

ACADEMY & FINANCE

HILTON BEIRUT METROPOLITAN PALACE

March 09, 2017

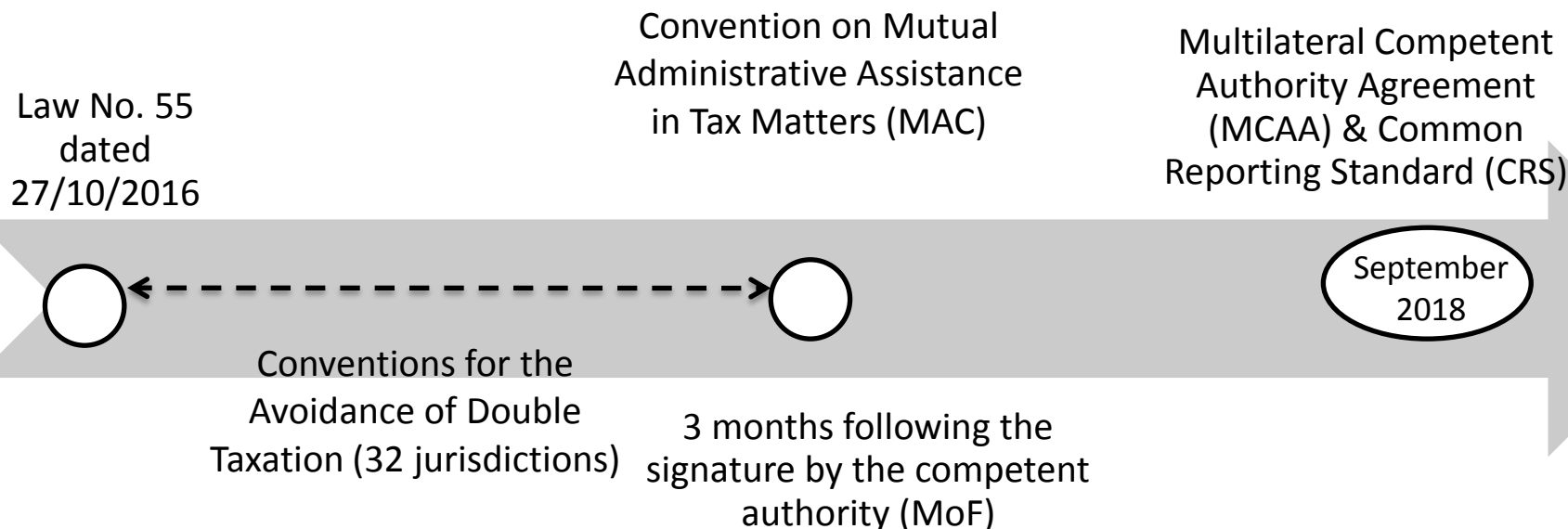
Le Liban et l'échange automatique d'informations fiscales

Un tournant historique, un défi pratique

“Practical Implementation & Implication”

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I – ROADMAP FOR THE IMPLEMENTATION :



Peer Review

Phase 1

- Legal framework for the exchange of information on demand and availability of access to said information.

Phase 2

- Assessment of the implementation of the said legal framework.

Phase 3

- Implementation of Automatic and Mutual Exchange of information between Tax authorities that are members to the Convention in addition to the confidentiality measures with the appropriate legal framework.

LEGAL FRAMEWORK

Law No. 42 dated 24/11/2015	Declaring the Cross-Border Transportation of Financial Instruments (ceiling of 15,000 USD).
Law No. 43 dated 24/11/2015	The Exchange of Tax Information <i>(cancelled and replaced by the Law No. 55 dated 27/10/2016).</i>
Law No. 44 dated 24/11/2015	Fighting Money Laundering and Terrorist Financing.
Decree No. 3065 dated 12/03/2016	Inventory of Movable Historical Monuments.

LEGAL FRAMEWORK

Law No. 55 dated 27/10/2016	Implementation of the procedure for the Exchange of Tax Information + Adoption and Authorization of MAC & MCAA.
Law No. 60 dated 27/10/2016	Definition of the Resident and amendment of provisions of Tax Procedure Law for more transparency and tax compliance.
Law No. 74 dated 27/10/2016	The Fiscal Obligations of the Trustees.
Law No. 75 dated 27/10/2016	Cancellation of Bearer Shares and Promissory Shares.

II- THE RESIDENCE CRITERION:

A- Background:

- A cornerstone for the Global Forum automatic exchange of information and transparency rules.

Residential Taxation is the most common taxation system in the world	(177 countries out of 244).
Residents taxed on worldwide (local and foreign) income	Non-residents taxed on local income.

- Unlimited tax obligation with deductions or tax credits for foreign paid taxes on same revenues.

B- Lebanese Taxation System

The current Tax regime is dependent on schedule taxes (*impôts cédulaires*) with separate and independent rules. Taxation's principles vary between each kind of taxes.

<u>Lebanon resident</u>	<u>Individual</u>
Active income (salary, commercial industrial and professional activities)	Lebanon Source only
Passive income (revenues from foreign securities and debentures)	Worldwide
Income from properties (real estates)	Lebanon Source only
Inheritance & Gifts (donation)	Worldwide for residents & Lebanon Source for non-residents

Definition:

Law N° 60/2016 amending the Code of Fiscal Procedures

Resident legal entities, if	Resident natural persons, if
Set up or registered in Lebanon	Business activities in Lebanon; or
Head office localized in Lebanon	Permanent home constituting an habitual abode for the person or his family; or
	Spending in Lebanon more than 183 days within a period of 12 months (does not include transit or stay for medical purposes).

C- Tax Treaties to mitigate :

- Prevent double taxation or non-taxation.
- Set in accordance with the model conventions of OECD.
- DTT's provisions prevail over the internal laws.
- **“Tie breaker”** clauses for resolving conflicts between residency rules of both Contracting States → alternative criteria:
 - The permanent home; or
 - The center of vital interests => Where personal and economic links of the taxpayer are closer; or
 - The habitual abode; or
 - The nationality.
- **“Home”** means the place where the person or his family (spouse and children) usually live.
- **“Center of vital economic interests”** means the country where are implemented major investments or is located the center of professional activities or major income is generated.
- **“Permanent abode”** means a country (State) where the person spends more than 183 days within one year.

III- Multilateral Tax Treaties (Global Forum):

A- Convention on Mutual Administrative Assistance in Tax Matters (MAC) → EOIR

- Exchange of information in tax matters upon request to the widest possible extent.
- Operates essentially as a giant multilateral TIEA.

B- Multilateral Competent Authority Agreement (MCAA) → AEOI

→ framework agreement designed to implement the automatic common reporting standard (CRS) on a multilateral basis → fully reciprocal.

- To become party to the MCAA, jurisdiction must also be party to the MAC.
- Need to ensure confidentiality and the proper use of information exchanged.
- Activated when both counterparties file Notifications with the OECD Secretariat and include each others on their respective list.
- Objective → expose the financial assets of non-residents so that they may be subject to tax by home revenue authorities.

Connecting to FATCA

**FATCA
Ultimately
GATCA ?**

**FFI Burden
(2 standards)**

**CRS Schema
virtually identical to
FATCA Schema**

**Savings on significant additional
investment = leverage on
investments already made**

**Global Tax
Information
Exchange**



Due Diligence

GATCA stricter

Withholding

No GATCA withholdings but enforced penalties

Reciprocity

GATCA fully reciprocal

IV- Practical Implementation of the CRS Standard (Reporting Institutions – Reportable Persons- Reportable Accounts).

A- The four core requirements to implement the CRS Standard:

Requirement 1:

Translating the reporting and due diligence rules into domestic law, including rules to ensure their effective implementation

Requirement 2:

Selecting a legal basis for the automatic exchange of information

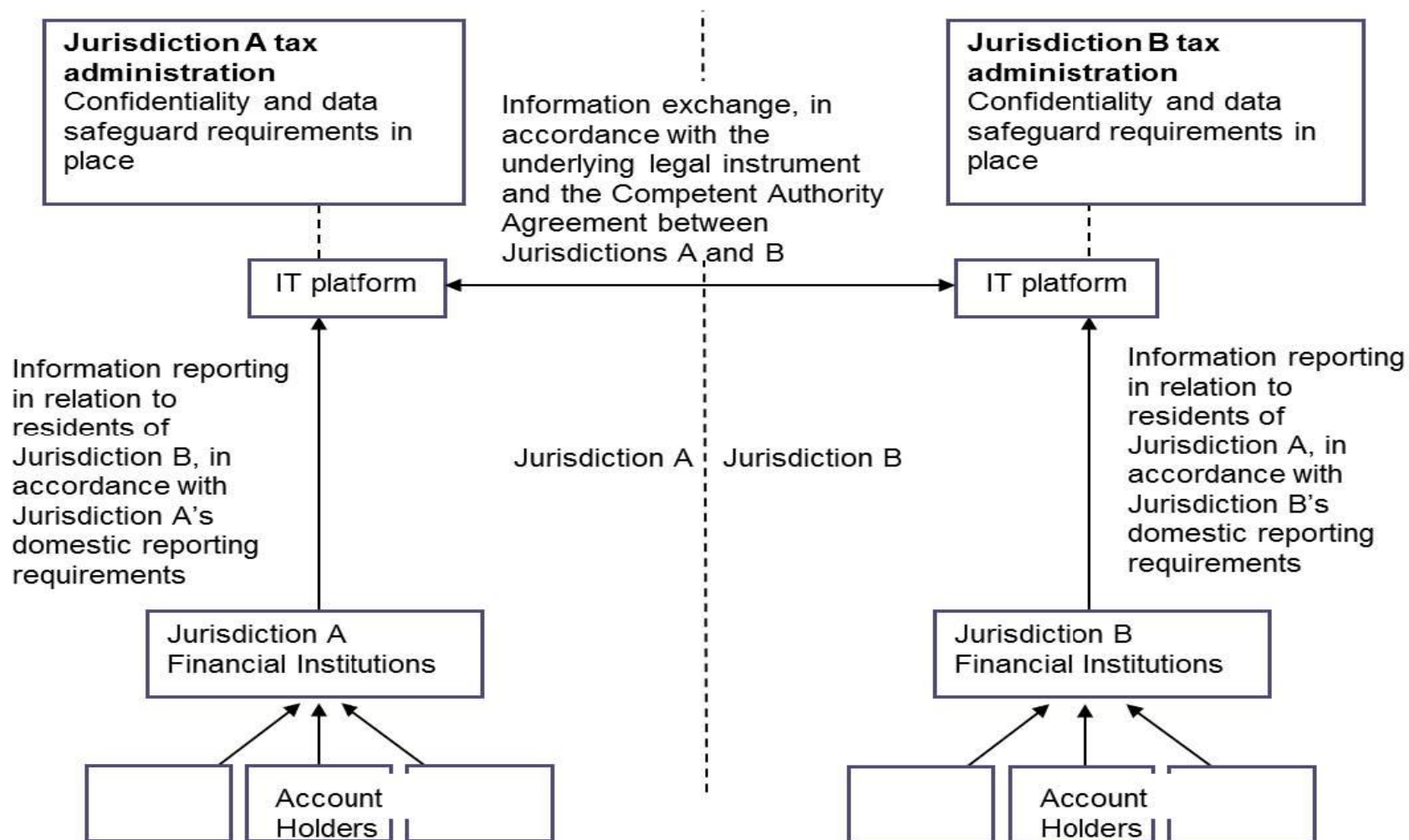
Requirement 3:

Putting in place IT and administrative infrastructure and resources

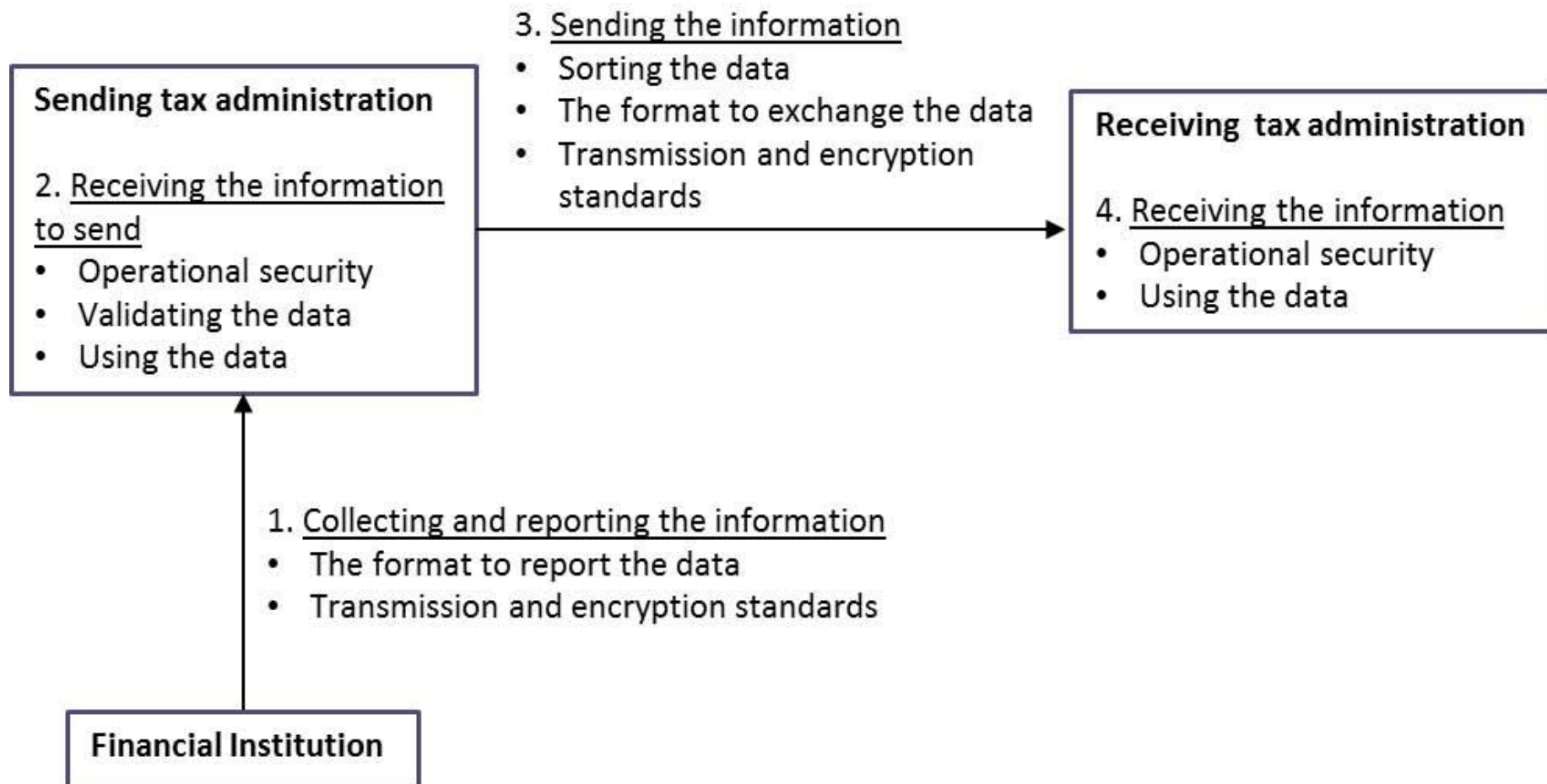
Requirement 4:

Protecting confidentiality and safeguarding data

B- The reciprocal automatic exchange framework¹



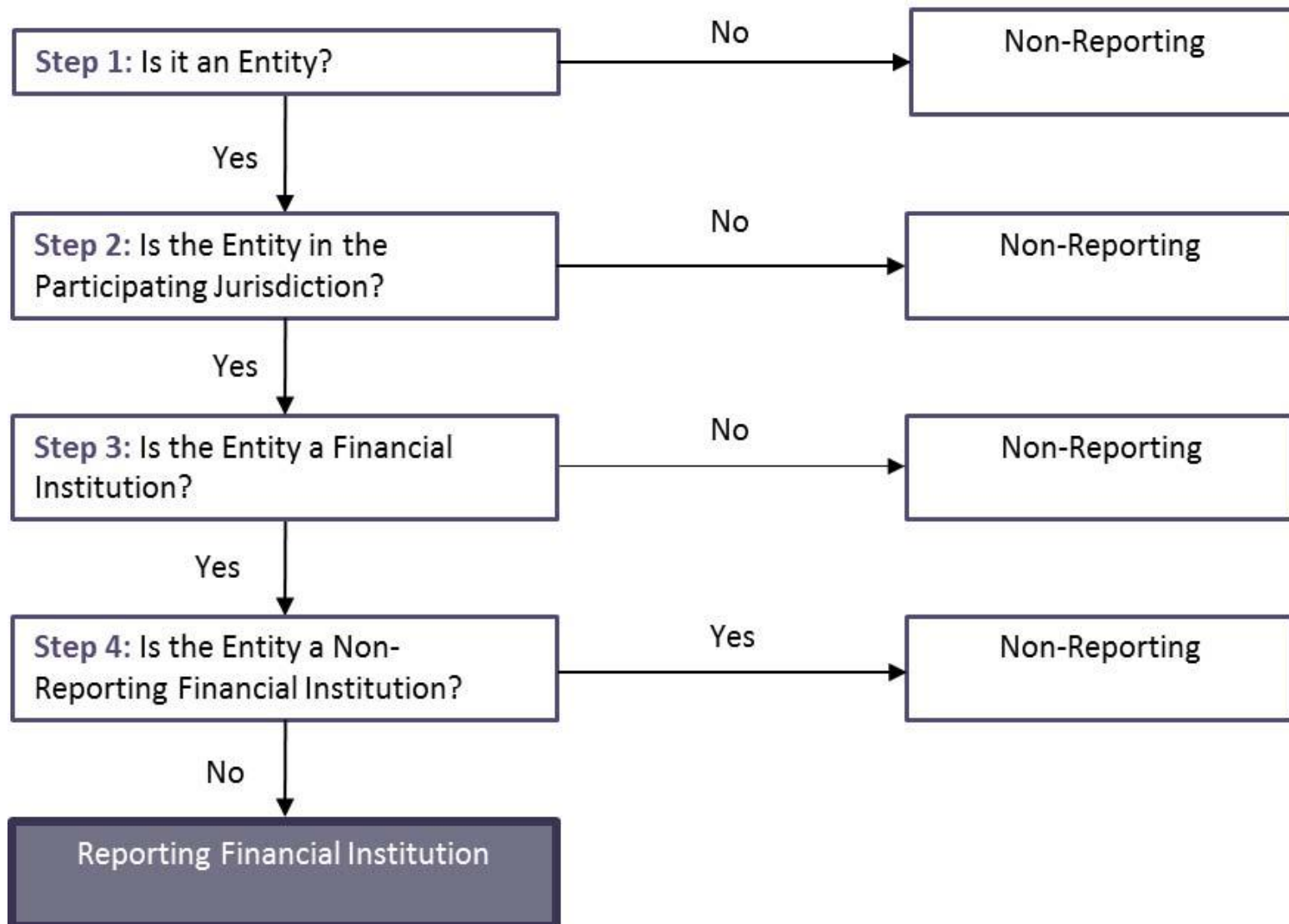
C- The steps to collect, report and send the Information:

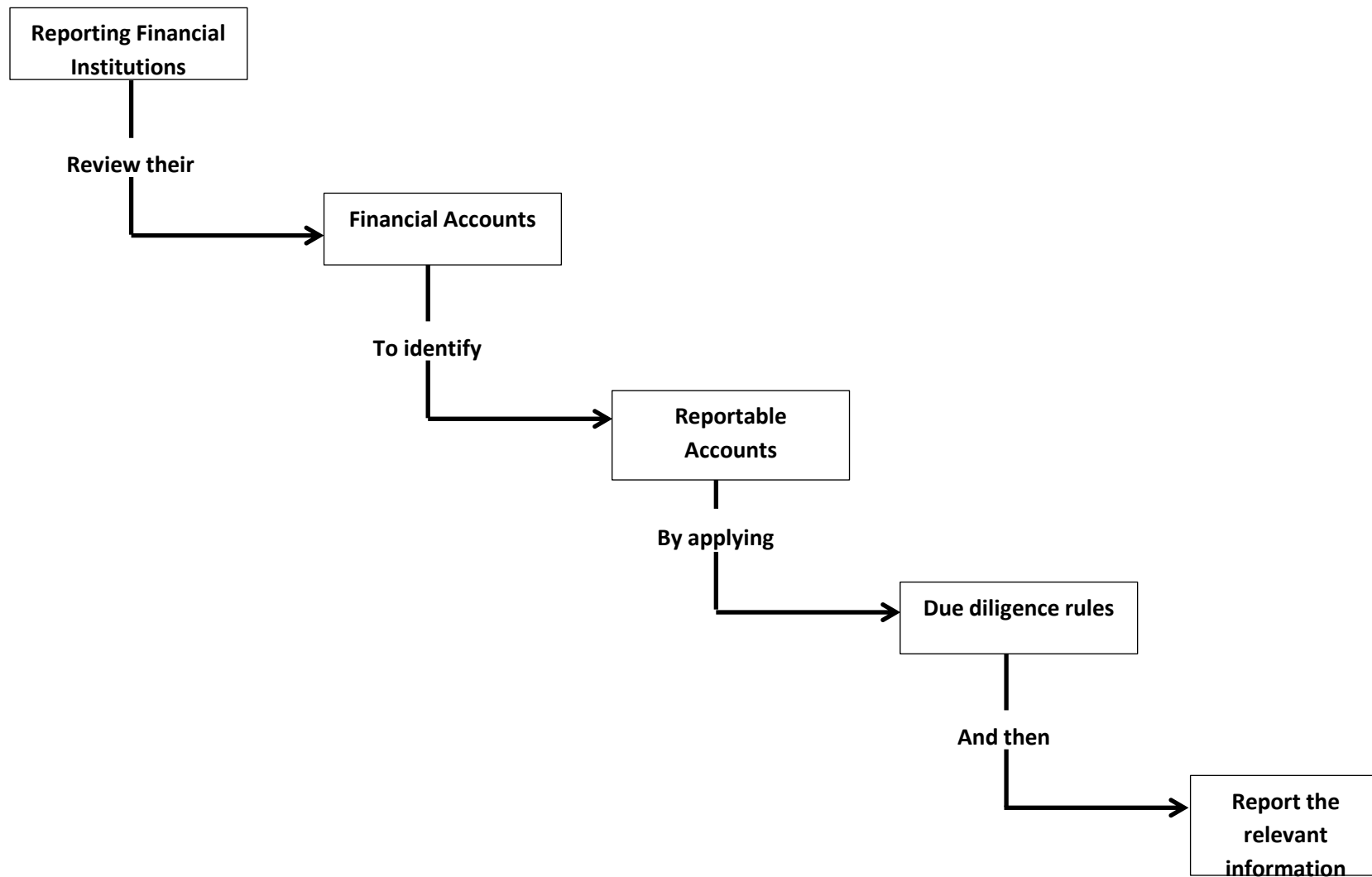


D- Determining where an Entity is located under the Standard

Entity	Location under the Standard
Tax resident Entities	Residence for tax purposes
Non-tax resident Entities, except trusts	Place where it is incorporated under the laws of, place of management or where it is subject to financial supervision
Multiple resident Entities, except trusts	Place where the accounts are maintained
Trusts	Where one or more trustees are resident, unless the required information is being reported elsewhere because the trust is treated as tax resident there.

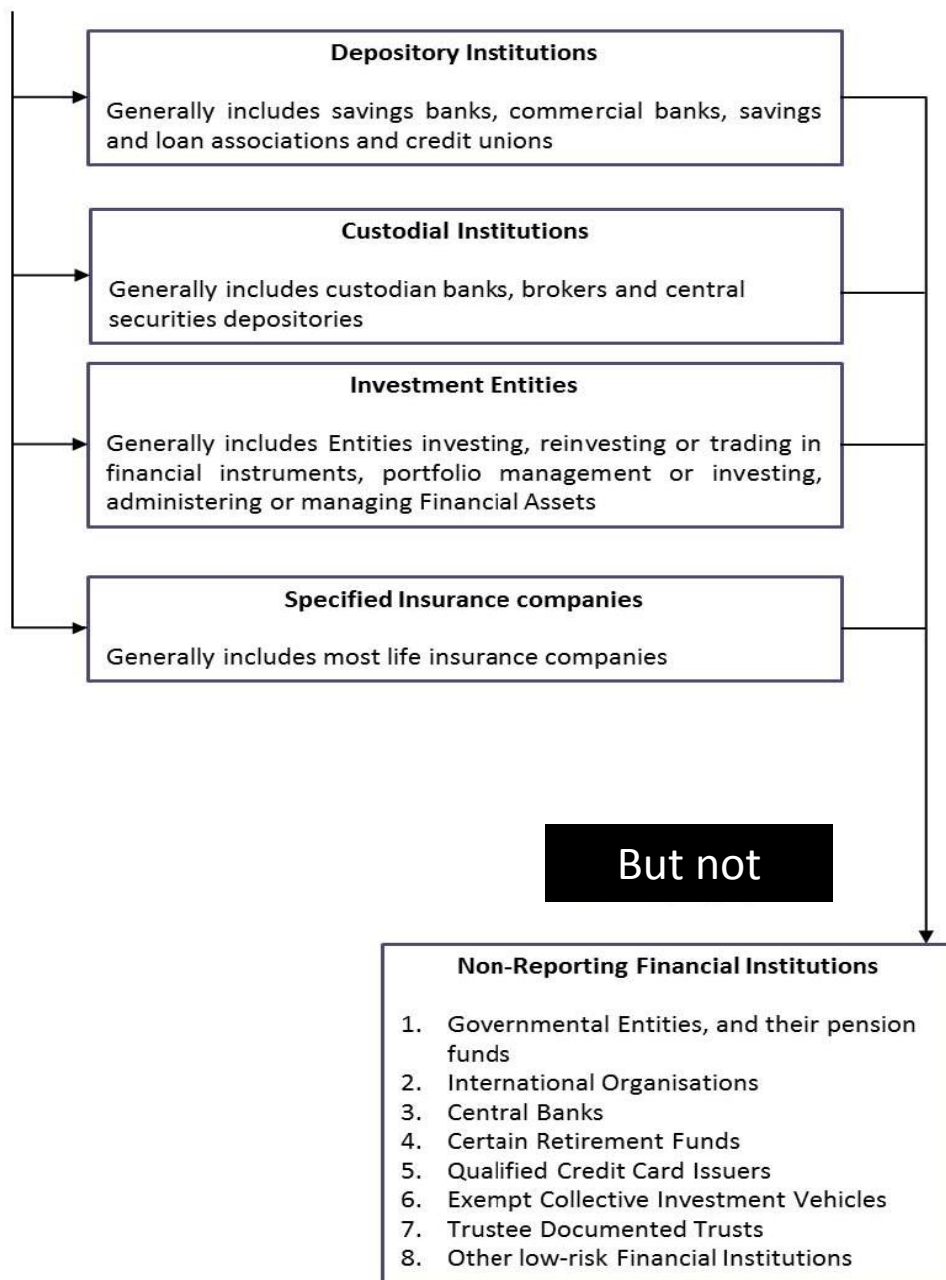
E- Identifying the Reporting Financial Institution:





F- Financial Institutions that need to report

Reporting financial institution are defined as :

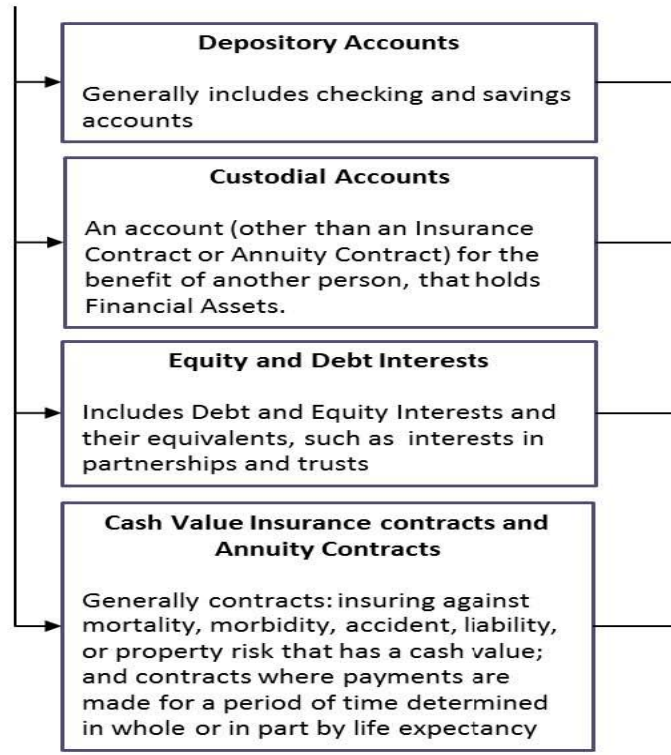


G- Who maintains the Financial Accounts:

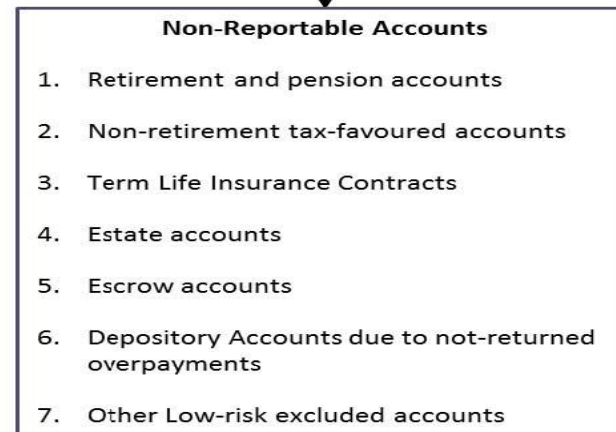
Accounts	Which Financial Institution is generally considered to maintain them
Depository Accounts	The Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution).
Custodial Accounts	The Financial Institution that holds custody over the assets in the account.
Equity and debt interest in certain Investment Entities	The equity or debt interest in a Financial Institution is maintained by that Financial Institution.
Cash Value Insurance Contracts	The Financial Institution that is obligated to make payments with respect to the contract.
Annuity Contracts	The Financial Institution that is obligated to make payments with respect to the contract

H- Accounts which are Financial Accounts:

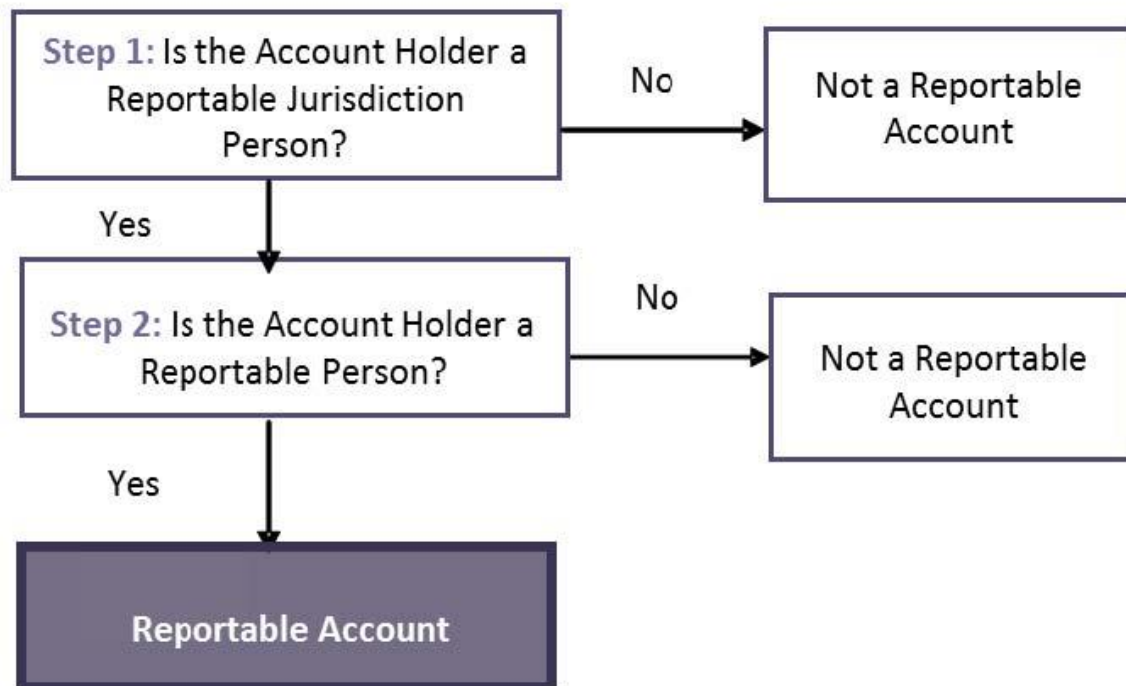
Financial Accounts that need to be reviewed:



But not:

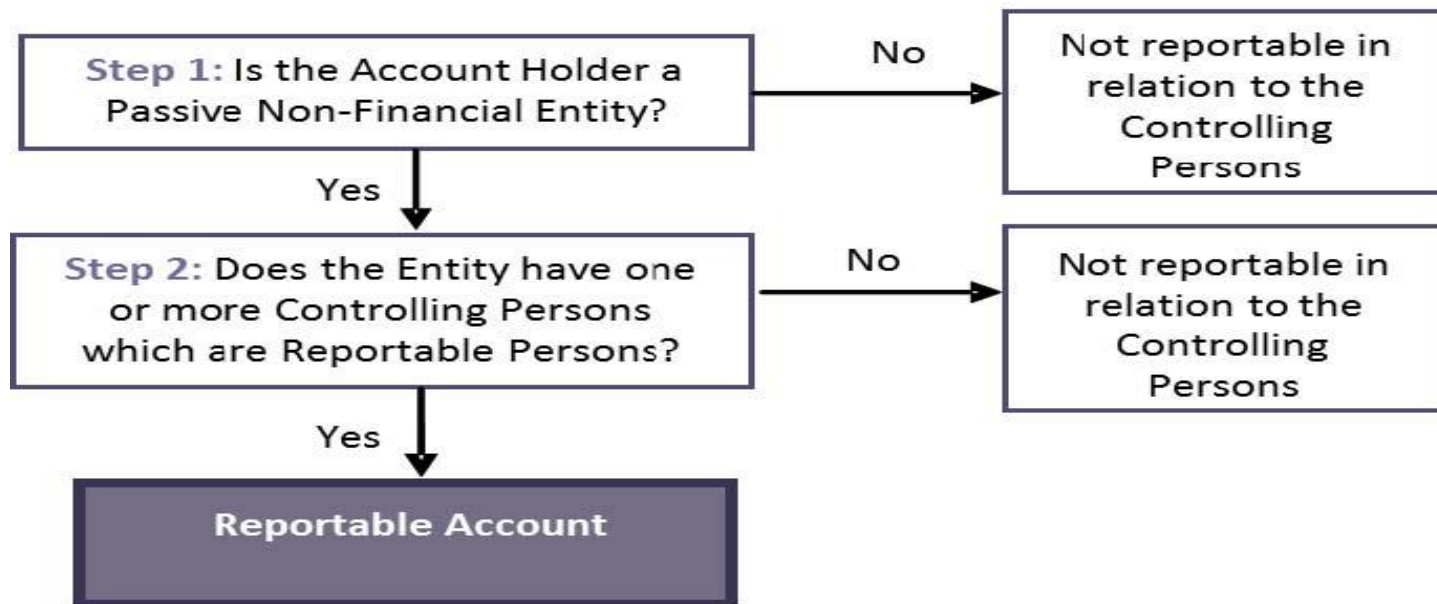


I- Reportable account by virtue of the Account Holder (Test 1):



J-Reportable account by virtue of the Controlling Persons (Test 2):

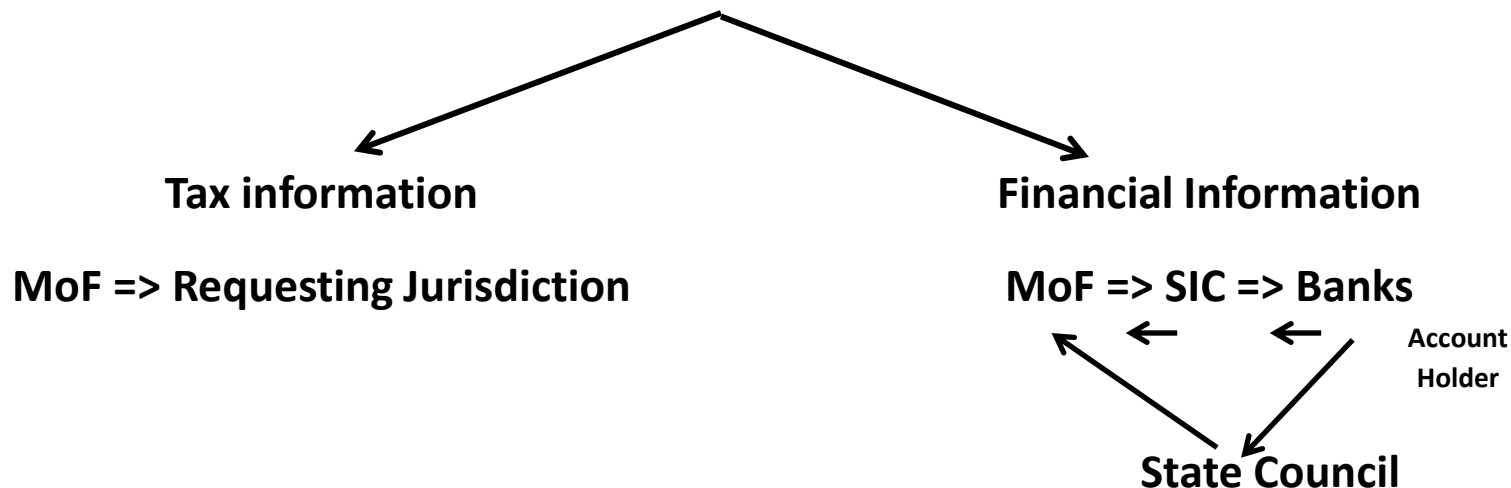
“Look – Through” Process



V- TAX EXPOSURE:

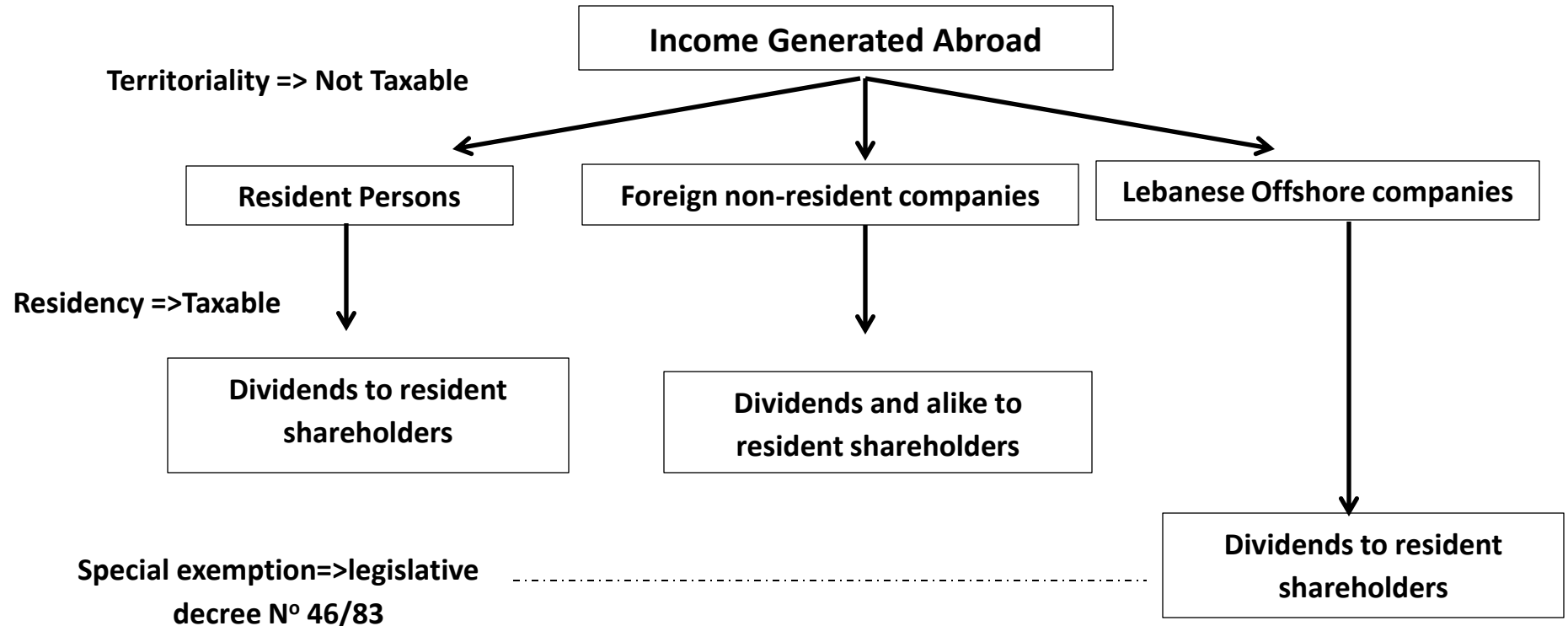
A- Non-Resident's Exposure:

- Waiver of Bank Secrecy under both MAC and MCAA.
- Procedure under MAC => Law N° 55 dated October 27, 2016.

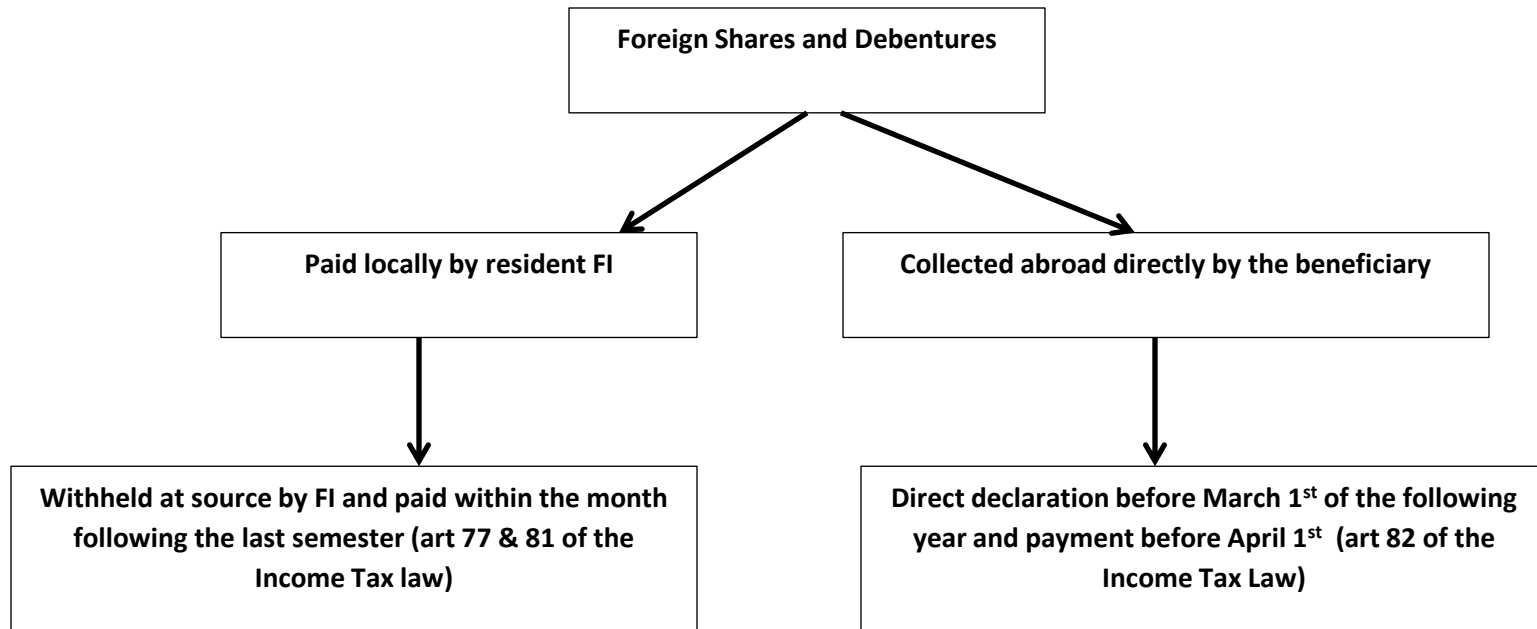


- Under MCAA (September 2018?) => CRS => Backdated to January 1st, 2017
- Self-certification and Documentary Evidence v/s CRS Indicia Search.

B – Lebanese and/or Residents tax exposure on income derived from foreign movable assets:



Mode of payment



Risks

