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// ELISA CASI, SARA NENADIC, MARK DINKO ORLIC,
AND CHRISTOPH SPENGEL

A Call to Action: From Evolution to Revolution on the Common Reporting Standard

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A Call to Action: From Evolution to Revolution on the Common Reporting Standard

Elisa Casi[*]

Sara Nenadic[**]

Mark Dinko Orlic[***]

Christoph Spengel[****]

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Abstract

As a result of technical development and globalisation, investing abroad has become much more accessible, and thus capable of facilitating the transference of wealth and income to offshore locations with the aim of evading tax obligations at home. In this regard, the Automatic Exchange of Information (AEOI) across countries is an important weapon in the fight to undermine cross-border tax evasion. This is why, in 2014, the Organisation for Economic Co-operation and Development (OECD) launched its proposal for a global AEOI standard, the so-called Common Reporting Standard (CRS). This article provides a cross-country analysis of the national CRS laws for a sample of 41 countries with the aim of determining whether significant deviations from the original OECD Model might hinder the effectiveness of the AEOI. The authors' key recommendation to the OECD and all participating jurisdictions is to achieve a higher level of standardisation when designing the CRS locally. Furthermore, international pressure on the US to join the CRS is needed. A global AEOI system can contribute substantially to the fight against cross-border tax evasion only if all attractive locations for illicit financial flows are eliminated.

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Keywords: Automatic Exchange of Information, Tax Evasion, Offshore Locations, Common Reporting Standard

1. Introduction

Globalisation has made it easier for taxpayers to make and manage their investments through offshore financial institutions. Thus, over a time span of several decades, a significant offshore wealth management industry has developed in several financial centres around the world, such as, Bermuda, the Cayman Islands, Hong Kong and Switzerland. For example, evidence suggests that 8 per cent of the

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[*] University of Mannheim.
[**] PwC Frankfurt.
[***] PwC Frankfurt.
[****] University of Mannheim and ZEW Mannheim.

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world's household financial wealth is held offshore, corresponding to 10 per cent of the global gross domestic product (GDP).[1] Some financial flows towards the jurisdictions referred to above are based on legitimate motives, such as currency diversification or hedging against political risk. Some financial flows may, however, be driven by individuals seeking to hide their wealth and related income while failing to comply with tax obligations at home. Although it is hard to quantify the overall size of the revenue loss from cross-border tax evasion, it is generally considered to be substantial. For example, a 2008 US Senate staff report indicates that at least US$100 billion of tax revenue is lost every year due to "offshore tax abuse".[2]

In this regard, the general consensus points towards the AEOI across jurisdictions as being the most powerful policy tool available to fight such tax evasion.[3] The US was the first country to take positive action towards developing a system for the AEOI in tax matters. Indeed, in 2010 the US Government passed the Foreign Account Tax Compliance Act (FATCA) with the specific aim of fighting the increasing tax revenue loss resulting from financial outflows to offshore locations without appropriate taxation at home. Following the implementation of FATCA, the rest of the world began to show an increasing interest in following the US's example. It was in this context that, early in 2013, the G20 made a formal request to the OECD to develop a global standard for the AEOI.[4] As the next step, the OECD presented its proposal for the CRS and, by the end of 2013, the G20 leaders had fully accepted this standard. A consideration of the CRS reveals that it is strongly based on FATCA but that there are certain important differences between the two. In addition to technical variances at the level of enforcement and in relation to the definition of "reportable person", under the CRS, participating jurisdictions accept that they will need to request that local financial institutions collect foreign account information and agree to transmit such data automatically to the relevant foreign tax authorities. This is not the case under FATCA where the US imposes substantial penalties on financial institutions around the world if they are unwilling to automatically transmit financial account information on US citizens to the Internal Revenue Service (IRS) either directly (Model 2 or no model intergovernmental agreement) or indirectly via the local competent authority (Model 1 intergovernmental agreement).

In this article, the authors focus specifically on the CRS and analyse its implementation at national level in 41 countries around the world, including the EU and OECD Member States and a representative sample of offshore locations. As at December 2017, there were more than 2,600 bilateral relationships worldwide based on the OECD Model for the AEOI. This leads to the expectation that tax evasion based on shifting wealth and related income offshore will experience a significant drop. In this context, a survey undertaken by Deutsche Bank and Oliver Wyman predicted a US$1.1 trillion outflow from offshore accounts as a reaction to the implementation of an AEOI system by 53 jurisdictions by the end

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[1] For more details, see G. Zucman, "The Missing Wealth of Nations: Are Europe and the U.S. Net Debtors or Net Creditors?" (2013) 128(3) *The Quarterly Journal of Economics* 1321, 1322.

[2] Estimates are from US Senate Permanent Subcommittee on Investigations, *Tax Haven Banks and U.S. Tax Compliance* (2008), available at: *http://www.hsgac.senate.gov//imo/media/doc/071708PSIReport.pdf* [Accessed 15 April 2019].

[3] This is supported by the related literature suggesting that engaging in information exchange does affect cross-border tax evasion. Both in the context of debt and equity portfolio investment (e.g. M. Hanlon, E.L. Maydew, and J.R. Thornock, "Taking the Long Way Home: U.S. Tax Evasion and Offshore Investments in U.S. Equity and Debt Markets" (2015) 70 *The Journal of Finance* 257; L. De Simone, R. Lester and K. Markle, *Transparency and Tax Evasion: Evidence from the Foreign Account Tax Compliance Act (FATCA)* (2019) Working Paper, Stanford University Graduate School of Business Research Paper No.17-62) as well as bank deposits (e.g. N. Johannesen and G. Zucman, "The End of Bank Secrecy? An Evaluation of the G20 Tax Haven Crackdown" (2014) 6(1) *American Economic Journal: Economic Policy* 65; L. Menkhoff and J. Miethe, *Dirty Money Coming Home: Capital Flows into and Out of Tax Havens* (2017) Discussion Paper No.1711 DIW Berlin).

[4] For a comprehensive overview on the OECD Model for the AEOI, see OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, 2nd edn (Paris: OECD Publishing, 2017), available at: *https://doi.org/10.1787/9789264267992-en* [Accessed 17 April 2019].

of 2017.[5] Although the estimations referred to above seem encouraging, the OECD continues to work constantly to improve its global standard on the AEOI in tax matters.

This article attempts to support the OECD by monitoring and recommending revisions to how the CRS has been implemented in domestic laws. The article contributes to the literature by providing a detailed description of the steps necessary to implement the CRS followed by a cross-country analysis of domestic CRS regulations. In particular, the authors consider eight different aspects of the CRS in respect of which any key deviation from the original OECD Model for the AEOI might hinder significantly its effectiveness in reducing cross-border tax evasion. The categories mentioned above include the implementation status at national level of current CRS law, the timing of the entry into force of that law, the chosen legal form, the enforcement level, the inclusion of a wider approach, the development of a prescribed self-certification form, the selected reporting schema and the data retention requirement. Finally, based on such a global comparison, the goal of this article is to provide valuable recommendations to both the OECD and all current and future participating jurisdictions on possible improvements to the CRS. In this way, the authors aim to support the development of a global standard for the AEOI, which can provide a strong contribution to the fight against cross-border tax evasion.

Furthermore, this article provides a detailed analysis of how global initiatives on information exchange are translated into national laws. In this regard, the authors provide an evaluation framework for future related research. In particular, the authors go beyond the key features which have so far been considered as hindering the efficiency of the AEOI policy tool (that is, the country coverage and the scope of the requested data). This is done by highlighting the relevance of the selected legal approach, the enforcement level, the format for both the collected and the transmitted information and the data retention period. Thus, the authors believe that researchers in the field will be able to profit from this study by also considering the aspects listed above when testing empirically the effect of initiatives in the field of information exchange on cross-border tax evasion.

The rest of the article is organised as follows: section 2 presents the institutional background by analysing the most important regulations which target cross-border tax evasion specifically; section 3 offers a detailed description of the crucial steps to be taken when implementing the CRS locally from a governmental and financial institution perspective; section 4 provides the cross-country study on national CRS legislations; section 5 gives key graphical evidence on the development of cross-border tax evasion in recent years; section 6 concludes by proposing the authors' main recommendations on how to improve current CRS regulations.

2. AEOI: from evolution to revolution

The initial steps towards a global standard for the AEOI

To all intents and meaningful purposes, 1998 represents the beginning of the path towards enhanced global tax transparency. Back then, the OECD issued the well-known report on harmful tax competition,[6] in which key policy tools to fight tax evasion based on shifting wealth and related income to low tax countries, mainly tax havens, were presented. Among these tools, a special emphasis was placed on the necessity of reaching an enhanced level of international tax transparency through the AEOI.

In this regard, the US was the first jurisdiction to take the initial step towards a standard for the AEOI. In 2001, the Qualified Intermediary (QI) Program was launched by the IRS with the aim of collecting tax on US source income from assets held overseas. The QI Program offers Foreign Financial Institutions (FFIs) the possibility of enjoying simplified information reporting for their non-US account holders and access to reduced withholding tax rates for payments made to clients in exchange for the

[5] Estimates are taken from K. Lakhani, M. O-Connor, S. Andrews, B. Bedell, A.-A Singh, Deutsche Bank and Oliver Wyman, *Special Report: Time to Advance and Defend* (2017), available at: *http://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2017/jun/Global-Wealth-Management-OW.PDF* [Accessed 15 April 2019].

[6] OECD, *Harmful tax competition. An Emerging Global Issue* (Paris: OECD, 1998).

collection and remittance of tax on US-sourced income earned by their clients. More specifically, financial intermediaries entering the QI Program (via an agreement with the IRS) are requested to properly identify and collect specific documentation on their clients in order for payments to receive reduced withholding rates.[7]

A few years later, the EU began to respond to the fight against cross-border tax evasion. Back in 2003, the EU was the first to develop a multinational AEOI programme through Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (also known as EU Savings Directive) (Council Directive 2003/48/EC).[8] The Directive targeted interest income underreported by EU residents. In particular, participating countries were given the option to either exchange bank account information on foreign EU residents or to levy a withholding tax on interest income owned by each reportable individual. However, Council Directive 2003/48/EC was still very limited in terms of country coverage and scope, that is, it only focused on income from private savings and excluded corporate accounts. In 2015, it was repealed due to the overlap with Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, which introduced the CRS at EU level.[9]

The introduction of FATCA

In 2007, the IRS issued its report entitled *Reducing the Federal Tax Gap*,[10] which estimated a total annual tax gap of approximately US$197 billion and for the portion for which the IRS was unable to collect any information, about 64 per cent was lost due to presumed cross-border tax evasion. At the same time, the UBS tax scandal[11] highlighted the weaknesses of the QI Program. In this regard, evidence emerged of UBS assisting US tax residents in evading taxes by offering offshore banking services designed specifically to avoid identification, reporting and withholding under the QI regime. In particular, a former UBS investment banker informed the IRS of how UBS had helped several US taxpayers to avoid domestic tax obligations by opening offshore accounts.[12]

The US Government reacted to its citizens' increasing concerns about cross-border tax evasion by passing FATCA in March 2010. The aim was to fight offshore tax evasion and other similar forms of illicit tax behaviour by ensuring the collection of information from FFIs on US tax residents' assets held abroad, as well as the related income generated from these assets. In particular, under FATCA, FFIs are expected to conduct due diligence on existing accounts as well as to develop processes to identify new accounts which are directly or indirectly held by US clients. The data to be collected is both on domestic-source and on foreign-source payments received on those accounts. A 30 per cent withholding on each US source payment is imposed on non-FATCA compliant FFIs or non-compliant accounts (excluding those in Model 1 jurisdictions).[13] When considering the reporting process, FFIs may directly transmit the collected data on the US clients to the IRS. Alternatively, Intergovernmental Agreements (IGAs) may be signed whereby jurisdictions might, for example, implement FATCA into national law and

[7] For more details on the scope and aim of the QI program, see IRS, *Revenue procedure 2000-12* (24 January 2000). The most recent QI Agreement aligns the regime with FATCA through IRS, *Revenue procedure 2017-15* (01.01.2017).

[8] For more details, see the European Council, Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments [2003] OJ L157/38.

[9] For more details, see European Council, Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation [2014] OJ L359/1.

[10] Internal Revenue Service, U.S. Department of the Treasury, *Reducing the Federal Tax Gap: A Report on Improving Voluntary Compliance* (2007).

[11] For more details, see S. Hansard, "UBS fined $780 million in tax evasion scandal", *InvestmentNews*, 19 February 2009.

[12] United States Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, *Tax Haven Banks and U. S. Tax Compliance* (2008).

[13] A summary of key FATCA provisions, IRS, *Summary of Key FATCA Provisions* (page last reviewed or updated 29 March 2019), is available at: *https://www.irs.gov/businesses/corporations/summary-of-key-fatca-provisions* [Accessed 15 April 2019].

information requested from the US tax authorities is exchanged on the basis of the bilateral Model 1 IGA.[14] In this case, FFIs transmit the requested financial information on US citizens to the respective local tax authorities, which then forward it to the IRS. Finally, jurisdictions may have a Model 2 IGA[15] where a bilateral agreement to support FATCA is established but FFIs must report directly to the IRS. Currently, 113 IGAs (either under Model 1 or Model 2) introducing FATCA regulations locally have been signed.[16]

The introduction of the CRS

The substantial costs involved in establishing the infrastructures needed to ensure FATCA compliance created, back in 2012, an increasing interest on a worldwide scale in developing a global standard for the AEOI. It should have been as similar as possible to FATCA but should also have enabled the collection and the exchange of financial account information on a wider range of foreign account holders than those owned only by US tax residents. In 2013, the first discussion around the development of a global standard for the AEOI began, and, one year later, the OECD issued the final version of its Model for the AEOI in the form of the CRS. Table 1 below presents a detailed outline of key CRS events.[17]

Table 1: timeline of key CRS events

2013	• 9 April 2013: G20 endorsement of automatic exchange as the expected new global standard. • 18 June 2013: the OECD Model for a global AEOI system is presented to the G8 Summit. • 5–6 September 2013: the G20 leaders fully endorsed the OECD proposal for a global model of AEOI.
2014	• 13 February 2014: the CAA and the CRS are officially published and approved by the OECD. • 23 February 2014: G20 endorsement of the CRS Model. • 6 May 2014: more than 60 jurisdictions publicly support the CRS via a joint statement at the OECD Council meeting. • 29 October 2014: signatories of the Multilateral Competent Authority Agreement (MCAA) in Berlin at the 7th Global Forum.
2015	• The set of countries, which decided to exchange information through the CRS system in September 2017 for the first time, the so-called 1st wave adopters, implemented the CRS into their national laws.
2016	• 1 January 2016: financial institutions located in early-adopters' countries start collecting information on new foreign reportable accounts for the purpose of the CRS. • 31 December 2016: financial institutions start reviewing high value pre-existing reportable accounts, that is, those above US$1m.
2017	• September 2017: the first exchange of information among early-adopters' countries begun.

[14] For the complete Model, see U.S. Department of the Treasury, Resource Center, *Model 1A IGA Reciprocal, Preexisting TIEA or DTC* (30 November 2014), available at: *https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Reciprocal-Model-1A-Agreement-Preexisting-TIEA-or-DTC-11-30-14.pdf* [Accessed 24 April 2019].

[15] For the complete Model, see U.S. Department of the Treasury, Resource Center, *Model 2 IGA, Preexisting TIEA or DTC* (30 November 2014), available at: *https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Model-2-Agreement-Preexisting-TIEA-or-DTC-11-30-14.pdf* [Accessed 24 April 2019].

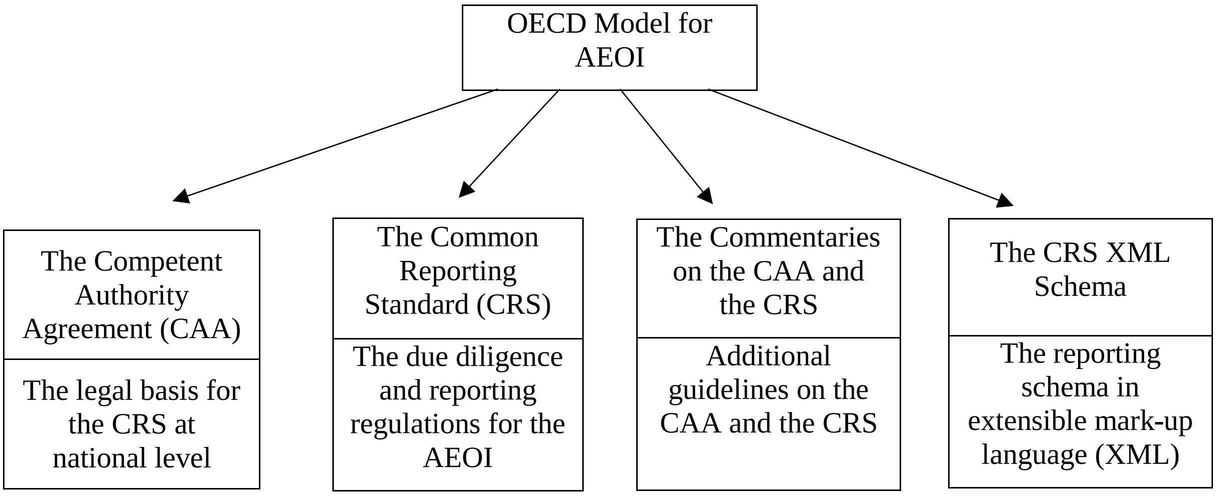
[16] A complete list of IGAs (both Model 1 and Model 2), is available at U.S. Department of the Treasury, *Resource Center*: *https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx* [Accessed 15 April 2019].

[17] For a complete overview of key CRS events, see OECD, *Automatic Exchange Portal*, "Tax–Automatic Exchange of Information", available at: *http://www.oecd.org/tax/automatic-exchange/* [Accessed 15 April 2019].

	• 31 December 2017: financial institutions start reviewing low value pre-existing reportable accounts and entity accounts.

The OECD Model for AEOI represents the bilateral or multilateral duty of signing governments to translate the CRS into domestic law, to ensure the establishment of a suitable IT system to collect and exchange the information on foreign account holders with the respective jurisdictions and to guarantee adequate protection of the exchanged data. The standard consists of four fundamental components as described in Figure 1: the Competent Authority Agreement (CAA); the Common Reporting Standard (CRS); the Commentaries on the CAA and the CRS; and the CRS XML Schema.

Figure 1: OECD Model for AEOI: key components



First of all, the CAA component[18] enables the implementation of a CRS system into national law by setting its legal basis. Three different CAA models exist: the multilateral model (or MCAA, to be used jointly with the *Multilateral Convention on Mutual Assistance in Tax Matters*[19]); the bilateral and reciprocal model (to be used in combination with Article 26 of the OECD Model Double Tax Agreement[20]); and the non-reciprocal model (to be used in the absence of income tax in the respective jurisdiction). Secondly, the CRS component[21] provides the due diligence and reporting regulations which financial institutions must follow in order to collect and transfer the required financial information to their respective tax authorities. Finally, the CRS XML Schema[22] is a reporting schema in extensible mark-up language (XML) elaborated upon by the OECD for the purposes of exchanging the information across jurisdictions as well as to receive information from the jurisdictions' financial institutions in a standardised manner.

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[18] For the official model for the CAA, see OECD, Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, available at: *http://www.oecd.org/ctp/exchange-of-tax-information/multilateral-competent-authority-agreement.pdf* [Accessed 15 April 2019].
[19] OECD, *The Multilateral Convention on Mutual Assistance in Tax Matters; Amended by the 2010 Protocol* (Paris: OECD Publishing, 2011).
[20] OECD, *Article 26 of the OECD Model Tax Convention and Its Commentary* (Paris: OECD Publishing, 2012).
[21] For a detailed overview on the OECD guidelines on the CRS, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, 2nd edn (Paris: OECD Publishing, 2018), available at: *http://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm* [Accessed 17 April 2019].
[22] For more information on the OECD guidelines on the CRS XML Schema, OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, above fn.4, Annex 3, 230–290.

As at October 2018, a total of 107 countries have committed to implementing the CRS by signing the MCAA.[23] Of these countries, as at 7 August 2018, 103 have signed the MCAA.[24] The majority of these jurisdictions already have CRS national laws with an intended first information exchange date of September 2017 for 1st wave countries and September 2018 for 2nd wave countries. Furthermore, the most recent list also includes jurisdictions undertaking the first exchange by 2019–2020—3rd and 4th wave countries. All major tax havens are on the list which implies a substantial change in the field of bank secrecy.[25] Although in the last decade several offshore locations have already set up a sound network of Tax Information Exchange Agreements (TIEAs), the CRS is substantially different from traditional TIEAs and this should ensure that it has a stronger impact on tax evasion based on parking income and wealth offshore.

In particular, the CRS requires financial institutions to automatically exchange detailed financial account information on non-resident taxpayers if the agreement on the AEOI on tax matters between their jurisdiction and the client's resident jurisdiction is in place. In contrast, traditional TIEAs are typically based on exchanging information upon request. What is more, participating jurisdictions do not have to sign agreements on an individual country-by-country basis. If they opt to sign the MCAA at the OECD level and they implement a CRS system into their national law, they automatically agree to exchange information on foreign financial accounts with any other jurisdiction that has signed the MCAA and has a CRS system in place.[26]

Given the global scope of the CRS, co-operation, consistency and persistence among participating jurisdictions are required in order to achieve a well-functioning AEOI system. The OECD recognised that the CRS can deliver benefits only if there is an international level playing field in relation to both its widespread adoption and the effectiveness of its implementation.[27] In this respect, the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes has provided significant support. For example, it offered extensive implementation assistance, such as, information and guidance on the CRS.[28] In addition, it provides technical assistance in the form of training seminars to government officials and one-on-one advisory services and support to developing countries through pilot projects.[29] Furthermore, on 9 March 2018, the OECD released *Model Mandatory Disclosure Rules for CRS*

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[23] For the complete list of jurisdictions, which have committed to the CRS so far, see OECD, *AEOI: status of commitments* (October 2018), available at: *https://www.oecd.org/tax/transparency/AEOI-commitments.pdf* [Accessed 15 April 2019].

[24] For a complete list of jurisdictions, which have signed the MCAA and the respective date of signature, see OECD, *Signatories of the multilateral competent authority agreement on automatic exchange of financial account information and intended first information exchange date* (status as of 29 October 2018), available at: *https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/MCAA-Signatories.pdf* [Accessed 15 April 2019].

[25] For a comprehensive definition of tax haven, see G. Schjelderup, "Secrecy Jurisdictions" (2016) 23(1) *International Tax and Public Finance* 168. For a list of offshore locations, see J.R. Hines Jr and E.M. Rice, "Fiscal Paradise: Foreign Tax Havens and American Business" (1994) 109(1) *The Quarterly Journal of Economics* 149. The list of offshore locations, which signed the MCAA, includes among others the Bahamas, Bahrain, Bermuda, the Cayman Islands, Guernsey, Jersey, Hong Kong, the Isle of Man, Panama and Singapore.

[26] Alternatively, although less preferable, jurisdictions can still decide to sign a CAA and exchange information automatically on a bilateral basis. In this case, similarly to TIEAs, individual agreements with jurisdictions around the world have to be put in place in order to establish an exchange relationship.

[27] For more details, see OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes Automatic exchange of information implementation report 2017* (Paris: OECD Publishing, 2017), 3.

[28] The OECD provides extensive guidance on what the CRS is and how it can be correctly implemented through its CRS *Implementation Handbook* (see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21) and its *CRS-Related Frequently Asked Questions* (February 2019), available at: *http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf* [Accessed 24 April 2019]. Moreover, a dedicated TIN (Taxpayer Identification Number) Information Help Desk has been set up, see OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes - Technical Assistance - Help Desk*, available at: *http://www.oecd.org/* [Accessed 15 April 2019].

[29] For a complete overview of the OECD technical assistance program, see OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes - Technical Assistance*, above fn.28.

Avoidance Arrangements and Opaque Offshore Structures.[30] The purpose of these rules is to assist tax administrations with information on arrangements that (purport to) circumvent the CRS (or CRS Avoidance Arrangements) and on structures that disguise the beneficial owners of assets held offshore (Opaque Offshore Structures). Nevertheless, given the magnitude of this challenging task, there is still "room for improvement" in the interests of achieving the originally stated purpose and objective of the AEOI: substantially reducing tax evasion based on re-locating wealth and related income offshore. The aim of this article is to support the OECD in this ambitious project. This is done in section 4 by analysing current CRS national laws in 41 different countries around the world and, based on this analysis, the authors make suggestions for potential improvements in order to achieve a well-functioning system for the AEOI. Before entering into the details of CRS national laws, in the next section, a detailed examination of the concrete steps which are needed to be taken in order to put local CRS systems into place is provided, with a focus on the perspective of governments and of financial institutions.

3. Different perspectives on CRS implementation

The government perspective

As mentioned in the previous section, signing the CAA is the starting point for establishing a CRS system at national level, either on a bilateral or a multilateral basis. Currently, over 100 jurisdictions have signed the CAA and most of them chose a multilateral approach. Signatory jurisdictions agree to exchange the required financial information with each other automatically and the CAA sets out which information must be exchanged as well as the timing and the method of exchange. Finally, the CAA also establishes the provisions on guaranteeing the confidentiality and the safeguarding of the data, on the process of monitoring the smooth operation of the agreement and on the procedure for any potential future amendment to it.

Once the CAA is signed, countries can start designing the legislation required to implement the CRS domestically. The OECD provides detailed guidelines[31] on key CRS features but countries have flexibility in relation to certain aspects of the standard. First of all, the CRS component provides a clear definition of "reportable financial institutions" and a detailed list of non-reportable financial institutions. In particular, only entities (corporations, partnerships, trusts and foundations) and not sole proprietors are considered to be reportable financial institutions. Additionally, within entities, non-reportable financial institutions include governmental entities and their pension funds, international organisations, central banks, certain retirement funds, qualified credit card issuers, exempt collective investment vehicles, trustee documented trusts and other low-risk financial institutions. The latter category is a residual category which gives single jurisdictions the opportunity to add financial institutions which are not explicitly listed as non-reportable entities but which are still in line with the requirements under section VIII(B)(1)(c) of the CRS and the associated commentary to be considered low risk.[32]

Moreover, the CRS component provides a list of financial accounts to be reviewed during the due diligence procedures such as depository accounts, custodial accounts, equity and debt interest accounts, cash value insurance contracts and annuity contracts as well as a list of excluded accounts.[33] The latter includes retirement and pension accounts, non-retirement tax favoured accounts, term-life insurance contracts, estate accounts, escrow accounts, depository accounts due to non-returned overpayments and other low-risk accounts. However, according to section VIII(C)(17)(g) of the OECD guidelines on the CRS, in this case jurisdictions are also granted the option to create a specific national list of excluded accounts if such accounts present a low risk of being used for tax evasion, show features which are

[30] OECD, *Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures* (Paris: OECD Publishing, 2018).
[31] For more details, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21.
[32] For more details, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21, 57–61.
[33] For more details, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21, 62–71.

significantly similar to one of the categories of excluded accounts described in section VIII(C)(17)(a) through to (f) of the OECD guidelines on the CRS and do not frustrate the purposes of the CRS.

Furthermore, CRS national laws need to provide clear requirements in relation to the definition of reportable persons. Under the OECD guidelines on the CRS, reportable persons are account holders being resident in a reportable jurisdiction for tax purposes, that is, a jurisdiction where an automatic exchange of information agreement is in place. Account holders are considered to be reportable persons unless they belong to the category "active non-financial entity", that is, a publicly listed corporation or related entities of such a corporation, a governmental entity, an international organisation, a central bank or a financial institution and not an entity whose primary activity is receiving passive income.[34]

Finally, when designing the CRS law at a national level, the OECD guidelines on the CRS provide no specific information on the enforcement level. Thus, countries need to decide on how enforcement will be supervised, and the level of penalties for non-compliant institutions or reportable persons which can be in the form of fixed monetary amounts and could be imposed daily or annual as well as per non-compliant account or per non-compliant financial institution. Additionally, certain countries opted for imposing criminal prosecutions for non-compliance with the CRS.

The last step to be taken when setting up a functioning CRS system is the establishment of the IT infrastructure for collecting information provided by reportable financial institutions, transmitting such information to the respective foreign tax authorities and analysing the received financial data on the respective tax residents. First of all, tax authorities of participating jurisdictions must create the IT framework to collect the account data from financial institutions. If within the CRS national law, a self-certification form is not provided or is provided but its use is not mandatory, a further step is needed, namely the reformatting of the financial data to be exchanged under the CRS. Furthermore, participating governments are required to set up a dedicated online portal where financial institutions can submit the information on reportable foreign account holders required under the CRS. This process necessitates the development of highly protected transmission channels and protocols, via encryption or physical measures or both. The minimum standard set up within the OECD guidelines on the CRS needs to be fulfilled. Secondly, tax authorities of participating jurisdictions have to develop the IT infrastructure to collect all of the required account data on their own residents from counterparties around the world. The first necessary step is to ensure the operational security for maintaining the received personal and financial information. According to the OECD guidelines on the CRS, the minimum safety level would be one which is consistent with best practice standards such as the latest ISO 27000 Series Information Security Standards.[35] What is more, a process for data validation is required in order to monitor whether the transmitted information is relevant (that is, that the data on an account holder has been correctly sent to the account holder's country of residence) and whether it has been conveyed in a complete format (that is, mandatory information is fully provided).

The financial institution perspective

On the basis of the OECD's MCAA, and more notably, the Standard for AEOI in Tax Matters (including commentaries),[36] global financial institutions already had the framework of what could be expected to be contained within the national legislation of the respective countries around the world. At this point, project teams within financial institutions, many of which were still in the process of implementing FATCA within their respective institutions, were now required to take on the task of "translating" these components, including various hypotheses on what the national CRS legislation would contain, into operational activities for assessing the impact of the CRS on their organisations, and then, rather quickly

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[34] If the reportable person is a passive non-financial entity, then the related financial institution is required to identify its controlling person(s) and report the financial account information of such a passive non-financial entity only if it belongs to a reportable person(s).

[35] For more details, see The ISO 27000 Directory, *An Introduction to ISO 27001, ISO 27002….ISO 27008*, available at: *http://www.27000.org* [Accessed 24 April 2019].

[36] OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, above fn.4.

thereafter, to begin implementing the required changes.[37] All the while, these teams were, and still are, responsible for tracking changes in national law and responding accordingly to ensure compliance with the requirements. For larger, global institutions, the foregoing has resulted in the commitment of thousands of days for internal employees and the expenditure of millions of US dollars in external specialist support to complement these teams and fill the existing knowledge gaps.

In order to provide a foundation for gauging the impact and the scope of the CRS in each jurisdiction, CRS project teams were first of all required to understand the potential legal entities and arrangements (including certain structured products) which would be impacted by the CRS. Given the lack of available national legislation at the time, and the heterogeneous rules around the world, the analysis of legal entities needed to be carried out at the national level, as opposed to centrally (for example, regionally or globally). This created significant inefficiencies and resulted in the need for focused, co-ordinated efforts to ensure that the existing legal entities, in some cases numbering tens of thousands, were: 1. all captured within a central legal entity management system (or some combination of systems); 2. appropriately reviewed on the basis of currently available information in order to make initial classifications; 3. reviewed again in the case of newly released or revised CRS national guidance; and, 4. definitively classified for CRS purposes. These efforts would determine the scope of those areas within the organisations which had been impacted and represent a task the importance and difficulty in execution of which should not be underestimated.

Additionally, the process outlined above focused only on existing entities. However, these requirements would need to be applied on a daily basis in the legal entity management function in order to ensure that newly created entities and arrangements were also considered in addition to those which were being liquidated. All the while, stringent consideration needed to be given to national data protection and data privacy rules for all aspects of these activities. This approach would require that specialists with both a deep understanding of local CRS definitions and the ability to collect the data necessary to understand the structure and activity of each legal entity in order to apply the rules in determining the appropriate classification were available and assigned in each participating jurisdiction. The classification of each legal entity and arrangement, as described above, would prove to be a critical element in the determination of the applicable compliance requirements.

In a similar manner, these institutions were required once again to review their products and accounts, as they had done only a few years (or even months) earlier for FATCA purposes, to determine which of these would: 1. be considered financial accounts for purposes of the CRS; and 2. then identify which of those would be reportable. Issues similar to those which related to the legal entity analysis arose as a result of divergent national legislation requiring accounts to be reviewed based on the legislation, if available, of the jurisdiction in which the accounts were maintained. In addition, given the fact that countries continue to sign the MCAA, the national lists of reportable jurisdictions must be reviewed regularly and incorporated into this process to ensure appropriate reporting of account holders.

Finally, as with the legal entity analysis, the review of existing account holders is only one component of this exercise. The account opening process needed to be amended, including on-boarding forms on a jurisdictional basis and, since the reporting schemas are divergent in many jurisdictions, reportable financial institutions needed to ensure that all information required for reporting was also collected at some point throughout the process. Since some jurisdictions required specified self-certification forms to be used by financial institutions in their jurisdiction, this further limited the ability to implement a common, global on-boarding and due diligence process. In addition, because some countries did not allow for the so-called wider approach, on-boarding forms needed to be reviewed and updated constantly to include new signatories to the MCAA. This is an obvious inefficiency resulting from the fact that organisations should not collect information from account holders from non-signatory countries without the expressed consent of their local authorities, given generally in the form of permission to apply the wider approach.

[37] For a detailed overview of the implications of the CRS for financial institutions and taxpayers, see K. Kuepper, "Germany: FATCA 2.0: The Introduction of a Global Standard on Automatic Exchange of Tax Information", *International Tax Review*, 17 June 2014.

Further, due to data privacy and data protection concerns, organisations needed to ensure that the data collected was required in order to make a CRS determination and was not superfluous to these needs. Throughout this entire process, impacting tens of millions of accounts in some cases, clear communication with account holders was essential, in particular in relation to the collection of required information from existing customers. As a result of traditionally poor response rates of under 20 per cent to such requests, contingency plans and subsequent actions needed to be implemented to ensure that account activity was interrupted until all required documentation was provided for the purposes of enabling the institution in question to make its account classifications. Clearly, impacted account holders did not welcome such activities.

The activities described above, in addition to many others, are carried out with the objective of identifying reportable accounts and, ultimately, reporting financial account information on those account holders properly to the local tax authorities. Again, given the lack of a standard reporting schema, or the opportunity to default to the OECD's CRS schema in all jurisdictions, global institutions face the seemingly unnecessary burden of including many variables in their reporting mechanisms. Initially, the common approach was to create a master file of all applicable data elements from all jurisdictions in which the institution operates and to require the data collection (that is, self-certification and on-boarding forms) in each jurisdiction. However, this approach was quickly abandoned because of data protection and data privacy concerns. Therefore, institutions now face the task of constantly tracking developments within the reporting schemas on a country-by-country basis and incorporating any changes in their internal reporting mechanism for CRS purposes. Remember though, if a data element is required to be reported to the tax authorities, then, from an operational perspective, this data element must first be collected from the impacted account holders, thereby running changes through all of the revised processes. In order to manage reporting to the local tax authorities, although the more practical approach would appear to be a global, centralised mechanism, this is often unfeasible given the challenges of local schemas, data privacy and data security.

Finally, the objective of the CRS is, generally, to share the financial account information of a country's residents with that country, but the effectiveness of the legislation will, nevertheless, be directly related to each government's ability to ensure that its financial institutions are meeting the requirements of the CRS legislation. Although many jurisdictions do not require the implementation of a specific compliance programme, given the certifications made by the financial institution (and potentially by individual employees) for CRS purposes, the lack of an explicit requirement for a compliance programme does not mean that such programmes are not being implemented. Financial institutions are creating the appropriate internal control environment and tailored compliance programmes for CRS processes. These programmes go under scrutiny on a regular basis in order to give the relevant compliance officers both the assurances they need to file CRS reports confidently and the comfort that, under inspection by the competent tax authority, material findings would not exist. Depending on the size of the institution and the structure of its operations, individuals or entire teams may be obliged to manage these compliance processes on a full time basis.

4. Qualitative analysis: cross-country overview of CRS national laws

In this section, a detailed cross-country analysis of national CRS legislation for a selected sample of countries is provided.[38] Indeed, when looking at the OECD Model for the AEOI, it can be seen that it is a template based on the US FATCA Model 1 IGA which provides that single jurisdictions have some degree of flexibility in certain areas in relation to how such a system has to be implemented domestically. However, the effectiveness of the CRS in fighting cross-border tax evasion based on residency may be hindered if strong deviations from the original OECD Model exist when it is implemented into national law.

[38] For a complete list of the countries considered in the sample, see Appendix, Table 1a.

In the following cross-country analysis, the CRS laws in OECD and EU Member States[39] are compared to those laws which exist in a set of commonly considered offshore locations (the Bahamas (BS), Bahrain (BH), Bermuda (BM), the Cayman Islands (KY), Guernsey (GG), Hong Kong (HK), the Isle of Man (IM), Jersey (JE), Macau (MO) and Singapore (SG)).[40] Dividing the authors' country sample into OECD and EU Member States versus offshore locations is especially relevant given the heterogeneity in the CRS system implementation status and the core CRS features across those subsets of jurisdictions. In this way, they represent the ideal scenario for an international comparison of the effective execution of the CRS at domestic level.

The authors focus upon several dimensions in their cross-country study. These dimensions have been carefully selected as those influencing the effective execution of the CRS in fighting cross-border tax evasion. In particular, the analysis considers the legislative status, the legislative approach, the enforcement level, the scope of the standard, the reporting requirements and the data retention requirements. In contrast, potential deviations from the proposed OECD list of non-reportable financial institutions are not considered. More specifically, certain countries do present deviations from the OECD related classification. However, additional categories of financial institutions falling outside the scope of the CRS are typically identified to avoid the duplicative reporting of the same financial account. Moreover, the OECD aims to monitor participating countries constantly in order to ensure that national CRS legislation does not exclude certain low risk financial institutions, which may be used to circumvent the application of the CRS.[41] Additionally, jurisdictions have the chance to add local categories to the official list of excluded accounts provided under the OECD guidelines on the CRS if such accounts present a low risk of being used for tax evasion. When considering the selected sample of countries, the authors did analyse potential deviations. Nevertheless, the detected local categories of excluded accounts do not present features that could seriously frustrate the purpose of the CRS by creating space for non-detection of illicit wealth and related income outside the country of residence.[42] Since the authors do not regard deviations in the category of non-reportable financial institutions and excluded accounts as seriously harming the effectiveness of the CRS, those categories were not considered in their cross-country analysis.

For the purposes of this article, all information on CRS national laws has been collected making use of the PwC Customer and Investor Tax Transparency Compare Tool (CITT Compare Tool).[43] The CITT Compare Tool is an online platform used to manage global tax information exchange requirements (including FATCA, UK Crown Dependencies and Overseas Territories (CDOT) and CRS). Additionally, local experts in CRS legislation within the PwC Network have reviewed and provided

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[39] OECD and EU Member States as of June 2018. Excluding Estonia, Finland, Greece, Iceland, Latvia, Lithuania, Malta, Norway and Portugal. For those countries information on CRS national legislation is not available through the PwC CITT tool.

[40] With respect to offshore locations, the authors selected these according to the category list provided by the Bank for International Settlement, *Locational Banking Statistics* (BIS LBS) (complete database available at: *https://www.bis.org/statistics/bankstats.htm* [Accessed 24 April 2019]), in Table A3 (available at: *https://stats.bis.org/statx/srs/table/a3?m=S* [Accessed 24 April 2019]) since the database provided by this institution is the one commonly used in the literature on tax evasion (e.g. H. Huizinga and G. Nicodème, "Are International Deposits Tax-Driven" (2004) 88(6) *Journal of Public Economics* 1093; Johannesen and Zucman, above fn.3; A. Alstadsæter, N. Johannesen and G. Zucman, "Who Owns the Wealth in Tax Havens? Macro Evidence and Implications for Global Inequality" (2018) 162 *Journal of Public Economics* 89).

[41] In this regard, Hong Kong initially classified Occupational Retirement Schemes (ORS) as non-reportable financial institutions. However, several reports were sent to the OECD on its online disclosure facility signaling the risk of shifting income to accounts in ORS as a way for tax evaders to avoid being reported to tax authorities under CRS. Following international pressure Hong Kong issued strict guidance highlighting that only a specific type of ORS could be considered to be a non-reportable financial institution.

[42] For example, except for the Isle of Man, which adds specific retirement, depository and dormant accounts, all other considered offshore locations follow the OECD list of excluded accounts strictly.

[43] A full description of the tool is available at K. Küpper and M.D. Orlic, *PwC's Customer & Investor Tax Transparency (CITT) Compare Tool* (November 2015), available at: *https://blogs.pwc.de/citt/files/2015/12/CITT-Compare-Tool-Flyer-November_2015.pdf* [Accessed 24 April 2019].

feedback on the considered jurisdictions in the authors' analysis.[44] The following sub-sections provide a detailed discussion of the categories listed above identifying links to the national CRS law in the selected sample of 41 countries. Moreover, key recommendations on best practice examples are suggested for each investigated aspect of national CRS laws.

The legislative status

When looking at the CRS implementation at national level, heterogeneity can be seen to exist in the current legislative status as shown in Figure 2. First, all the selected EU Member States belong to the so-called 1st wave, that is, those jurisdictions that performed the first exchange of information in 2017. This homogeneity in CRS legislative status results from Directive 2014/107/EU,[45] which provides the foundation for implementing the CRS at EU level. Most of the remaining OECD Member States are 2nd wave countries, that is, they began exchanging information in 2018. Israel is the only OECD Member State which has committed to the CRS but has not yet implemented the standard in its national legislation.[46]

Figure 2: the CRS status

[44] Feedback from local PwC contacts in Bahrain and Bermuda has not been collected. For those countries, the information from PwC's CITT tool was complemented by looking directly at the CRS national law and CRS national guidelines.

[45] For more details, see European Council, above fn.9.

[46] However, draft legislation exists and should be voted on soon. For more details, see PwC CITT Blog, M.D. Orlic, *Israel issues Draft CRS Regulation* (11 August 2017), available at: *https://blogs.pwc.de/citt/* [Accessed 17 April 2019].

EFFECTIVE		IMPLEMENTED	COMMITTED	NOT COMITTED
1st Wave	2nd Wave			
AT, BE, **BM**, BG, CY, CZ, DE, DK, ES, FR, **GG**, HR, HU, IE, **IM**, IT, **JE**, KR, **KY**, LU, MX, NL, PL, RO, SE, SK, SI, UK	AU, **BH**, **BS**, CA, CH, CL, **HK**, JP, NZ, **SG**, TR	(none)	IL, **MO**	US

Where 1st wave = countries exchanging information in 2017 for the first time

2nd wave = countries exchanging information in 2018 for the first time

Finally, the US as the world's major economy has shown no sign of commitment to the CRS.[47] One reason for this can be seen in the unattractiveness of the CRS from a US perspective. Indeed, information on US tax citizens holding financial accounts abroad is already collected through FATCA. In addition, US financial institutions would face substantial additional costs if they were to implement the CRS locally given that they are not domestically affected by FATCA in the same way as non-US financial institutions. Lastly, the IRS would have to establish a system for collecting and exchanging substantial information on foreign financial account holders in US financial institutions. Under FATCA, data from US financial institutions on foreign accounts is not automatically exchanged with other jurisdictions

[47] In fact, it has demonstrated no intention to join this global initiative. For more details, see Editorial Board, "The U.S. Is Becoming the World's New Tax Haven", *Bloomberg*, 28 December 2017.

across the world. Only information on direct owners[48] and the related interest earned is provided on request based on FATCA Model 1A IGA.[49]

When turning to the selected group of offshore locations, a promising CRS implementation status seems to have been achieved. Indeed, most of these offshore locations belong to the 1st wave adopters. This means that they had implemented the CRS into national law by the end of 2015 and that the first information exchange had already occurred in 2017. Only a minor group of offshore locations (the Bahamas, Bahrain, Hong Kong and Singapore) belongs to the 2nd wave of adopters, that is, they implemented the CRS locally in late 2016 and exchanged information in 2018, for the first time. Macau is the only offshore location, which has committed itself to the CRS but did not implement it at national level. Nevertheless, it does appear that in Macau progress is being made to implement the CRS locally.[50]

By considering the cross-country analysis of the CRS's legislative status as presented above, it is possible to state that the initial objective of reaching a global standard for the AEOI has been substantially achieved. Not only the OECD countries, but also almost all offshore locations, have adopted the CRS in their national law. The few remaining jurisdictions have at least committed to it and are taking important steps to implement the CRS in local law. Unfortunately, the most significant economy in the world, the US, has not shown any interest in joining the CRS project. Data from US financial institutions on foreign accounts as well as the related beneficial owners are not automatically exchanged with other jurisdictions across the world. Moreover, even the reciprocity, which is dictated by the Model 1A IGA, does not appear to be respected in its entirety by the US. Indeed, the US does not seem to provide other jurisdictions with information on or content concerning foreign account holders despite receiving substantially similar information from those other jurisdictions on its own citizens and tax residents.[51] It is not surprising then to note that the US has been indicated as being one of the safest locations to which to re-allocate wealth and related income upon the first CRS implementation date.[52] Some financial flows are certainly based on legitimate motives (for example, seeking business opportunities) but to a reasonable observer most of these flows would appear to have suspicious timing and motives. This is in line with the related literature suggesting that as long as attractive locations for cross-border taxation evasion exist, tax evaders will find it more beneficial to relocate their wealth and

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[48] In May 2016, under the Bank Secrecy Act – CDD Rule (see Financial Crimes Enforcement Network, *CDD Rule* (11 May 2016), available at: *https://www.govinfo.gov/content/pkg/FR-2016-05-11/pdf/2016-10567.pdf* [Accessed 24 April 2019]), the Treasury's Financial Crimes Enforcement Network issued a new customer due diligence requirement imposing on certain domestic financial institutions the collection of a beneficial ownership information form for their respective clients' corporations and trusts. However, the law has not yet being enacted. Additionally, even if enacted, anecdotal evidence suggests that it would not be effective because among others it allows senior managers of the company to be classified as beneficial owner, see Tax Justice Network, *Financial Secrecy Index - Narrative Report on USA* (2018), available at: *http://www.financialsecrecyindex.com/PDF/USA.pdf* [Accessed 17 April 2019].

[49] For a detailed description of key differences between FATCA and CRS reporting requirements, see P.A. Cotorceanu, "Hiding in plain sight: how non-US persons can legally avoid reporting under both FATCA and GATCA" (2015) 21(10) *Trust and Trustees* 1.

[50] In May 2017, the legislative assembly in Macau enacted a new legal framework for the exchange of information in order to align the country with G20 and EU standards. One year later, Macau prepared to sign the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information. For more details, see PwC CITT Blog, M.D. Orlic, *Macau prepared to sign the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information* (11 May 2018), available at: *https://blogs.pwc.de/citt/* [Accessed 17 April 2019].

[51] For example, between 2014 and 2015 the German tax authority provided the IRS with information on more than 301,000 US taxpayers having income generated in Germany but received almost no information on German taxpayers generating income in the US, as reported by C. Gammelin, "Einbahnstraße in die USA", *Sueddeutsche Zeitung*, 3 April 2018.

[52] Indeed according to *The Economist*, the US is currently not providing information to most of the non-EU countries around the world, making it a very attractive location for hiding wealth and related income for the purpose of tax evasion (from Financial Transparency, "The Biggest Loophole of All", *The Economist*, 20 February 2016).

related income to non-collaborative jurisdictions rather than repatriate it.[53] Thus, in order to fight tax evasion based on shifting wealth and related income to offshore locations effectively, a truly worldwide coverage as regards CRS adoption needs to be achieved.

The legislative approach

Although under the OECD Model for the AEOI, a multilateral and bilateral approach is allowed, almost all jurisdictions which have committed to the CRS so far have agreed to implement it under a multilateral approach as depicted in Figure 3 below.

Figure 3: the legal form

MULTILATERAL	BILATERAL	MIXED	NOT YET DEFINED
AT, AU, BE, BG, **BH**, **BM**, **BS**, CA, CL, CY, CZ, DE, DK, ES, FR, **GG**, HR, HU, IE, IL, IT, **JE**, JP, KR, **KY**, LU, **MO,** MX, NL, NZ, PL, RO, SE, SK, SI, TR, UK	(none)	CH, **HK**, **IM**, **SG**	(none)

When considering Macau, the local government has only recently signed the MCAA but has not yet started implementing it in its national law. Hong Kong has just signed the MCAA but implemented the CRS originally on a bilateral basis. This implies that, currently, financial data on foreign accounts is exchanged exclusively with counterparties with whom Hong Kong has signed a TIEA. Originally, only Japan and the UK established exchange relations with Hong Kong based on the CRS but the Hong Kong Government announced in early 2017 its plan to expand the country list to 72 new bilateral exchange agreements.[54] Hong Kong's decision to extend the country coverage was motivated mainly by the risk of being labeled as a non-cooperative jurisdiction on tax transparency matters by the EU and the OECD.[55] Moreover, the Government in Hong Kong realised the non-feasibility of a bilateral approach. Signing exchange agreements on a country-by-country basis is extremely complex. This is especially

[53] Johannesen and Zucman, above fn.3; P. Caruana-Galizia and M. Caruana-Galizia, "Offshore Financial Activity and Tax Policy: Evidence from a Leaked Data Set" (2016) 36(3) *Journal of Public Policy* 457; De Simone, Lester, and Markle, above fn.3.

[54] From the Inland Revenue Department, Amendment Ordinance No.2, *Inland Revenue (Amendment) (no. 2) Ordinance 2017* (15 June 2017).

[55] Indeed as reported by Baker McKenzie, being part of such a list implies not only potentially remarkable reputational damage but also the risk of concrete counter-measures by international organisations, making the country a less attractive location for foreign direct investment and for conducting business locally (R.L. Weisman and S.R. Sieker, *Hong Kong Government Considers Expanding Its List of 'Reportable Jurisdictions' for Automatic Exchange of Information* (9 March 2017), available at: *https://s3.amazonaws.com/documents.lexology.com/fd32698b-5e65-4e3a-9375-32d317bed2c4.pdf* [Accessed 24 April 2019]).

relevant in light of the continuing expansion in the scope and country coverage of the international network for the AEOI, which increases the number of TIEAs which Hong Kong would have to make.[56] The drawbacks of a bilateral approach as described above encouraged the Government in Hong Kong to issue an amendment Bill in October 2017 with the aim of preparing the route for Hong Kong's participation in the MCAA, which it has now implemented.[57] Initially, the Bahamas were also more inclined to implement a CRS system under a bilateral approach but, also in this case, international pressure pushed the change towards a multilateral approach.

Moreover, certain jurisdictions, that is, the Isle of Man, Singapore and Switzerland, have a mixed system where for a certain subset of countries only a bilateral approach applies. For example, Switzerland has implemented agreements with EU Member States on a multilateral basis and with jurisdictions outside the EU on a bilateral basis.[58] However, having a mixed approach also hinders the effectiveness of the CRS in fighting cross-border tax evasion. Thus, only a pure multilateral approach to the CRS ensures the creation of a sound network of exchange relations. By signing the MCAA, jurisdictions automatically agree to exchange information on foreign financial accounts with any other jurisdictions that have a CRS system in place. This reduces the risk that certain jurisdictions where substantial wealth and related income are located for tax evasion purposes are establishing bilateral relationships with only a limited number of countries. If this were to happen, the CRS would not reach its primary objective of combating illicit financial flows to offshore locations. On this critical aspect, the OECD has achieved impressive results. As at June 2018, a total of 100 jurisdictions across the world had signed the MCAA, which ensures the implementation of the CRS at national level on a multilateral basis. Thanks to this far-reaching achievement, a network of more than 2,600 bilateral exchange relationships is currently in place and guarantees extensive scrutiny of foreign financial accounts worldwide. However, a fully effective CRS system would require the adoption of the multilateral approach by each current, and future, participating jurisdiction.

The enforcement level

According to the original OECD Model for the AEOI, enforcement and oversight is decided locally. Each jurisdiction has the power to set the monetary penalty for financial institutions as well as for account holders in cases of missing or incorrect information transmission or failure to conduct the required due diligence and compliance process. In addition to monetary consequences, countries may use criminal prosecution. When looking at the sample of selected jurisdictions, a significant variation can be found, as shown in Figure 4 below.

[56] For more details on the reasons for the Hong Kong Government to amend the CRS law, see Hong Kong Government, press release, *Inland Revenue Ordinance to Be Amended to Facilitate International Tax Co-Operation* (6 October 2017), available at: *https://www.info.gov.hk/gia/general/today.htm* [Accessed 17 April 2019].

[57] From the Inland Revenue Department, Amendment Ordinance No.5, *Inland Revenue (Amendment) (no. 2) Ordinance 2017* (6 October 2017).

[58] For a complete list of bilateral treaties that Switzerland has for the purpose of the AEOI under the CRS, see State Secretariat for International Financial Matters, *Automatic Exchange of Information - Financial Accounts*, available at: *https://www.sif.admin.ch/sif/en/home/multilateral/steuer_informationsaust/automatischer-informationsaustausch/automatischer-informationsaustausch1.html* [Accessed 24 April 2019].

Figure 4: the penalties (* criminal penalties)

BELOW US$100,000	BETWEEN US$100,000 AND US$1 MILLION	BETWEEN US$1 MILLION AND US$2.5 BILLION	NOT YET DEFINED
BM*, CA*, CY, CZ, DE, ES, **HK***, HR, HU, **JE***, JP*, KR, **KY**, NZ*, RO, **SG***, SK, SI, UK	AT, **BS**, CH, CL, IE, **IM,** IT, LU, PL	AU (12M), BE*(246 M), BG (16 M), FR (25 M), MX (166 M), NL* (2.5 BN), TR (39M)	**BH**, DK, **GG***, IL, **MO**, SE

In terms of monetary penalties, values range from US$762 to around US$2.5 billion. For the purpose of this comparison, the authors converted the maximum possible amount from local currency to US dollars and an infringement on a hypothetical total volume of 100,000 accounts per financial institution for a prolonged period of 30 days. Indeed, differences in enforcement levels across countries are not limited to the top threshold of monetary punishment. Certain jurisdictions such as Ireland or the Isle of Man may apply daily penalties while others, such as Belgium, France, Mexico, the Netherlands and Turkey, charge a fixed monetary penalty on each single account. When comparing the enforcement level, several countries in the authors' sample charge monetary penalties below the US$100,000 thresholds. The latter group includes five offshore locations, that is, Bermuda, the Cayman Islands, Hong Kong, Jersey, and Singapore. Yet, some of those offshore locations may impose criminal prosecution.[59]

In general, for those jurisdictions which charge monetary penalties of less than US$100,000 and which do not impose criminal prosecution, it is questionable whether local financial institutions would perceive the cost of CRS compliance to be higher than the penalties for non-compliance. Certainly, the implementation of the CRS system implies substantial costs for the financial institutions. For example, Finér and Tokola (2017) provide some initial estimates ranging from more than US$100 million in terms of information technology (IT) systems and from US$8 to 800 million in terms of the start-up costs per affected individual institution worldwide.[60] Therefore, imposing limited penalties of less than US$100,000 for non-compliance with the CRS may create incentives for financial institutions to not report clients' data for purposes of the AEOI. In contrast, the FATCA charges 30 per cent withholding on each US source payment for non-compliant financial institutions, which creates a much higher pressure to comply with the requirements.

[59] It is important to note that the CRS law in Guernsey has not set a specific maximum penalty amount but may charge officers of non-compliant financial institutions with imprisonment. In particular, the law states: "An RFI which without reasonable excuse fails to comply with any provision of paragraph (1) or Schedule 2 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one year, to a fine not exceeding twice level 5 on the uniform scale, or to both", from the Treasury and Resources Department of Guernsey, Regulation No.97 of December 1, 2015—The Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations.

[60] For more details, see L. Finér and A. Tokola, "The Revolution in Automatic Exchange of Information: How is Information Used and What Are the Effects? (2017) 71(12) *Bulletin for International Taxation* 688.

However, seeking uniform enforcement mechanisms in the context of the OECD Model for the AEOI across more than 100 nations may turn out to be impossible. Nonetheless, the OECD could try to set a minimum level of monetary penalties to be imposed on non-compliant financial institutions and could also suggest tax evasion standards (or separate prosecution) for non-compliant account holders. In this way, an acceptable level of enforcement would be encouraged. Moreover, the authors propose, in addition to the monetary punishment, a revocation (even provisional) of a licence to operate in cases of non-compliance with the CRS requirements. This type of enforcement already exists in China for example. The authors believe that directly threatening the financial institution with the possible removal of its licence to operate represents a more effective warning when compared to threatening the institution's employees with potential prison sentences.

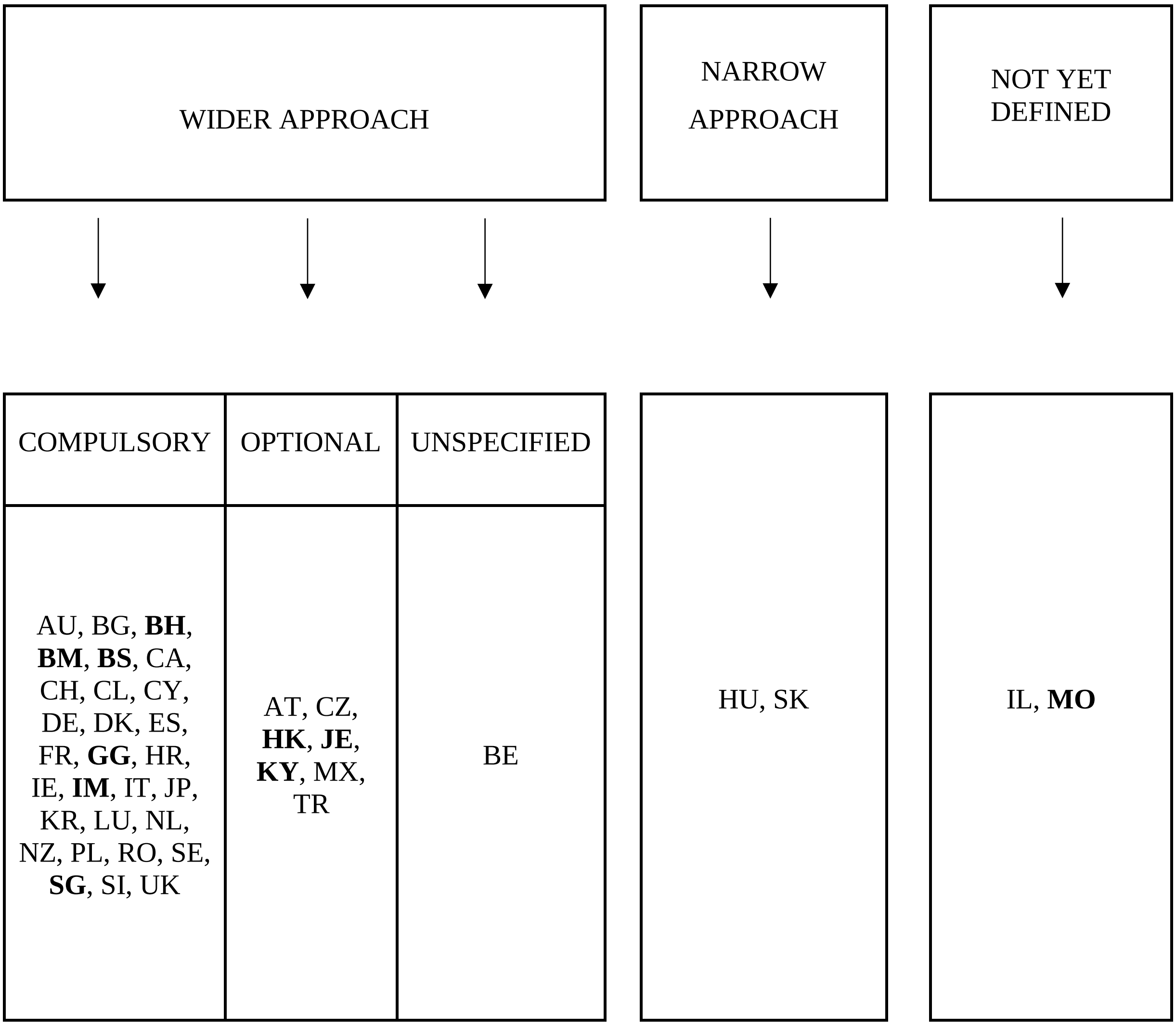
Finally, as regards cross-border tax evasion based on residency, the authors advise that jurisdictions should remove any kind of voluntary disclosure programme under which tax evaders could face reduced penalties for avoiding tax obligations at home in return for voluntary disclosure. Current evidence from the literature demonstrates that although such programmes offer a cheap solution in order to increase tax revenue, such programmes may also incentivise tax evasion.[61] However, jurisdictions face substantial costs in relation to implementing the CRS locally, which, in turn, should ensure the effective monitoring of cross-border illicit financial flows. Thus, the authors see no substantial benefit in offering tax amnesties for past avoidance of tax obligations at home if the CRS is in place. The authors believe that the costs of maintaining a voluntary disclosure mechanism would be better invested in CRS oversight and governance.

The scope of the CRS

Under the CRS, individual jurisdictions have the opportunity to decide independently upon the adoption of a wider or a narrow approach. The narrow approach prescribes the reporting of information to financial institutions only on foreign financial accounts owned by residents in jurisdictions recognised as reportable jurisdictions. In contrast, under a wider approach financial institutions must (if the wider approach is mandatory) or can (if the wider approach is optional), collect information on all reportable foreign accounts even for account holders who are not residents of a reportable jurisdiction under the CRS. Figure 5 offers a cross-country overview.

[61] Langenmayr (2017) provides an analytical model and tests it empirically in the context of the US voluntary disclosure programme. Overall evidence demonstrates that voluntary disclosure programmes do increase tax evasion. However, the authors find that such programmes increase tax revenue net of the related costs (see D. Langenmayr, "Voluntary Disclosure of Evaded Taxes - Increasing Revenue, or Increasing Incentives to Evade?" (2017) 151 *Journal of Public Economics* 110). Similar results are also found when analysing the general context of law violation. Marceau and Mongrain (2000) and Feess and Walzl (2005) offer evidence that reducing the penalty in cases of self-reporting increases the incidence of criminal actions (see N. Marceau and S. Mongrain, "Amnesties and Co-operation" (2000) 7(3) *International Tax and Public Finance* 259; E. Feess and M. Walzl, "Optimal Self-Reporting Schemes with Multiple Stages and Option Values" (2005) 12(3) *International Tax and Public Finance* 265).

Figure 5: the wider approach



When considering the analysed sample of countries, only Hungary and Slovakia selected a narrow approach. This represents an extremely positive result. Indeed, in its guidelines on the CRS, the OECD invites governments to adopt a wider approach. The central reason for this is the inefficiency related to a narrow approach. First of all, the overall CRS implementation costs would be reduced by choosing a mandatory wider approach. Financial institutions would avoid additional due diligence processes to identify new reportable accounts whenever a new automatic exchange relationship is established. Thus, a wider approach would ensure that an existing national AEOI system could adapt quickly to a network of exchange relationships, which is currently constantly growing.

Moreover, the OECD guidelines on the CRS provides no rules on the due diligence process for information on foreign financial accounts owned by residents of non-reportable jurisdictions.[62] But, as the OECD suggests, another benefit of adopting a wider approach lies in the standardisation of the information collection for all foreign accounts.[63] Of particular importance is the request for the collection of a TIN (Taxpayer Identification Number) for all new account holders if such an identification number is issued to the foreign account owner by its country of residence.[64] Having the TIN readily available

[62] For more details, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21, 23–26.
[63] For more details, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21, 23–26.
[64] For more details, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21, 25.

for all foreign account holders would not only ensure the immediate adaptation of the CRS national law to every new exchange relationship but would also enhance the efficiency of the AEOI system. It would reinforce the accuracy of all collected data on foreign account holders, especially if a reconciliation of the information on tax residence reported by the account holder is performed by tax authorities and financial institutions.

Regardless of the clear benefits of the wider approach, some jurisdictions, including offshore locations such as the Cayman Islands, Hong Kong and Jersey, decided to make it optional. This allows each financial institution to decide independently whether to collect information on all foreign account holders immediately or rather only on those who are residents of reportable jurisdictions at the time of the due diligence process. This might be especially beneficial for financially constrained institutions, which would have the freedom to choose how much to invest for the purposes of the initial CRS implementation. In addition, confidence in an institution's ability to maintain an ever-changing system is likely to be lower than it would be if it were maintaining a fixed system (with standardised processes).

In summary, this option limits the flexibility of the CRS national laws in adapting easily to future changes and so this option could hinder the CRS's effectiveness in tracking down wealth and related income located outside the residence country of the respective owner. Indeed, according to interviews with Swedish tax authorities conducted by Finér and Tokola (2017), the use of financial account data collected through AEOI relationships has been reduced due to the late arrival of such information from the counterpart jurisdictions.[65] In this regard, the mandatory wider approach would guarantee the development of a uniform, yet flexible, CRS system, which could adapt easily to the growing network of exchange and offer a significant reduction in implementation costs. Thus, the mandatory wider approach is in the authors' view the best solution.

The reporting requirements

By December 2017, more than 2,600 bilateral relationships for the AEOI had been established globally. Information on foreign financial accounts for CRS purposes had been collected by more than 250,000 financial institutions around the world and exchanged across more than 50 jurisdictions.[66] This implies that tax authorities in each of the 1st wave countries had received an incredible amount of data by September 2017. Manual analysis of this data would definitely not be feasible. Instead, local tax authorities scrutinise the collected information on foreign financial accounts through standardised processes. In particular, an electronic risk analysis is conducted by considering the overall account balance and whether or not there is a probability that sufficient evidence of tax evasion exists.[67] Thus, the format in which the information is collected for the purpose of the CRS is crucial to ensuring its usability. In this regard, the homogeneity of the format under which information is collected and exchanged is critical for the safeguarding of data usability. For the purposes of national legislation implementing the CRS, the standardisation of two specific documents is of particular importance: the self-certification form and the reporting schema.

The self-certification form

First of all, any new client of a reportable financial institution is requested to provide a self-certification stating his/her country of residence. A self-certification form has been developed and made available on the OECD website[68] but the use of this form is only encouraged and jurisdictions may decide to create

[65] For more details, see Finér and Tokola, above fn.60.
[66] Estimates on financial institutions come from Finér and Tokola, above fn.60. While the total number of jurisdictions are those listed as early adopters and thus exchanged information in September 2017 according to the OECD, *AEOI: status of commitments* (October 2018) above fn.23.
[67] Finér and Tokola, above fn.60.
[68] The OECD, via the OECD *Automatic Exchange Portal*—online support for the implementation of automatic exchange of information in tax matters, provides a format both for individuals, *Guidance for Financial Institutions Requesting the Form* (February 2016), available at: *https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS_INDIVIDUAL_Self-Cert_Form.pdf* [Accessed 24 April 2019], and for

their own format or allow financial institutions to create their own. Indeed, the OECD only dictates that in order for the document to be valid, it must be signed (a positive confirmation may suffice as well) and that it must also include the date of signature, the name, the residence address, the residence jurisdiction(s), the TIN and the date of birth. Single jurisdictions might impose a specific self-certification model and reportable account holders have to use it strictly for CRS reporting purposes. Alternatively, national CRS legislations may provide local guidelines and the financial sector can deliver a formal example of a self-certification format. In this case, reportable account holders can opt for such a format for CRS reporting purposes. When looking at national legislations implementing the CRS, differences emerge regarding the local guidelines for the self-certification format. These are depicted in Figure 6 below.

Figure 6: the self-certification form

MANDATORY FORMAT	OPTIONAL FORMAT	NO PRESCRIBED FORMAT	NOT YET DEFINED
BG, **IM**, KR	BE, **BM**, CA, CH, CL, FR, **GG**, **HK**, IE, IT, **KY**, LU, MX, NL, RO, SI, UK	AU, AT, **BH**, **BS**, CY, CZ, DE, DK, ES, HR, HU, **JE**, JP, NZ, PL, SE, **SG**, SK, TR	IL, **MO**

Most of the selected countries leave financial institutions and account holders free to choose the format for certifying their residence when opening a new account in a foreign country. However, such a decision may not be the best solution for achieving an efficient execution of the CRS at either a national level or an international level. First of all, this may create additional costs for the financial institutions. Financial institutions have to review all self-certification documents they collect from clients to assess their validity. Receiving standardised forms would significantly reduce the time spent on analysing such certificates of residency. This might be the reason why certain financial institutions provide a generalised self-certification format on their website and request each new client to specifically use it for the purpose of CRS reporting requirements.[69] For global institutions, this is a critical issue and the standardisation of form content, or permitting institutions to default to a globally recognised standard, would be central to the efficient implementation and operation of the CRS. This would not result in the need to alter existing guidance and regulation significantly, but would rather allow for the use of a global standard.

Moreover, any one country requiring a different standard will also cause significant inefficiencies for tax administrations as well. From the perspective of tax authorities the usability of such collected information is reduced substantially if clients have the chance to use any format they may prefer for certifying their residence. Additionally, if a standard format for the self-certification requirement is not used, tax authorities have to reformat the received financial data to be exchanged under the CRS. This

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entities, *Guidance for Financial Institutions Requesting the Form* (February 2016), available at: *https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS_ENTITIES_Self-Cert_Form.pdf* [Accessed 24 April 2019].

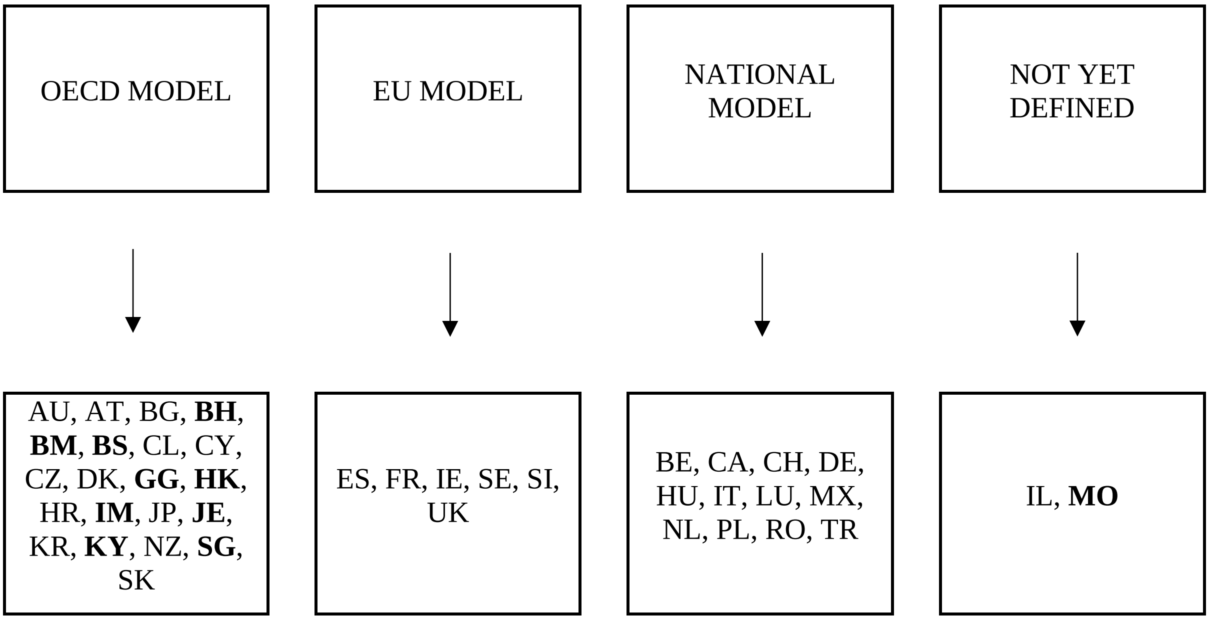
[69]An example of this is represented by the case of CITI Bank, where standard self-certification format is directly available on the bank’s website, see CITI Bank, Treasury and Trade Solutions, *Common Reporting Standards*, available at: *https://www.citi.com/tts/solutions/liquidity-management/tax-regulations/crs/* [Accessed 24 April 2019].

involves not only extra time spent on revising the information but also an additional financial burden in order to establish the IT infrastructure for reformatting the received data. Thus, governments should instead impose the OECD Model for self-certification requirements to ensure, through this standardisation, the highest quality and usability of the exchanged information under the CRS.

The reporting schema

The standardisation of the electronic reporting schema is also crucial in order to achieve an efficient CRS.[70] In particular, a CRS XML Schema has been developed by the OECD for the purpose of both transmitting information to domestic tax authorities and exchanging such collected data across jurisdictions. This represents a standardised data structure for maintaining and transmitting information by electronic means and on a large-scale.[71] The OECD provides detailed guidelines on how such a schema should look and how it can be implemented for the purpose of the CRS.[72] Moreover, Directive 2014/107/EU also prescribes the OECD Model.

Figure 7: the reporting schema



As Figure 7 shows, the majority of the local governments opted for the OECD Model in their CRS national law either directly or through Directive 2014/107/EU. This means that more than half of the selected jurisdictions adopted the same standardised data structure for maintaining and exchanging information by electronic means. Twelve local governments, however, decided instead to issue national regulations on the electronic reporting schema for CRS purpose. This implies that although these governments generally still prescribe the same digital language, that is, XML, they opted to add specific domestic requirements.

[70] This necessity is also expressed by the report on the implementation of the CRS in EU issued by the European Commission, see European Commission, *First Report of the Commission AEFI expert group on the implementation of Directive 2014/107/EU for automatic exchange of financial account information* (2015), available at: *https://www.abbl.lu/content/uploads/2017/06/first-report-expert-group-automatic-exchange-financial-information.pdf* [Accessed 17 April 2019], 34–37.
[71] For detailed information on the CRS XML Schema, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21, 50–51.
[72] For more details, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21, 49–52.

Tailoring the reporting system to local requests might create substantial operational challenges for the financial sector. Indeed, the OECD XML has been developed to be as similar as possible to the FATCA counterpart. Additionally, in 2017, the IRS developed a new reporting schema (FATCA XML Schema v2.0) to more closely align to its CRS counterpart.[73] Thus adopting the OECD XML Schema into CRS national laws reduces substantially the investment financial institutions, which are already FATCA compliant, have to make in order to establish the IT infrastructure for CRS purposes.

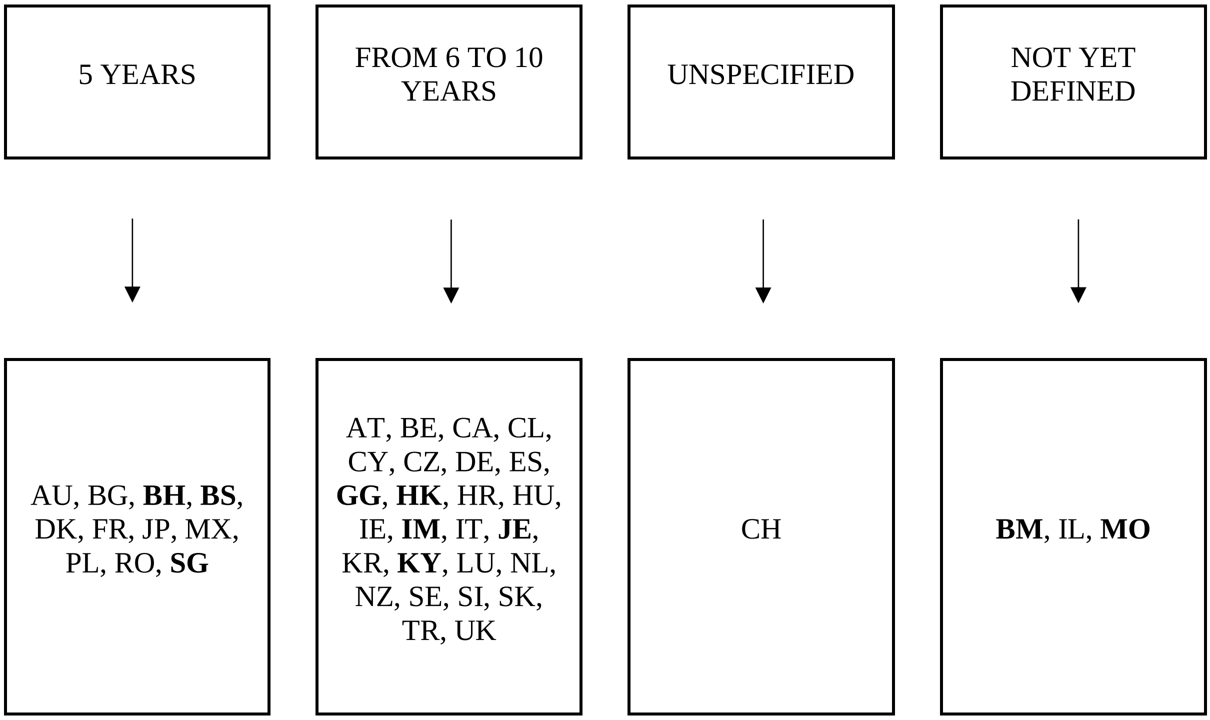
Finally, tax administrators would also benefit from a standardised electronic language for exchanging information on financial accounts on a global scale.[74] For example, when the German CRS regulation is considered, the guidelines for the reporting schema do prescribe the XML language but provide a different layout on how the data has to be transmitted compared to the layout suggested by the OECD.[75] In a world of standardised digital processes for the analysis of huge amounts of data, the existence of different reporting formats can seriously increase the risk of the non-usability of the received information on foreign financial accounts or greatly reduce efficiency in mining the data. This, once more, reduces the effectiveness of the CRS in identifying and investigating potential tax evaders.

The data retention requirement

The OECD does not impose a predefined required number of years for which financial institutions must retain information for the purpose of CRS requirements. Moreover, it provides only some limited guidelines on the minimum standards necessary to ensure the protection of such information. Single jurisdictions have the chance to assess which retention period for the CRS would be most appropriate in case of future tax audits on foreign financial accounts and data safeguard obligations simply follow national privacy laws. The latter may vary substantially across countries. For example, jurisdictions in the EU have high standards of data protection especially thanks to the new regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (Regulation 2016/679).[76] However, other countries such as Chile, Japan and Mexico are not recognised by the European Commission as having regulations which guarantee an adequate security level in relation to personal data.[77] Instead, when considering data retention periods for the selected sample of countries, several timeframes, ranging from five to 10 years, are defined under CRS national legislation. These are shown in Figure 8.

[73] For more details on FATCA XML Schema 2.0, see IRS, *FATCA XML Schema v2.0 User Guide*, available at: *https://www.irs.gov/pub/irs-pdf/p5124.pdf* [Accessed 17 April 2019].
[74] For more details, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21, 47.
[75] For a detailed overview of the German CRS XML Schema, see Bundeszentralamt für Steuern, Steuern International – CRS (1 June 2017), available at: *https://www.bzst.de/DE/Home/home_node.html* [Accessed 17 April 2019].
[76] For more details, see Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1.
[77] For more details, see European Commission, Adequacy Decisions - How the EU Determines if a non-EU Country Has an Adequate Level of Data Protection, available at: https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en [Accessed 17 April 2019].

Figure 8: the data retention requirement



The lack of unique regulation in relation to the number of years for which data is required to be retained, as is the case in Switzerland, creates an additional cost for the financial industry. Indeed, this indicates that financial institutions have to review every single piece of domestic legislation carefully to find out the exact timing requirement. Moreover, financial institutions will need to monitor constantly whether every collected piece of information on all reportable foreign financial accounts is maintained for the requested period under each local regulation. At the same time, these institutions must ensure that the data is deleted or destroyed when the retention period has expired so as to fully protect their client's data privacy. Additionally, the imposition of a very long time period for data retention may not represent the best solution because it may entail high costs in terms of cyber security. According to the national legislation of nine countries in the selected sample, financial institutions need to guarantee that all data collected on behalf of their clients is safely stored and to ensure that such a service is provided for 10 years.

The most important concern remains the heterogeneity of data retention requirements documented in the selected sample of countries. In terms of centralised, regional or global processes, these differences create a fundamental discrepancy and require local approaches. This is why the standardisation of data retention requirements would result in significant efficiencies and reduction of risks. Still, setting up globally unified data retention requirements is highly complex. For example, when considering Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks (Directive 2006/24/EC),[78] the missing harmonisation in terms of the required retention periods for data was one of the most unfavourable aspects of the Directive. Variations in domestic application of Directive 2006/24/EC created several challenges for telecommunications operations when developing the data storage system to ensure that it was fully compliant with such regulation.[79] The European

[78] For more details, see Council Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC [2006] OJ L105/54.

[79] Back then, the aim of the Directive was to establish duties for telecommunications providers on withholding the traffic and location data from clients to be used for investigation, detection and persecution of severe crime. However the affected industry was extremely critical of these new obligations not only because of the lack of

Commission acknowledged the issue described above and, in April 2014, the Directive was declared invalid.[80] A new regulation, that is, Regulation 2016/679/EU,[81] has been issued with the aim of not only guaranteeing a high level of data protection safeguards but also of harmonising data retention laws across the EU. This illustrates the complexity involved in achieving a common retention period. Nevertheless, the OECD should try to improve the current guidelines[82] on data maintenance. The European Parliament and Council have already addressed this issue by sending a letter to the OECD asking for stringent guidelines on data retention and data protection in the context of the CRS.[83]

The authors do believe that having the same standard data retention period across participating jurisdictions represents the most important way in which CRS compliance costs for reportable financial institutions can be reduced even at the price of imposing a long data retention period. Thus, the authors' recommendation would be for governments to use a common standard, perhaps the OECD standard of a 10 year retention period for the purposes of CRS requirements. When formulating a homogenous value that could be the best solution for several jurisdictions, it is important to take the length of court processes into consideration. Requesting data only for five years may not be sufficient to ensure that information from non-CRS compliant persons can be analysed for the purposes of the final court decision. Knowing that countries will have different standards for tax purposes, these countries should create an exemption whereby CRS documentation would not be admissible as evidence in cases where the relevant statutory limitation period has expired but the institution is maintaining the data solely to comply with the CRS requirement.

Interim conclusion

The purpose of this section is first to offer a brief overview of main trends in CRS national laws and, secondly, to set out the authors' key recommendations on how to improve the current system for the AEOI developed under the CRS. Table 2 provides a short summary.

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harmonisation in respect of the data retention schema but also because of the substantial costs that woud be incurred in order to comply with the Directive. For more details, see European Commission, *Report from the Commission to the Council and the European Parliament: Evaluation report on the Data Retention Directive (Directive 2006/24/EC)* (Brussels: 18 April 2011, COM(2011) 225 final, available at: *http://ec.europa.eu/transparency/regdoc/rep/1/2011/EN/1-2011-225-EN-F1-1.Pdf* [Accessed 17 April 2019], pp.27–32.

[80] For the complete statement, see Court of Justice of the European Union, press release, No.54/14, *The Court of Justice declares the Data Retention Directive to be invalid* (8 April 2014), available at: *https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140054en.pdf* [Accessed 17 April 2019].

[81] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1.

[82] For more details, see OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, above fn.21.

[83] See letter of 12 December 2016 from the Chairwoman of the Art. 29 Working Party to the OECD, "OECD Common Reporting Standard", available at: *http://ec.europa.eu/newsroom/document.cfm?doc_id=42942* [Accessed 17 April 2019].

Table 2: country practice and key recommendations

Legal Form	• Currently bilateral and multilateral approaches are available. Almost all countries selected the multilateral approach. • The authors propose: − removal of the bilateral approach option; − set the multilateral approach as the only available option.
Enforcement Level	• Currently there is no strict OECD guideline on enforcement. Monetary penalties range from US$762 to around US$2.5 billion and some countries additionally prescribe criminal prosecution. • The authors propose: − set a minimum standard of monetary penalties; − prescribe the removal of the licence to operate; − eliminate voluntary disclosure programme (in the context of cross-border tax evasion).
CRS Scope	• Currently possible to opt for a narrow approach or a (optional or mandatory) wider approach. Most countries selected a wider approach. • The authors propose: − removal of the narrow approach option; − set the mandatory wider approach as the only available option.
Reporting Requirements	• Currently it is possible either to opt for the standardised OECD Model or to impose a specific national model for the self-certification form and the reporting schema. Most countries do not prescribe a self-certification schema but select the OECD Model as the reporting schema. • The authors propose: − mandatory adoption of the OECD self-certification form and reporting schema or option for institutions to use it as an acceptable default globally; − removal of specific local requirements for self-certification form and reporting schema.
Data Retention Period	• Currently no strict OECD guideline on the required data retention period. Under national CRS law, the required data retention period typically ranges from five to 10 years. • The authors propose: − set a uniform maximum data retention period of 10 years, with caveats for conflicts where countries have shorter periods for other tax purposes.

Overall, the CRS is already effective in almost all the selected countries in this article, with the exception of Israel, which is in the process of drafting the CRS law, Macau, which only recently signed the MCAA for the CRS, and the US, which shows no willingness to join the CRS project. When considering those jurisdictions that have already implemented the CRS into national law, most of these jurisdictions opted for a multilateral approach, although some have taken a mixed approach, that is, multilateral and bilateral at the same time. At the enforcement level, very heterogeneous penalty levels and forms for non-CRS compliance exist with several countries opting for what is, presumably, too low a monetary punishment, for example, less than US$100,000. Turning to the reporting requirements, most countries did not opt for a standardisation of the format for collecting and transmitting the financial account information. Typically, jurisdictions in the authors' sample neither imposed a pre-defined self-certification form for collecting account holder information nor requested the use of the OECD Model for the reporting schema for transmitting the financial account data to foreign tax authorities. Finally, very heterogeneous data retention periods emerged when considering the authors' sample of countries. These retention periods vary from five to 10 years and, in certain cases, no exact timeframe was even imposed for the purpose of CRS.

When turning to the recommendations, first, the authors are of the opinion that the bilateral approach as an option should be removed. Specifically, even though it is understood that the bilateral approach was offered as an alternative when the CRS was initially launched, the authors believe that sustaining this option for the future, in a certain way, defeats the purpose of the CRS. This is because the bilateral approach offers jurisdictions the opportunity to decide on a country-by-country basis with whom they will exchange information. This could result in the CRS failing to fulfill its stated objective entirely, that is, failing to achieve a global reach. In addition, a multilateral approach significantly reduces the amount of time and financial costs with which jurisdictions have to deal when faced with the continuous expansion in the scope and country coverage of the CRS.

Secondly, there should be a minimum standard for monetary penalties in cases of CRS non-compliance. Although participating jurisdictions are obliged to implement CRS effectively, the authors are of the view that a minimum monetary penalty standard set by the OECD would encourage an appropriate level of enforcement across countries. Moreover, in addition to the monetary punishment, the authors propose the introduction of another enforcement measure: the revocation of the licence to operate in the case of non-compliant financial institutions. Furthermore, for cases of cross-border tax evasion, the authors are of the opinion that any kind of voluntary disclosure programme should be revoked at this stage, because such programmes do not offer any kind of benefits for the CRS participating jurisdictions; on the contrary, they may incentivise tax evasion.[84]

Thirdly, although the OECD already recommends the wider approach, the authors believe that it should be mandatory, instead of optional. Indeed, the wider approach ensures that financial institutions collect the information on all foreign account holders and not only on those residents in participating jurisdictions. Under the wider approach, financial institutions substantially reduce the future time and cost invested in adapting their internal process every time a new exchange relation under the CRS is established. Similarly, the wider approach would also facilitate the effective and timely adaptation of tax authorities' internal systems to the continuously growing AEOI network. Thus, the authors suggest that any country, which would like to become MCAA signatory, must implement the mandatory wider approach into their CRS national law.

Fourthly, the authors propose that participating jurisdictions be obliged to adopt a standardisation of the self-certification format and electronic reporting schema for the purposes of the CRS. In this regard, the OECD developed a model for the self-certification format as well as one for the CRS XML Schema. Both are publicly available on the OECD's website. Imposing the OECD Model for the self-certification requirements and the CRS XML Schema would ensure a high level of readability of the collected information. Indeed, it is not the quantity, but rather the quality of the information exchanged under the CRS, which determines the effectiveness of such a global tax transparency tool in the fight against cross-border tax evasion. The quality can be enhanced by ensuring homogeneity in both the format for collecting information on financial accounts and in the standardisation of the reporting schema for exchanging the data. Thus, the authors believe that participating jurisdictions should abstain from tailoring the CRS reporting schema to their specific local requirements and, instead, fully adopt the OECD self-certification Model and the OECD XML Schema. If the latter is not possible, participating jurisdictions should at least allow institutions to choose to submit the OECD standard schema.

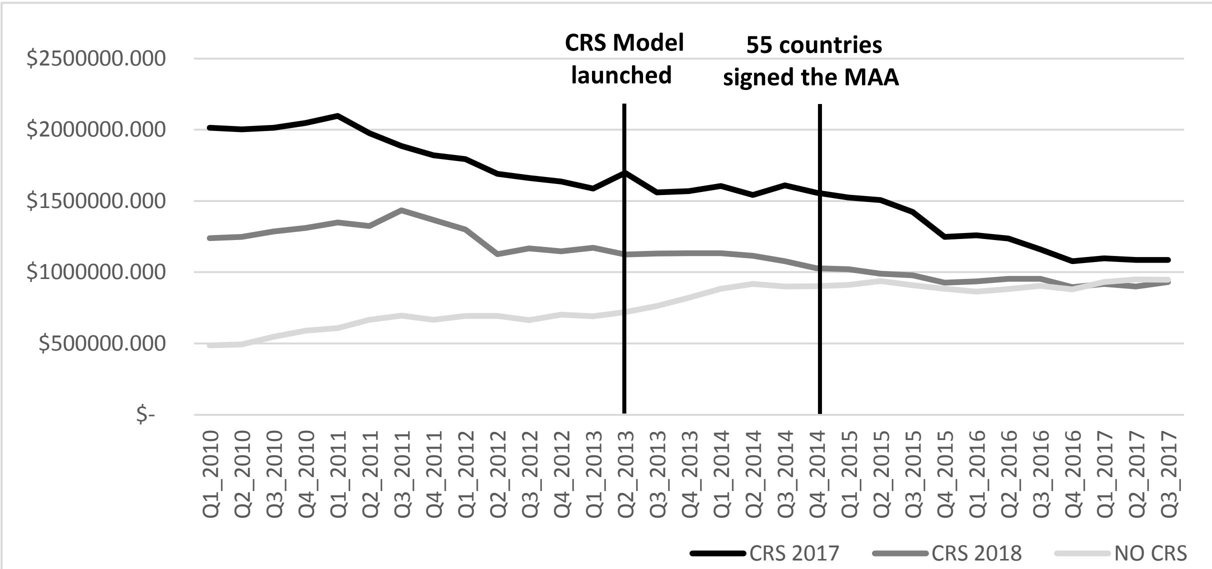
Lastly, the authors propose setting a standard in relation to the required retention period for CRS related data, as current inconsistent practice has the potential to create serious issues in the future. The authors are aware that requesting the storage of CRS data for long periods represents a significant cost for affected financial institutions. However, imposing very different data retention periods across countries constitutes the biggest source of costs. Thus, based on the sample of countries analysed for the purposes of this article, the authors propose the adoption of a uniform timeframe of 10 years as the required number of years for CRS data retention. The idea would be that the OECD publishes such a proposal and that governments should implement the requirement into CRS national laws thereafter.

[84] For more details, see Langenmayr, above fn. 61; Marceau and Mongrain, above fn.61; Feess and Walzl (2005), above fn.61.

5. Quantitative analysis: recent development in cross-country deposits

The purpose of this section is to provide early evidence in relation to the development of cross-border tax evasion in the last decades, with the emphasis on key CRS events. This will enable the completion of the qualitative analysis of CRS national laws with preliminary evidence on the effect of the CRS on cross-border tax evasion. In this regard, cross-border deposits are selected since they are considered a sound proxy for measuring tax evasion.[85] The data has been gathered from the Bank for International Settlements, *Locational Banking Statistics* (BIS LBS).[86]

Figure 9: cross-border deposits held in banks located in offshore locations (in million US dollars)



Data is from the BIS LBS—Table A5[87] and includes cross-border deposits held in banks located in the Bahamas, Bahrain, Bermuda, the Cayman Islands, Guernsey, Hong Kong, the Isle of Man, Jersey, Macau and Singapore by foreign residents. They are divided into 1st wave countries or CRS 2017 (Bermuda, the Cayman Islands, Guernsey, the Isle of Man and Jersey), 2nd wave countries or CRS 2018 (the Bahamas, Bahrain and Singapore) and those not having CRS implemented or not having it effective (Hong Kong and Macau).

Figure 9 depicts the development of cross-border deposits held in 10 offshore locations from 2000 to 2017. The latter group of countries is the one used in the qualitative analysis in section 4. The overall trend shows that, starting from 2007, a drop in cross-border deposits has occurred for those jurisdictions belonging to the 1st and 2nd wave adopters. One reason for the detected decrease may be the improved global information exchange network.[88] Indeed jurisdictions such as Jersey, Guernsey and the Isle of

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[85] For example Johannesen and Zucman, above fn.3; Huizinga and Nicodème, above fn.40; Alstadsæter, Johannesen and Zucman, above fn.40.

[86] For the complete database, see BIS LBS, above fn.40.

[87] For example, for data on cross-border deposits held in banks located in the Bahamas, see BIS LBS, above fn.40, Table A5, available at: *http://stats.bis.org/statx/srs/table/A5?c=BS&p=* [Accessed 24 April 2019].

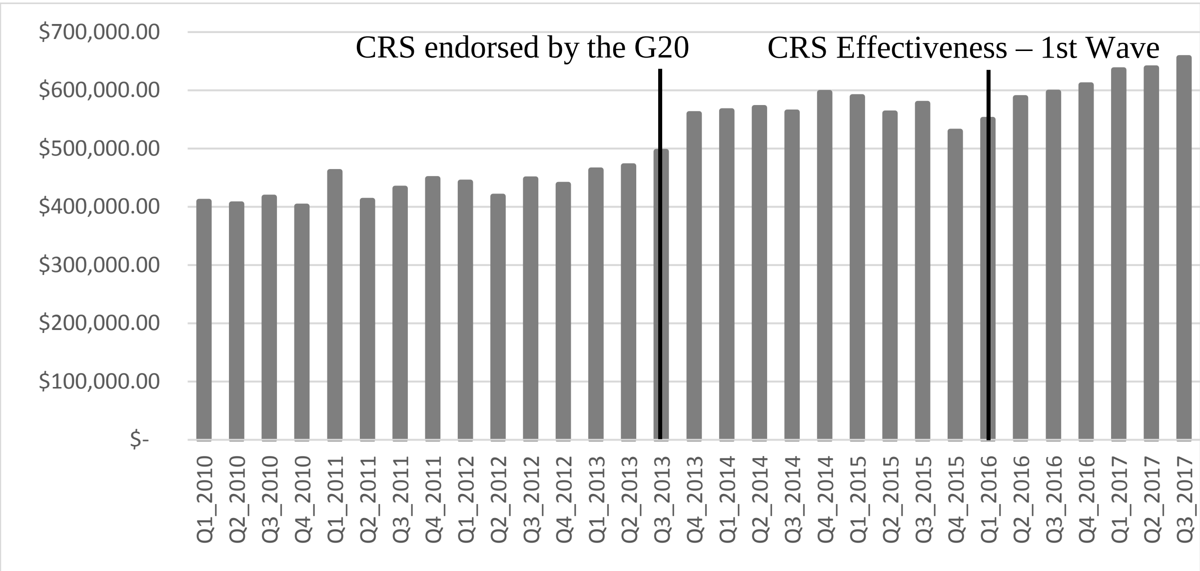
[88] For a detailed overview of TIEAs signed by tax havens during 2008 and 2011 as a reaction to international pressure, see K. Bilicka and C. Fuest, "With which Countries Do Tax Havens Share Information?" (2014) 21(2) *International Tax and Public Finance* 175.

Man signed several TIEAs between 2007 and 2011[89] whereas the Bahamas, Bermuda and the Cayman Islands followed in 2009–2011.[90] The subsequent decrease in cross-border deposits in offshore locations that are 1st or 2nd wave adopters can be related to key CRS events such as the signature of the MCAA in late 2014. In contrast, the numbers for Macau or Hong Kong, which only recently signed the MCAA and either have not implemented the CRS yet or have implemented it initially under a bilateral approach, do not show a clear decrease from 2014 onwards. Thus, the current shift by Hong Kong away from a bilateral approach represents an important step towards the achievement of a truly global standard for the AEOI.

In addition, the authors have analysed whether the common implementation of the CRS in multiple jurisdictions with the exception of the US led to an inflow of deposits located in the US. As there is no material automatic information exchange for foreign account holders in the US with their home countries, account holders might be incentivised to transfer their undeclared wealth and related income to the US. Figure 10 shows the outstanding volume of cross-border deposits located in US banks.

As shown in Figure 10, upon the G20 endorsement of the CRS (5–6 September 2013),[91] foreign wealth transfers to the US, measured in terms of cross-border deposits located in US banks, increased by around 13 per cent and upon noting the effectiveness of the CRS in the 1st wave countries (1 January 2016) by 7 per cent. This may suggest that upon the implementation of the CRS into national laws, the portion of deposits held in offshore locations for tax evasion purposes might have been reallocated, at least partially, to the US as the country may now appear to be an attractive location for hiding wealth and related income given its non-commitment to the CRS.

Figure 10: cross-border deposits held in banks located in the US (in million US dollars)



[89] In the period between 2007 and 2011 Guernsey signed 17, the Isle of Man 18 and Jersey 16 new TIEAs, see OECD, *Tax Information Exchange Agreements (TIEAs)*, available at: *http://www.oecd.org/tax/exchange-of-tax-information/taxinformationexchangeagreementstieas.htm* [Accessed 26 April 2019]. This represents a significant change in the tax transparency level in those offshore jurisdictions when considering that before 2007 they only had one, maximum two, TIEAs signed only with the US (Guernsey, the Isle of Man and Jersey) and the Netherlands (Guernsey and the Isle of Man).

[90] For example, in the period between 2009 and 2011 the Bahamas signed 25, Bermuda 23 seven and the Cayman Islands 18 new TIEAs, see OECD, *Tax Information Exchange Agreements (TIEAs)*, above fn.89. This represents also in this case a significant change in the tax transparency level in those offshore jurisdictions when considering that before 2008 they only had one, maximum two, TIEAs signed only with the US (the Bahamas, the Cayman Islands), Australia (Bermuda) and the UK (Bermuda).

[91] For more details, see *G20 Leaders' Declaration, Saint Petersburg Summit* (5–6 September 2013), available at: *http://www.g20.utoronto.ca/2013/2013-0906-declaration.html* [Accessed 25 April 2019].

Data is from the BIS LBS—Table A6.2[92] and includes loans and deposits held in US banks by residents of Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Cyprus, Denmark, France, Finland, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, the Republic of Korea, Luxembourg, Mexico, the Netherlands, Norway, New Zealand, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, Romania and the UK (these countries have been selected because they represent those EU and OECD Member States for which data is available in the BIS database).

6. Conclusion

A globalised world and increased number of cross-border activities have set a major challenge to jurisdictions and tax authorities worldwide, as they need to learn how to work together to make sure that the correct amount of tax is paid to the corresponding country. This is a challenge of the 21st century—the era of technology and, as such, requires jurisdictions to be equipped with the appropriate legal, administrative and IT tools to be able to accomplish their goals, including the collection of taxes. With the development and adoption of the CRS, over 100 jurisdictions committed to automatically exchange information with each other. 100 countries have already signed the MCAA and undertook the first AEOI in 2017 followed by the second AEOI in September 2018. The success of this whole initiative by the OECD must be acknowledged. However, looking at how the CRS has been implemented currently at national level, the authors' cross-country study of 41 jurisdictions has shown a significant variation in different aspects of the CRS national laws, which could be improved upon in future.

Based on the analysis set out in this article, the authors have developed key suggestions for further enhancement. In particular, a key recommendation to the OECD and all current and future participating jurisdictions is to achieve a higher level of standardisation when implementing the CRS into national law. The authors are of the opinion that allowing flexibility in relation to the legal form and scope of the CRS may hinder its effectiveness in achieving the stated objectives. This is why it is suggested that the bilateral approach and narrow approach options be removed while the multilateral approach and the wider approach be imposed as the only available options for the CRS. Additionally, a high level of CRS compliance can be achieved through the imposition of a homogenous and sufficiently stringent enforcement level. In this regard, the authors advise the setting of a minimum standard for monetary penalties and the possibility of revoking the licence to operate for the non-complaint financial institution. Moreover, to achieve high quality as regards the information exchanged under the CRS, the adoption of the OECD Model for self-certification requirement and reporting schema and the avoidance of any national model is considered as being crucial. In addition, homogeneity needs to be achieved with regard to the maximum period for data retention requirement, which could be set to 10 years.

The OECD has certainly set a level playing field for the global AEOI: 100 countries out of a total of 156 existing countries have signed on to the CRS and the number is continuously growing. Nonetheless, one very important global player has not committed to the CRS, and has shown no interest in doing so in the future: the US. After FATCA has been enforced, US citizens and taxpayers have almost nowhere to hide their wealth. This is due to the fact that the IRS receives substantial identical information directly or indirectly from foreign financial institutions. Yet, despite its fairly aggressive approach to obtaining information on its citizens and taxpayers, the US is not providing the same level of information on foreign residents holding financial accounts in US institutions. Even the reciprocity clause under Model 1 IGA is often seen to be violated as suggested by a report[93] showing that the US is not actually "walking the talk", as it is not exchanging the information on a mutual basis. Therefore, by neither reciprocating its request under FATCA nor signing the CRS, the US is on its way to turning into a very attractive offshore location for all non-US citizens and taxpayers. Having said that, the US currently has the status of the "weakest link" in the AEOI concept, that is, that no matter how much progress all CRS jurisdictions make, it is impossible to achieve the goal of the global AEOI unless the US joins.

[92] For example, for data on Austrian residents holding bank accounts in US banks, see BIS LBS, above fn.40, Table A6.2, available at: *http://stats.bis.org/statx/srs/table/A6.2?c=AT&p=* [Accessed 25 April 2019].
[93] Gammelin, above fn.51.

Finally, it can be concluded that adoption, implementation and execution of the CRS represents a major step forward and a significant weapon in fighting cross-border tax evasion. Continuous efforts for further improvements made by the OECD should be supported by countries, including the US, the professional community and the public. The authors hope that this article and the suggestions made therein will contribute to increasing the reach and achieving the greater potential of the CRS.

Appendix: Table 1a—cross-country overview of the main CRS features

Countries	CRS Status	Enter into Force	Legal Form	Enforcement Level (* criminal penalties)	Wider Approach	Self-Cert. Form	Reporting Schema	Data Retention Requirement
Australia	E	2	M	US$12,273,600	Y/M	N	OECD	5
Austria	E	1	M	US$245,640	Y/O	N	OECD	7
Bahamas	E	2	M	US$ 300,000	Y/M	N	OECD	5
Bahrain	E	2	M	NYD	Y/M	N	OECD	5
Belgium	E	1	M	*US$245,640,000	Y	Y/O	NL	7
Bermuda	E	1	M	*US$50,000	Y/M	Y/O	OECD	NYD
Bulgaria	E	1	M	US$15,733,750	Y/M	Y/M	OECD	5
Canada	E	2	M	*US$31,850	Y/M	Y/O	NL	6
Cayman Islands	E	1	M	US$60,975	Y/O	Y/O	OECD	6
Chile	E	2	M	US$477,450	Y/M	Y/O	OECD	7
Croatia	E	1	M	US$33,375	Y/M	N	OECD	10
Cyprus	E	1	M	US$24,564	Y/M	N	OECD	6
Czech Rep.	E	1	M	US$24,291	Y/O	N	OECD	10
Denmark	E	1	M	NYD	Y/M	N	OECD	5
France	E	1	M	US$24,564,000	Y/M	Y/O	EU	5
Germany	E	1	M	US$61,410	Y/M	N	NL	10
Guernsey	E	1	M	*NYD	Y/M	Y/O	OECD	6
Hong Kong	E	2	B/M	*US$6,374	Y/O	Y/O	OECD	6
Hungary	E	1	M	US$7,876	N	N	NL	8
Ireland	E	1	M	US$116,796	Y/M	Y/O	EU	6
Isle of Man	E	1	B/M	US$126,297	Y/M	Y/M	OECD	6
Israel	C	2	M	NYD	NYD	NYD	NYD	NYD
Italy	E	1	M	US$154,753	Y/M	Y/O	NL	10
Japan	E	2	M	*US$4,647	Y/M	N	OECD	5
Jersey	E	1	M	*US$4,210	Y/O	N	OECD	6
Luxembourg	E	1	M	US$307,050	Y/M	Y/O	NL	10
Macau	C	2	M	NYD	NYD	NYD	NYD	NYD
Mexico	E	1	M	US$165,731,016	Y/O	Y/O	NL	5
Netherlands	E	1	M	*US$2,548,515,000	Y/M	Y/O	NL	7
New Zealand	E	2	M	*US$72,110	Y/M	N	OECD	7
Poland	E	1	M	US$295,151	Y/M	N	NL	5
Rep. of Korea	E	1	M	US$28,011	Y/M	Y/M	OECD	6

Romania	E	1	M	US$1,629	Y/M	Y/O	NL	5
Singapore	E	2	B/M	*US$762	Y/M	N	OECD	5
Slovak Rep.	E	1	M	US$12,282	N	N	OECD	10
Slovenia	E	1	M	US$30,705	Y/M	Y/O	EU	10
Spain	E	1	M	US$24,564	Y/M	N	EU	10
Sweden	E	1	M	NYD	Y/M	N	EU	7
Switzerland	E	2	B/M	US$256,568	Y/M	Y/O	OECD/NL	?
Turkey	E	2	M	US$38,934,177	Y/O	N	NL	10
UK	E	1	M	US$4,210	Y/M	Y/O	EU	6
US	N (FATCA)	-	-	-	-	-	-	-

Countries

- The OECD as well as EU Member States are considered together with selected offshore locations (the Bahamas, Bermuda, Bahrain, the Cayman Islands, Guernsey, the Isle of Man, Hong Kong, Jersey, Macau and Singapore).
- Certain OECD/EU members are missing. They are Estonia, Finland, Greece, Iceland, Latvia, Lithuania, Malta, Norway and Portugal. Those countries are not available through the PwC CITT tool.
- Information is taken from current national CRS regulations as of June 2018. Certain countries (for example, Austria) have draft amendments pending. The information contained in proposals that are in a draft phase is not considered.

CRS status

- E—effective, that is, financial institutions started collecting the foreign account holder information.
- I—implemented, that is, the CRS system has been implemented under national law, but it is not yet effective (financial institutions did not start collecting the required information).
- C—committed, that is, the country committed to CRS but still did not implement the law.
- N—none, that is, the country did not commit to the CRS implementation.

Enter into force

- 1—1st wave country, that is, a CRS system is in place since 1 January 2016 and information is exchanged in 2017.
- 2—2nd wave country, that is, a CRS system is in place at latest beginning of 2017 and will start exchanging information in 2018.
- NYD—not yet defined, that is, the CRS law is still under the drafting process.

Legal form

- M—multilateral, that is, information is exchanged among all other jurisdictions where a CRS system is in place.
- B—bilateral, that is, bilateral agreements have to be signed before information is exchanged among two jurisdictions if one has adopted a bilateral form.
- NYD—not yet defined, that is, the CRS law is still under the drafting process.

Enforcement level

- Maximum monetary amount possible.
- * is criminal prosecution is possible.
- All amounts expressed in local currency are converted to US dollars (using the conversion rate from central bank websites on 23 April 2018).
- To make the comparison possible, penalties are considered those applied in case of non-compliance for a total period of 30 days and for a total of 100,000 accounts per institution.

- NYD—not yet defined, that is, the CRS law is still under the drafting process.

Wider approach

- Y/M—yes, mandatory, that is, financial institutions must collect information on every foreign account holder falling under the CRS definition of reportable account.
- Y/O—yes, optional, that is, financial institutions have the option either to collect information on every foreign account holder falling under the CRS definition of reportable account or to collect only information for those foreign account holders who are resident of a country which has a CRS in place and thus with which the country of residence of the financial institutions has to exchange the information.
- Y—yes, that is, not specified whether the wider approach is mandatory or optional.
- N—no, that is, financial institutions must collect only the requested information for those foreign account holders who are resident of a country which has a CRS in place and thus with which the country of residence of the financial institution has to exchange the information.
- NYD—not yet defined, that is, the CRS law is still under the drafting process.

Self-certification form

- Y/M—yes, a self-certification form is provided by the central government on its website and needs to be used for CRS purposes.
- Y/O—yes, a self-certification form is provided by the central government or by financial institutions on their respective websites but its use for CRS purposes is optional.
- N—no, that is, client has no template to follow when providing their personal information to the respective financial intuition.
- NYD—not yet defined, that is, the CRS law is still under the drafting process.

Report schema

- OECD—OECD level, that is, the CRS schema provided in Annex 3 of the OECD Global Standard is used for purposes of exchanging the information.
- EU—EU level, that is, the CRS schema provided under Article 9 of Directive 2003/48/EC guidelines is used for purposes of exchanging the information.
- NL—national level, that is, the CRS schema provided under the CRS national law is used for purposes of exchanging the information.
- NYD—not yet defined, that is, the CRS law is still under the drafting process.

Data retention requirement

- Maximum number of years, for which financial intuitions are requested to keep a copy of the collected data.
- ?—no general rule is stated yet in the CRS law.
- NYD—not yet defined, that is, the CRS law is still under the drafting process.

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ZEW – Leibniz-Zentrum für Europäische Wirtschaftsforschung GmbH Mannheim

ZEW – Leibniz Centre for European Economic Research

L 7,1 · 68161 Mannheim · Germany
Phone +49 621 1235-01
info@zew.de · zew.de