

## **INTERNATIONAL PRIVATE CLIENT**

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# **USA and the New Era of Financial Transparency (CRS/FATCA)**

Privacy and Security Protections of  
the U.S. Holding Structures and the  
U.S. Hybrid Trusts

# ABOUT US

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DILENDORF  
KHURDAYAN

## Real Estate and International Private Client

Dilendorf Khurdayan is a private client law firm based in New York that focuses on working with foreign clients that invest in the U.S., expand businesses operations into U.S., move family to the U.S., or a lot of times a combination of the above.

Among our clients, high-net-worth individuals, family offices, private funds.

We guide clients through everything U.S.-related – be it a one-time investment in real estate project, restructuring of assets and holdings with the use of beneficial U.S. entities, expansion of business operations in the U.S. or pre-immigration tax planning.

**[DILENDORF.COM](https://www.dilendorf.com)**

# OUR TOPICS FOR TODAY

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- **Unites States** – leading jurisdiction for **offshore** investments
- **Privacy** and **Security** protections of the U.S. holding structures (Hybrid Trusts)

# ATTENTION!

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- This presentation is intended for **fully compliant** people
- Tax evasion is **illegal**
- Assisting in tax evasion is **illegal**
- This presentation is about fundamental rights of **privacy** and **security**

# OUR TOPICS FOR TODAY

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# RACE TO THE U.S.

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- **2014** - Rothschild & Co. established a trust company in Reno, Nevada and has been shifting client's accounts out of places such as the Cayman Islands and Switzerland to the U.S. (reported by Bloomberg in 2016)
- **2014** - Trident, a Swiss trust company, set up an office in Sioux Falls, South Dakota, moving dozens of accounts out of traditional offshore jurisdictions (reported by Financial Times in 2016)



Source: <https://www.ft.com/content/cc46c644-12dd-11e6-839f-2922947098f0>

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# WHY 2014?

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## Common Reporting Standard

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From Wikipedia, the free encyclopedia

The **Common Reporting Standard** (CRS) is an information standard for the automatic exchange of tax and financial information on a global level, which the Organisation for Economic Co-operation and Development (OECD) developed in 2014.

# CRS

# NEW ERA OF FINANCIAL TRANSPARENCY

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## ➤ **CRS (or GATCA)**

2014, the Organization for Economic Cooperation and Development introduced the CRS

## ➤ **FATCA**

2010, Foreign Account Tax Compliance Act (FATCA)



# GATCA, CRS, OECD, FATCA, ASPIRIN, .....PLEASE!

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# CRS OVERVIEW

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- **102** Countries committed
  - First reporting in 2017, second reporting in 2018 (**Russia**)
  - Financial Institutions (“**FIs**”) required to report:
    - Banks, custodians, brokers, certain investment vehicles, trusts and certain insurance companies
  - Reportable income
    - Account balances and sales proceeds from financial assets
    - All types of investment income
  - Reportable accounts
    - Accounts held by individuals and entities (including trusts), with the **requirement to look thru** the entity to identify beneficial owners
  - **U.S. IS NOT A SIGNATORY**
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# U.S. IS NOT A SIGNATORY TO CRS

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How did U.S. manage to avoid signing into CRS?

**FATCA**

# FATCA – WHAT YOU NEED TO KNOW

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- Requires foreign financial institutions (“**FFIs**”) to report information with respect to their U.S. persons’ accounts to the U.S. Internal Revenue Service (“**IRS**”)
- FFIs are required to look thru for beneficial owners
- Is FATCA Reciprocal? **NOT SO MUCH**

# FATCA – RECIPROCITY

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- Info exchange pursuant to Intergovernmental Agreements (**IGAs**) between U.S. and partner countries
  - 3 types of IGAs
    - MODEL 1 **reciprocal**
    - MODEL 2 **non-reciprocal** (Cayman, BVI, Bahamas, etc.)
    - “reached agreement in substance” **non-reciprocal**
  - Even MODEL 1 – **no requirement for the U.S. to look thru the entity** (U.S./non-U.S.) for beneficial owners
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# FATCA – U.S. reciprocal „reporting“

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- So what information does U.S. provide under FATCA reciprocal IGA? **NOT VERY MUCH**
  
  - U.S. will **NOT** give **reciprocal** partners info:
    - Depository accounts held by entities (even if the entity is in reciprocal jurisdiction)
    - Non-cash accounts, whether individual or by entity, unless the accounts earn U.S.-source income
    - Controlling persons of any entities
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# Avoiding FATCA „disclosures“

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➤ **EASY** → Move banking to the U.S. and:

## **For Cash Accounts:**

- Hold the account through an entity

## **For Non-Cash Accounts:**

- Block the account for assets that produce U.S.-source income (e.g. US securities), or
- If one wants to invest in U.S. securities—hold the account through an entity

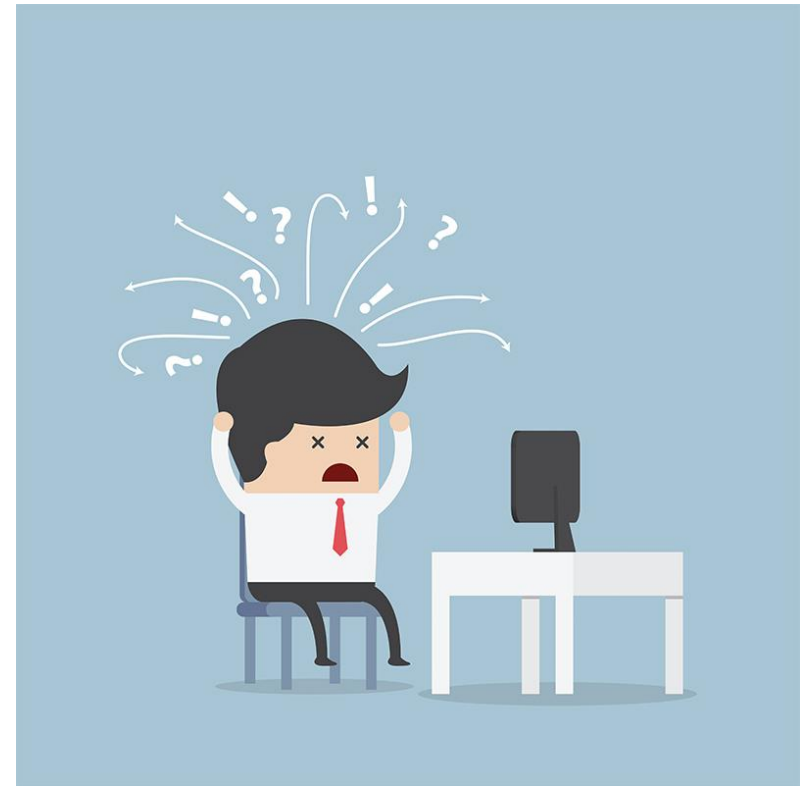
# NEW ERA OF FINANCIAL TRANSPARENCY

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## USA



## EVERYWHERE ELSE





# MOVING BANK ACCOUNT TO THE U.S.

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**NO CRS, NO FATCA, NO WORRIES**

**!WORD OF CAUTION!**

If the assets are held through a structure that is resident in participating jurisdiction and the structure is treated as FI or Non Financial Entity (“**NFE**”) under CRS — the structure itself might be reporting under CRS even though U.S. bank will not be reporting anything

**SOLUTION?**

# NO CRS, NO FATCA, NO WORRIES

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# MOVE THE HOLDING STRUCTURE TO THE U.S.

# OUR TOPICS FOR TODAY

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- **Unites States** – leading jurisdiction for offshore investments
- **Privacy and Security** protections of the U.S. holding structures (Hybrid Trusts)

# ADVANTAGES OF U.S. STRUCTURES

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## ➤ **Trusts in the U.S.**

- Safest and least intrusive jurisdiction for trusts (no CRS)
- Economic stability and leading banking system
- Strong asset protection laws
- High quality judicial system
- High quality of professional advice and trust administration
- Strong Attorney-Client Privilege
- Flexibility of structures (migration between states and US/non-US)
- Several states very hospitable to trusts (Delaware, Nevada, South Dakota, New Hampshire)

# WHAT ABOUT U.S. TAXES?

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# U.S. TAXATION OF NRAs - OVERVIEW

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- The U.S. taxes **U.S. residents** on **worldwide** income derived from **any** source.
  - Non-residents (“**NRAs**”) are normally taxed only on **U.S. source income**, including income effectively connected to a U.S. trade or business, salary, compensation or U.S. investment income.
  - **NRAs** are only subject to U.S. **transfer taxes** (estate, gift and generation-skipping transfer taxes) on **U.S.-situated assets**.
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# BACK TO TRUSTS

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- Just like individuals – trusts in the U.S. can be residents (**domestic or U.S. trusts**) and NRAs (**foreign trusts**) for U.S. tax purposes .
- **FOR U.S. TAX PURPOSES:** jurisdiction of the trust is **NOT** determined by jurisdiction of the trustee

# TRUST – U.S. vs FOREIGN

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- A trust is considered domestic for U.S. tax purposes **only if**:
    - a U.S. court can exercise primary supervision over its administration (the court test), **and**
    - the U.S. fiduciaries have the authority to control **all** substantial decisions relating to the trust (the control test).
  - Substantial decisions include:
    - Whether and when to distribute income/corpus
    - The selection of a beneficiary
    - Whether to terminate the trust
    - Whether to remove, add or replace a trustee
    - Investment decisions
    - And other decisions outlined by U.S. Treasury
  - If a non-U.S. person (usually protector) controls **any one** of the substantial decisions of the trust – the trust is foreign for U.S. tax purposes
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# TAXATION OF FOREIGN TRUST

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- Same general principles of taxation apply to trusts - (U.S.-source income vs. worldwide income)
  - A foreign trust is **NOT** subject to U.S. taxation unless it has U.S.-related income or U.S.-situs assets

**Ex:** *A trust organized in Delaware with a Delaware trustee and no U.S. holdings or investments will not be subject to any U.S. taxation.*

# CRS REPORTING?

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- **For the purposes of CRS:** jurisdiction of the trust **IS** determined by **residence of the trustee**
  - If Trustee in participating jurisdiction - reporting for settlors, beneficiaries and protectors (regardless of the level of control) and any other controlling persons
  
- **But, as discussed, for U.S. tax purposes:** Jurisdiction of the trust is **NOT** determined by residence of the trustee
  
- **THUS:** A trust structured as a foreign trust with a U.S. trustee and administered in the U.S. will escape CRS reporting (and FATCA) and will also escape U.S. tax on non-U.S. assets/income.

# AGAIN

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**A trust structured as a foreign trust for U.S. tax purposes but administered in the U.S. and with a U.S. trustee will escape CRS reporting (and FATCA) and will also escape U.S. tax on non-U.S. assets/income.**

# NO CRS, NO FATCA, NO U.S. TAXES?!

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# RACE TO THE U.S. – MAKES SENSE

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## REMEMBER THIS SLIDE?

- **2014** - Rothschild & Co. established a trust company in Reno, Nevada and has been shifting client's accounts out of places such as the Cayman Islands and Switzerland to the U.S. (reported by Bloomberg in 2016)
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# ETHICAL CONSIDERATIONS

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- ✓ Advisors/attorneys must be especially vigilant
- ✓ Heightened due diligence before accepting clients
- ✓ Avoid assisting in tax evasion or use of international asset transfers to launder funds traced to illegal sources
- ✓ Get bank and legal references from jurisdiction in which NRAs reside/do banking
- ✓ Have clients certify that are tax compliant in home jurisdictions and planning engaged will not change that compliance

# SUMMARY

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- **Unites States** – leading jurisdiction for **offshore** investments
- **Privacy** and **Security** protections of the U.S. holding structures (Hybrid Trusts)

# DISCLAIMER

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This presentation outline and the presentation itself are for *general* educational purposes only and are not intended to provide *specific* guidance or legal advice about what to do or not to do in any particular case.

You should not rely on this general information and should seek the assistance of an attorney to help you resolve any issues.

Thank you.



# THANK YOU!

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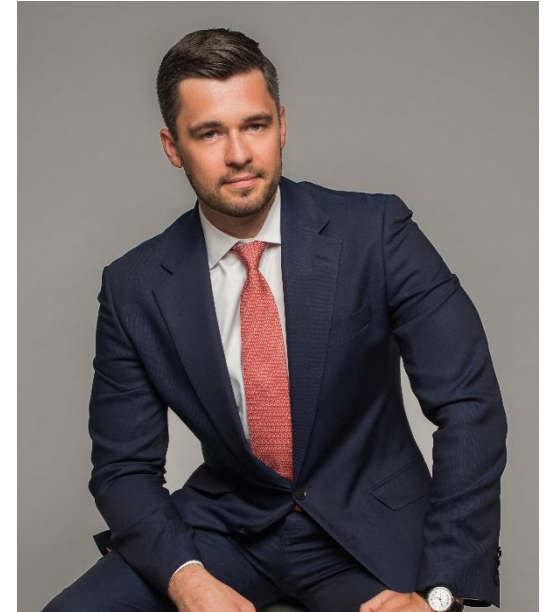


Rika Khurdayan, Esq.  
[rk@dilendorf.com](mailto:rk@dilendorf.com)

Partner  
International Private Client

**Dilendorf Khurdayan PLLC**  
**750 Third Avenue, Suite 900**  
**New York, NY 10017**

**t. +1 212-457-9797**



Max Dilendorf, Esq.  
[md@dilendorf.com](mailto:md@dilendorf.com)

Partner  
Real Estate