residents' bank in the country) - up to December 31, 2017

Banks of the countries embarking on the automatic exchange in 2018 (for example, Russia, Switzerland, Austria), will be required to:

to exercise due diligence for the purpose of exchange (in particular, to establish tax residency, active / passive nature of the legal entity, and others.) for new clients (individuals and legal entities - non-residents' bank in the country) - from 1 January 2017 .;

complete due diligence of existing customers - individuals (non-residents' bank in the country), the balance of accounts which exceed US \$ 1,000,000, - until 31 December 2017 .;

complete due diligence of all existing clients (individuals and legal entities - non-residents' bank in the country) - up to December 31, 2018

So, in order sent to an automatic exchange of information:

- about individuals (account holders) who are residents of jurisdictions participating in the MCAA, - the tax authorities of the jurisdiction;

- legal entities (account holders) who are both active and passive non-financial organizations - the tax authorities of the country of residence of these entities are (if this country is involved in the MCAA);

- about controlling persons (beneficial owners) passive NFO (account holders) if the supervisors are residents of countries participating in the MCAA, - the tax authorities of the country of residence of those controlling persons. Generalized information presented in Table 2.

Example 1.A company registered in the British Virgin Islands, has a bank account in Cyprus. Both jurisdictions are involved in the MCAA and begin sharing in 2017. In this case, the Cypriot bank sends the Cyprus tax authority information

about the company account (account holder), followed by Cyprus tax authority sends the information to the authorized body BVI. If a company is not a "passive NFO" beneficiaries - residents of jurisdictions participating in the MCAA, the process ends.

Table 2 - The information transmitted in the framework of the automatic exchange of information

The account holder in the country's banks participating in the MCAA	What information is passed to the tax authority of the country of the bank	In some jurisdictions, the tax authority of the country of the bank sends information
Individual (Resident participating jurisdiction)	On account of the physical person	In the jurisdiction of which is a tax resident of a given individual
"Active" company (Resident participating jurisdiction)	About the company account	The jurisdiction of the tax residence of the Company
"Passive" company (Resident participating jurisdiction) without beneficiaries - residents participating jurisdictions		
"Passive" company (Resident participating jurisdiction) with beneficiaries - residents participating jurisdictions	About the company account	The jurisdiction of the tax residence of the Company
	1) On account of the company; 2) About the beneficiary owner of the company	The jurisdiction of the tax residence of the beneficial owner

Example 2. If there is the same situation (See Example 1), but the bank has classified the company as a "passive NFO" and found that its beneficiary is a natural person - resident involved in the MCAA jurisdiction, for example, Russia. In this case, the Cypriot bank transfers Cyprus tax authorities' information not only about the company - the holder of the account, but also its beneficiary. The tax authority, in turn, sends a BVI company data account, and in Russia (the jurisdiction of tax residence of the beneficiary) - the data on the company's account, as well as information about its beneficiary (taking into account that with regard to Russia, it will only be possible since September 2018).

Auto Exchange is not total and comprehensive transmission of information "everything and everyone." The volume of information to be exchanged, strictly

defined standard CRS and limited variety of "filters":

- Have engaged in exchange of the country, and there are countries that have not yet taken upon itself such obligations;
- Participating countries to enter into practical phase of the exchange are not at the same time;
- Information to be transmitted is limited to only that information held by banks (or other financial institutions, leading customer accounts). Information held by other entities (. For example, the registration authorities of legal entities, notaries, tax authorities are outside the scope of the framework for the automatic exchange of financial intelligence agencies, law enforcement, etc.) - under the automatic exchange does not fall;
- For legal entities accounts set strap 250 000 US dollars. If the account balance is below this threshold, the information on this account is not subject to the exchange;
- Collection (actualization) and the transfer is not subject to any information, but only the setting of standards CRS closed list information about accounts, customers and controlling persons;
- Data on the controlling persons (beneficiaries) are not transmitted by all accounts, but only in those whose owners are so-called "passive" companies whose beneficiaries are residents of the countries participating in the exchange. Such a "categorization" for the purposes of the exchange will be carried out by banks through standard AML / KYC procedures adjusted to the new requirements and additional CRS survey of customers;
- Possible (and inevitable) difficulties associated with the implementation of CRS standards and legislation of individual countries. Late payment of changes in national laws, the adoption of by-laws and clarification of regulators and other legal and technical obstacles may hinder the practical implementation of the exchange in the stated period and across all participating jurisdictions.

However, the automatic exchange can be one of the alternative sources of information by which the tax authorities of the Russian Federation will be able to establish the fact of the tax resident of Russia undeclared foreign bank accounts or undeclared controlled foreign companies. And then, and another is an offense and, under certain circumstances, may lead to tax measures (Art. 129.5, 129.6 of the Tax Code), administrative (Art. 15.25 of the Administrative Code) or criminal (Art. 198, 199 of the Criminal Code) responsibility. Russia's accession to the automatic exchange of repeatedly was declared as one of the key ways to increase the efficiency of tax administration KMC.

As conceived by the MCAA and CRS developers, in particular run the automatic exchange mechanism should buy virtually global (the number of acceding countries) character. Outside the system, in the end, can only remain the most "marginal" or insignificant areas unsuitable for international business and storage savings, so that the transfer of jurisdiction to such tax residency or bank accounts will be devoid of any meaning. On the contrary, participation in the automatic exchange will be one of the signs of a positive impact on the business image of a particular jurisdiction.

CONCLUSION

International tax planning in one form or another existed for almost the entire history of world economic relations. Many nations and countries in their desire to get as much profit from increased international trade have created in their territories favorable tax environment for economic activity. This subsequently led to this concept as the erosion of the tax base. To eliminate this effect, countries all over the world came together. The Organization for Economic Cooperation and Development has succeeded in this more than others. So there was an international automatic exchange of financial and tax information. With its advent and adoption of international legal acts for Russian banks as of cross-border tax intermediaries, responsible for collecting and transmitting the information of participants in this mechanism, there was a question about the organization of this process. Since the mechanism of automatic exchange of information is young and the process of its formation has only begun consideration of the relevance of the work of this mechanism and its accompanying regulations is of great value for both individual banks and the OECD on a global scale.

Analysis of the current status of the automatic exchange of information allows us to say that it requires significant improvement. For the banks, as the cross-border exchange of tax intermediaries subsequent years will be particularly difficult, because at the moment the mechanism did not worked and therefore banks will have to learn from their mistakes. Isolation steps of the process of international exchange of information can help in the structuring of legal documents, to operate them in the process of information exchange. The proposed recommendations may be used to improve the process of international exchange of information and indicators of erosion of the tax base can be used by banks to assess the feasibility of further participation in the exchange information.

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Federal State Autonomous Educational Institution
of Higher Education
"Siberian Federal University"

School of Economics, Management and Environmental Studies
Basic Department of Sberbank of Russia

Confirmed by
the Head of the Basic Department
of Sberbank of Russia
Igor V. Tonkoshkurov
Date 14 06 2018

MASTER'S DEGREE THESIS
COMMERCIAL BANK AS CROSS-BORDER TAX INTERMEDIARIES
OF THE INTERNATIONAL EXCHANGE OF INFORMATION

38.04.08 Finance and Credit
Academic Course Code and Title

38.09.08.02 Banking
Master's Degree Program Code and Title

Academic supervisor [Signature] 11.06.18 ass. prof. can. of ec. Julia Chumazova
signature, date position, degree Name, surname

Graduating student [Signature] 9.06.2018 Yulia Trifonova
signature, date Name, surname

Reviewer [Signature] 13.06.18 Managing the operational office Tulupova
signature, date position, degree Name, surname
"Krasnoyarsk" Bank PJSC "Levoberezhny" Svetlana
Name, surname Anatolievna

Krasnoyarsk, 2018