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"Live that International Life"



FATCA, CRS AND CARF

Buenos Aires, Argentina

April 4, 2025

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ABOUT DERREN

Education Summary

- Completed the Comparative Tax Program at Harvard University.
- Enrolled Agent (EA) with authorization to represent taxpayers before the IRS across all 50 states and internationally.
- Holds two Master's Degrees in Economics and a Certified Diploma from the Association of Chartered Certified Accountants (ACCA), UK.
- Executive Education at Columbia Business School and Advanced Tax coursework at New York University and the University of London.

Career Summary

- Chair of the Tax Working Group for Moores Rowland in the Asia Pacific, overseeing 23 countries.
- Member of the Global Leadership Committee of the International Business Structuring Association (IBSA).
- Member of Briefing Group advising the Lord Mayor of London on international tax issues.
- Board of Advisors, Caribbean Chamber of Commerce in Europe
- Board of Advisors, American social media company called Vlogmi AI.
- Published three books on taxation, including an Amazon Best Seller in 2020.

KEY PLAYERS SHAPING GLOBAL TAX POLICY

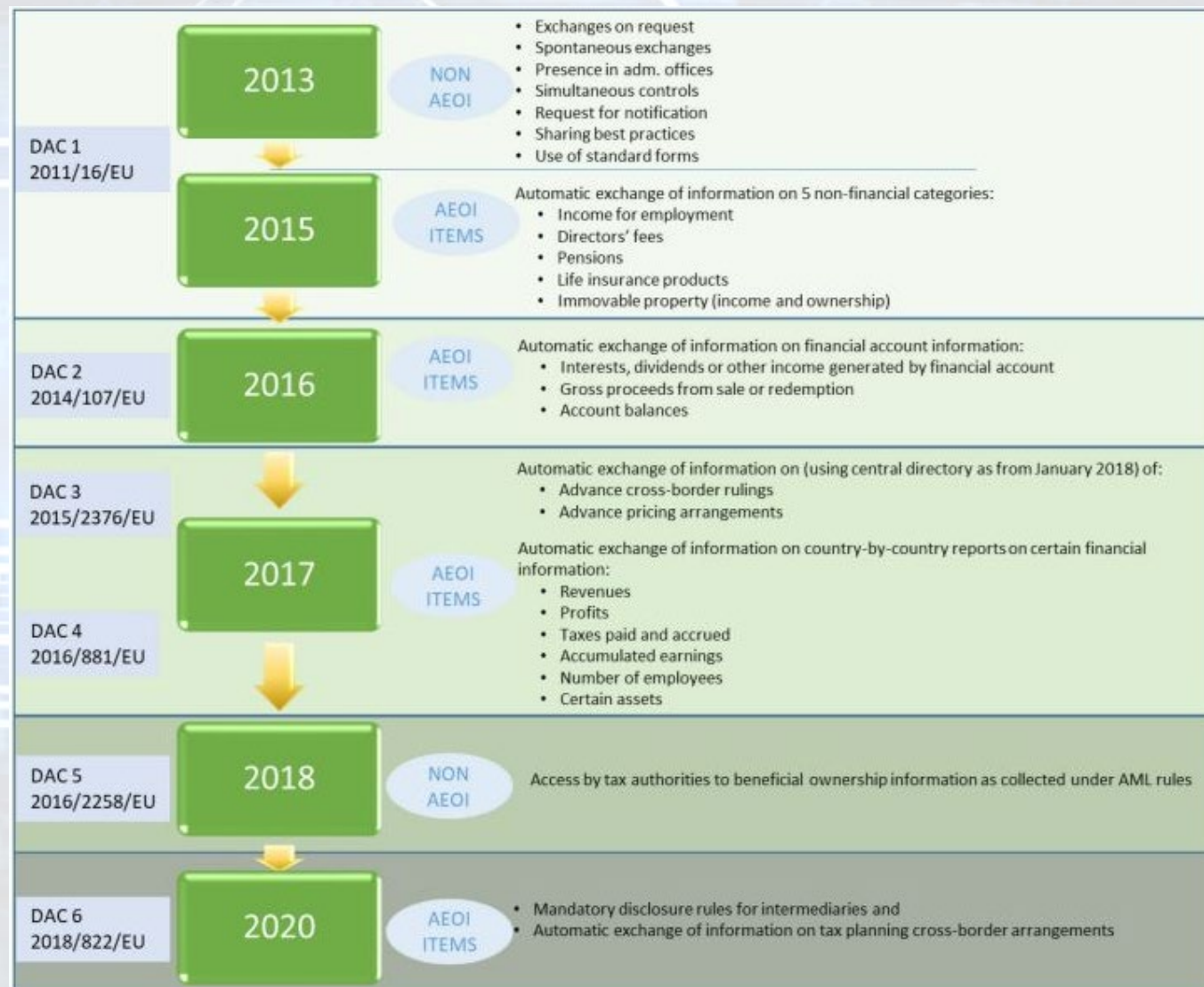
- OECD - a club of 38 “rich countries” - formed in 1961
- FATF - Financial Action Task Force - 1989 anti crime and terrorism - membership largely mirrors OECD
- G-7 / G20 - informal forums - world’s industrialized economies
- United Nations
- (Powerful) nation states -
 - a. France - directs EU policy and hosts OECD and FATF offices in Paris
 - b. US - gets involved when it suits their domestic interests. Otherwise American “exceptionalism”
 - c. UK - large financial services sector. Overseas Crown Dependencies and Overseas Territories
- “Civil Society” - eg Tax Justice Network

AUTOMATIC EXCHANGE OF INFORMATION



Crypto-Asset
Reporting Framework
(CARF/DAC8)

AUTOMATIC EXCHANGE OF INFORMATION



OUTLINE

- What exactly is FATCA?
 - Origin
 - How does it work
 - Loopholes
- What exactly is CRS?
 - Origin
 - How does it work
 - Loopholes
- What exactly is CARF?
 - Origin
 - How does it work
 - Loopholes
- Q&A



WHAT IS FATCA?



- The Foreign Account Tax Compliance Act (FATCA) is codified as Chapter 4 of the Internal Revenue Code. It represents the Treasury Department's efforts to prevent U.S. taxpayers who hold financial assets in non-U.S. financial institutions (foreign financial institutions or FFIs) and other offshore vehicles from avoiding their U.S. tax obligations.
- The intent behind the law is for foreign financial institutions (FFIs) to identify and report to the IRS U.S. persons holding assets abroad and for certain non-financial foreign entities (NFFEs) to identify their substantial U.S. owners.
- In order to comply with the rules, FFIs are required to enter into an FFI agreement with the U.S. Treasury or comply with intergovernmental agreements (IGAs) entered into by their local jurisdictions.
- U.S. withholding agents (USWAs) must document all of their relationships with foreign entities in order to assist with the enforcement of the rules. Failure to enter into an agreement or provide required documentation will result in the imposition of a 30% withholding tax on certain payments made to such customers and counter-parties.
- Failure to impose the requisite withholding under FATCA requirements could result in significant financial exposure.

PARADIGM SHIFT – 1980S TO NOW



- 1998 Pivot -
 - Rule - No country is obligated to help another enforce tax rules (India vs the UK and US Revenue Rulings)
 - OECD Harmful Tax Practices Project reversed the rule
- 2001 - 09/11
- 2007 - Bradley Birkenfeld / UBS

US ENFORCEMENT TO DATE

- UBS Deferred Prosecution Agreement (Feb. 2009)
 - Over 100 individual account holders have been criminally charged
- Numerous prosecutions of facilitators
- **Enforcement Actions Against Banks**
 - Bank Leumi (Israel) – December 2014; deferred prosecution agreement. \$270 million penalty and turn over of more than 1,500 names of account holders.
 - Credit Suisse (Switzerland) – May 2014; guilty plea. \$2.6 billion penalty.
 - LLB-Vaduz (Liechtenstein) – July 2013; non-prosecution agreement. \$23 million penalty.
 - Wegelin Bank (Switzerland) – January 2013; guilty plea. \$58 penalty and \$16.2 forfeiture.

US ENFORCEMENT TO DATE

- More than 100 Swiss Banks enrolled
 - BSI SA (March 30; \$211 million)
 - Vadian Bank AG (May 8; \$4.3 million)
 - Finter Bank Zurich AG (May 15; \$5.4 million)
 - Societe Generale (May 28; \$1.4 million)
 - MediBank AG (May 28; \$826,000)
 - LBBW (Schweiz) AG (May 28; \$34,000)
 - Scobag Privatbank AG (May 28; \$9,090)
 - Rothschild Bank AG (effective 6/3/15)
 - Banca Credinvest SA (effective 6/3/15)
 - Societe Generale Private Banking (Suisse) SA (effective 6/9/15)
 - Berner Kantonalbank AG (effective 6/9/15)
 - Bank Linth LLB AG (effective 6/19/15)
 - Bank Sparhafen Zurich AG (effective 6/19/15)
 - Ersparniskasse Schaffhausen AG (effective 6/26/15)
 - Privatbank Von Graffenried AG (effective 7/2/15)



Moneymaking can be Messi business

Making money is great, but what about handling all-things tax?

Footballers in both the UK's Premier League and Spain's La Liga have been charged with tax evasion by local tax authorities. In some cases, they are even facing potential bankruptcy.



Taxlinked.net - the online community for lawyers, accountants, trustees and tax specialists.

**MANNY PACQUIAO
Socked By IRS:
YOU OWE US \$18
MILLION!!!**

EXCLUSIVE

#BOXINGFANATIK



Manny Pacquiao has 18 MILLION new tax problems ... in addition to his \$50 million tax fight in the Philippines ... and this time, it's Uncle Sam that's trying to force Manny to pay up.

STARBUCKS
£398m sales



**Corporation
Tax
£0**

COSTA
£377m sales

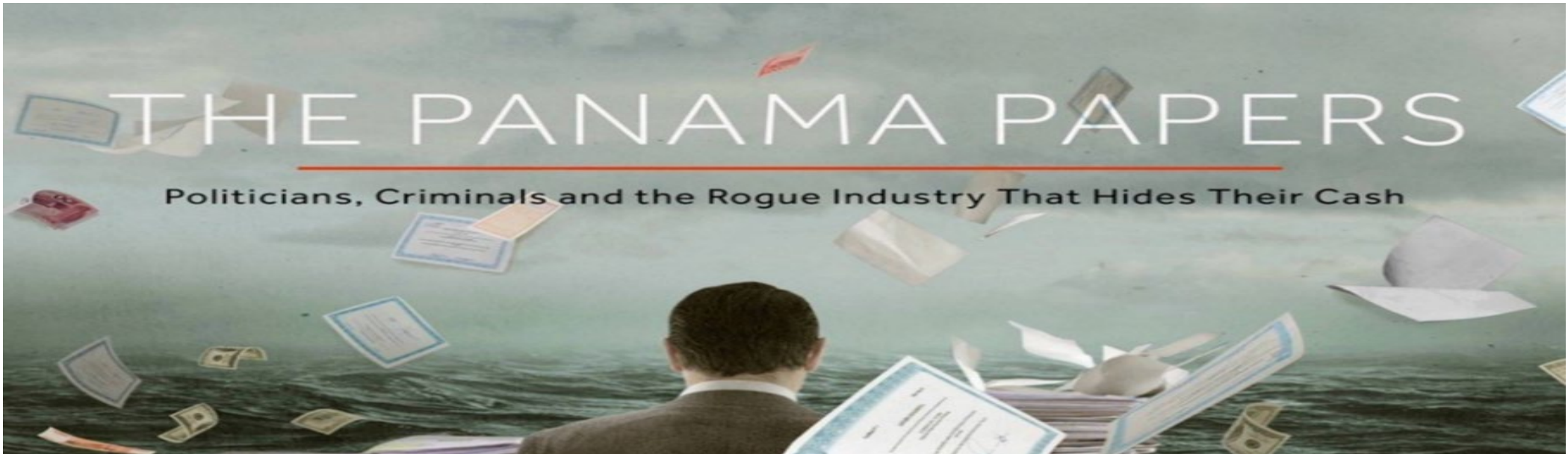


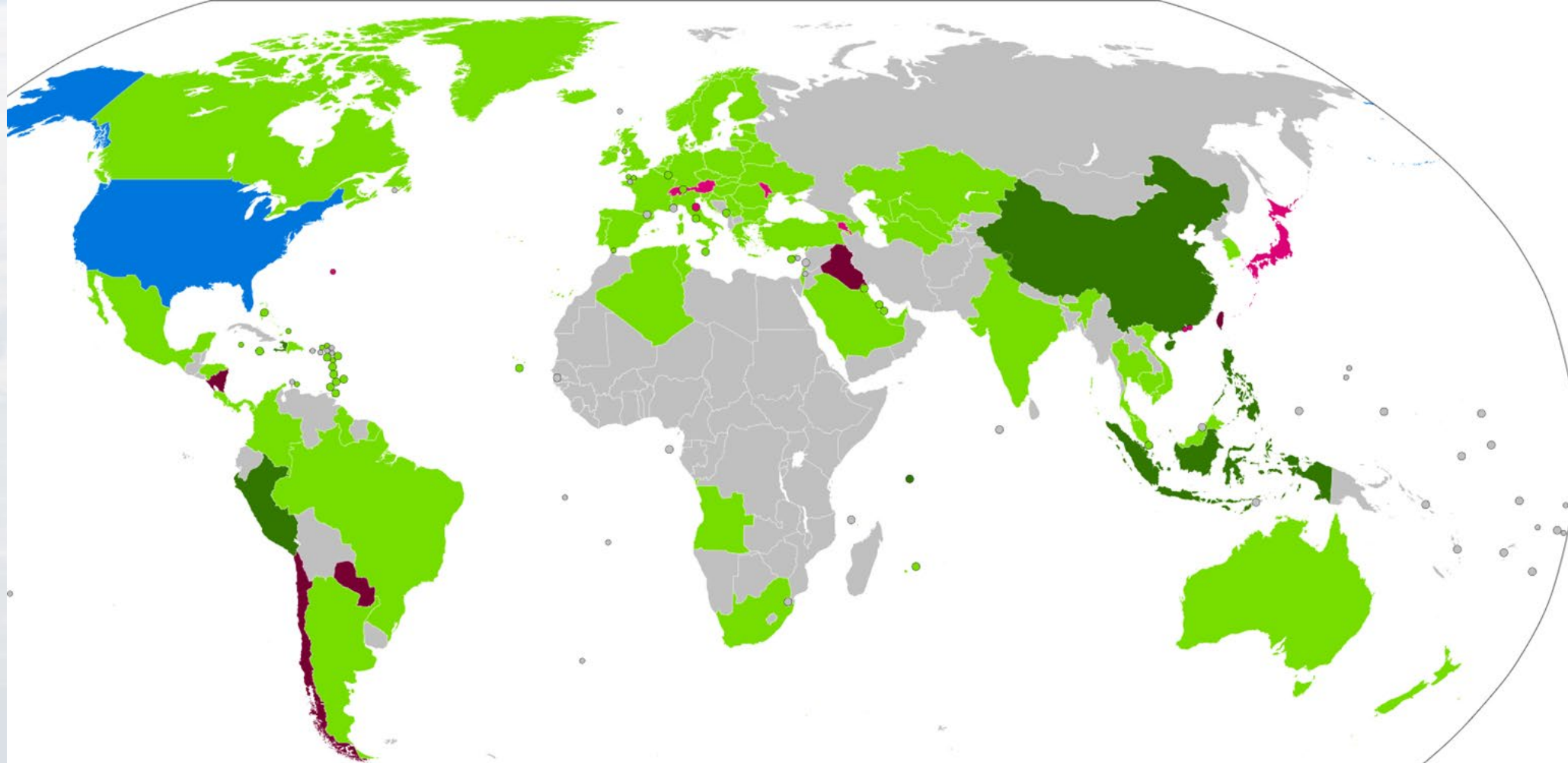
**Corporation
Tax
£15m**

Source: Companies House/ Reuters

THE PANAMA PAPERS

Politicians, Criminals and the Rogue Industry That Hides Their Cash

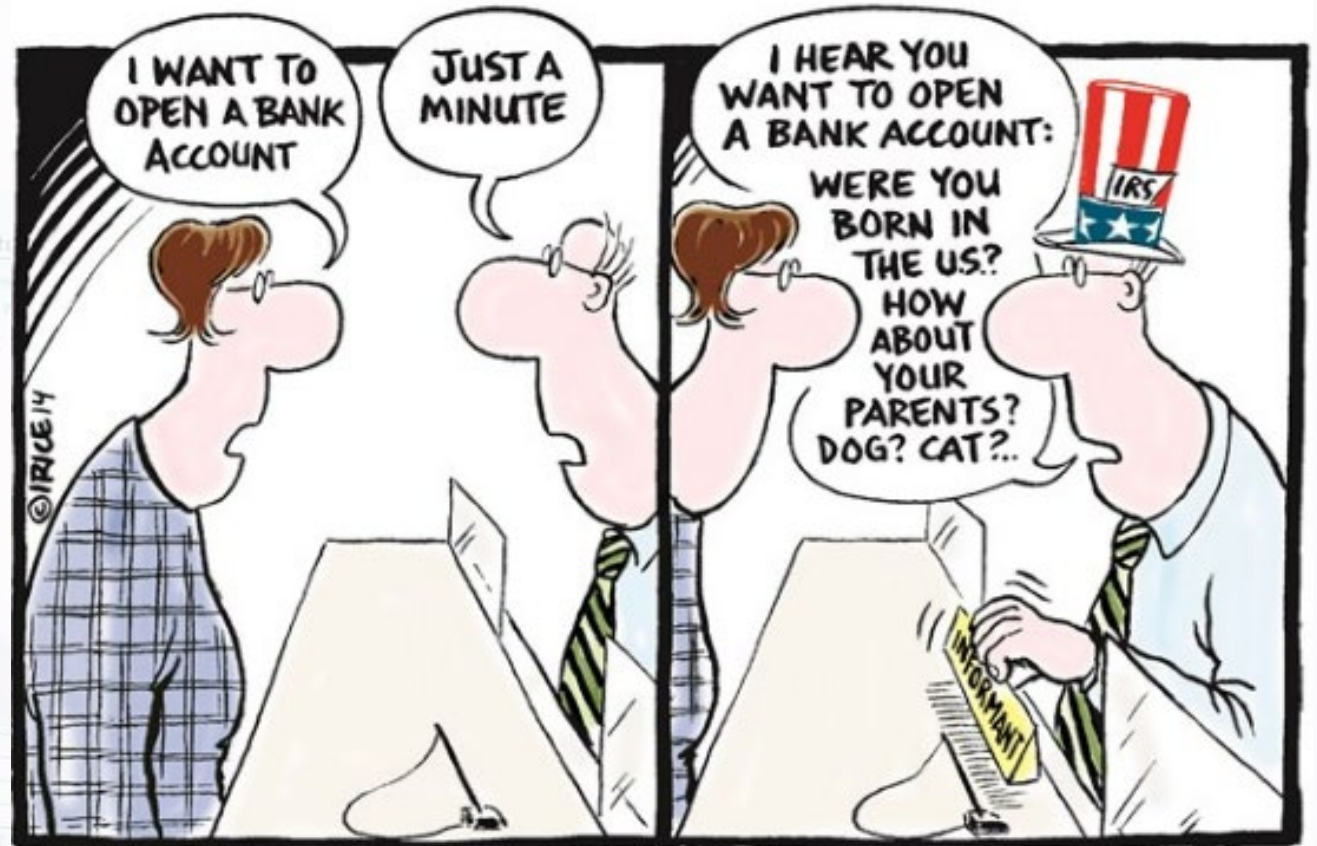




- United States
- Jurisdictions with agreements regarding FATCA implementation
 - Model 1 agreement in force
 - Model 2 agreement in force
 - Model 1 agreement **not** in force
 - Model 2 agreement **not** in force

FATCA IMPLICATIONS

- Governments
- Financial Institutions
- Other Entities
- Individuals



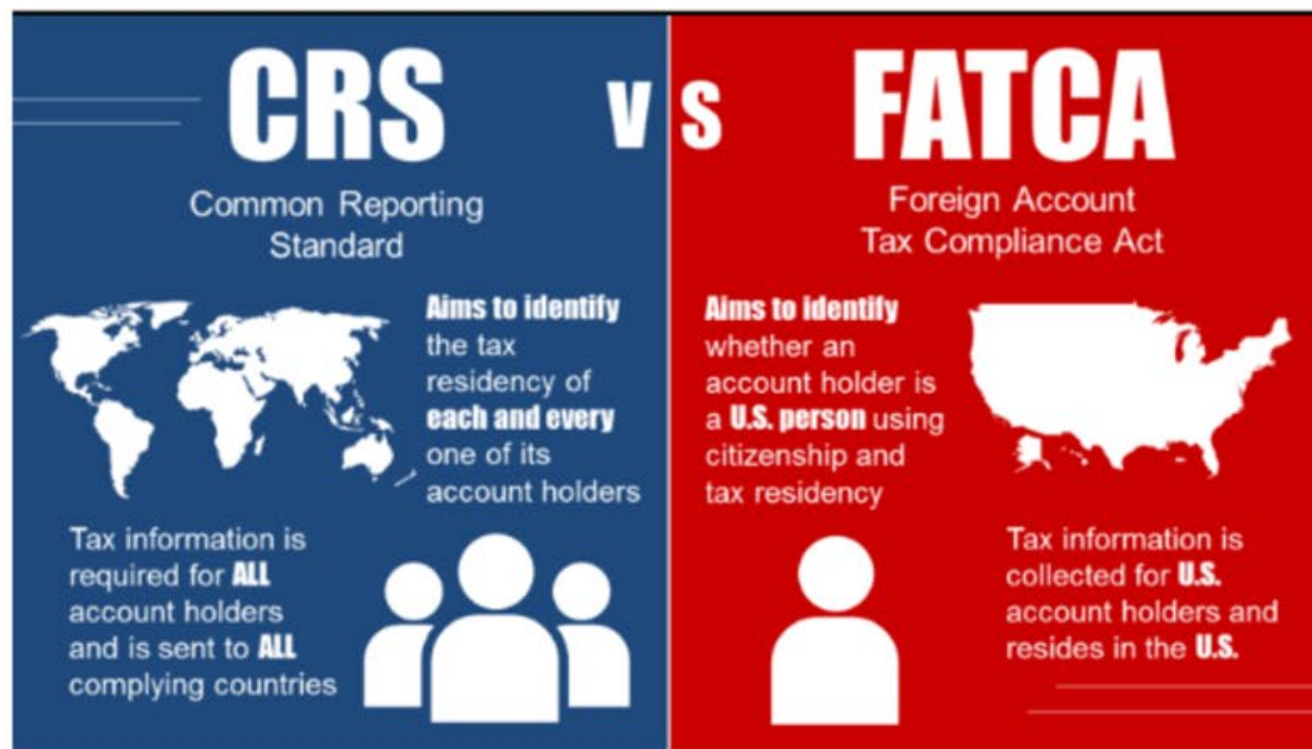
FATCA LOOPHOLES



- Robert Brockman / Shell Bank Loophole / FFI registers for GIIN and then opens bank account which is not reportable - \$2.7 billion in CH.
- Reciprocity / Recognized partners
- US persons failure to Self Report – FinCEN 114 / FBARs, Form 8938
- Other loopholes eg Non Participating Custodial Institution Trust

WHAT IS CRS?

The **Common Reporting Standard (CRS)**, developed in response to the G20 request and approved by the OECD Council on 15 July 2014, **calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information** with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.



FATCA VS CRS

WHO HAS TO COMPLY?

✓ Only applies to American citizens

✓ Applies to CRS signatories

WHAT ACCOUNTS ARE DECLARABLE?

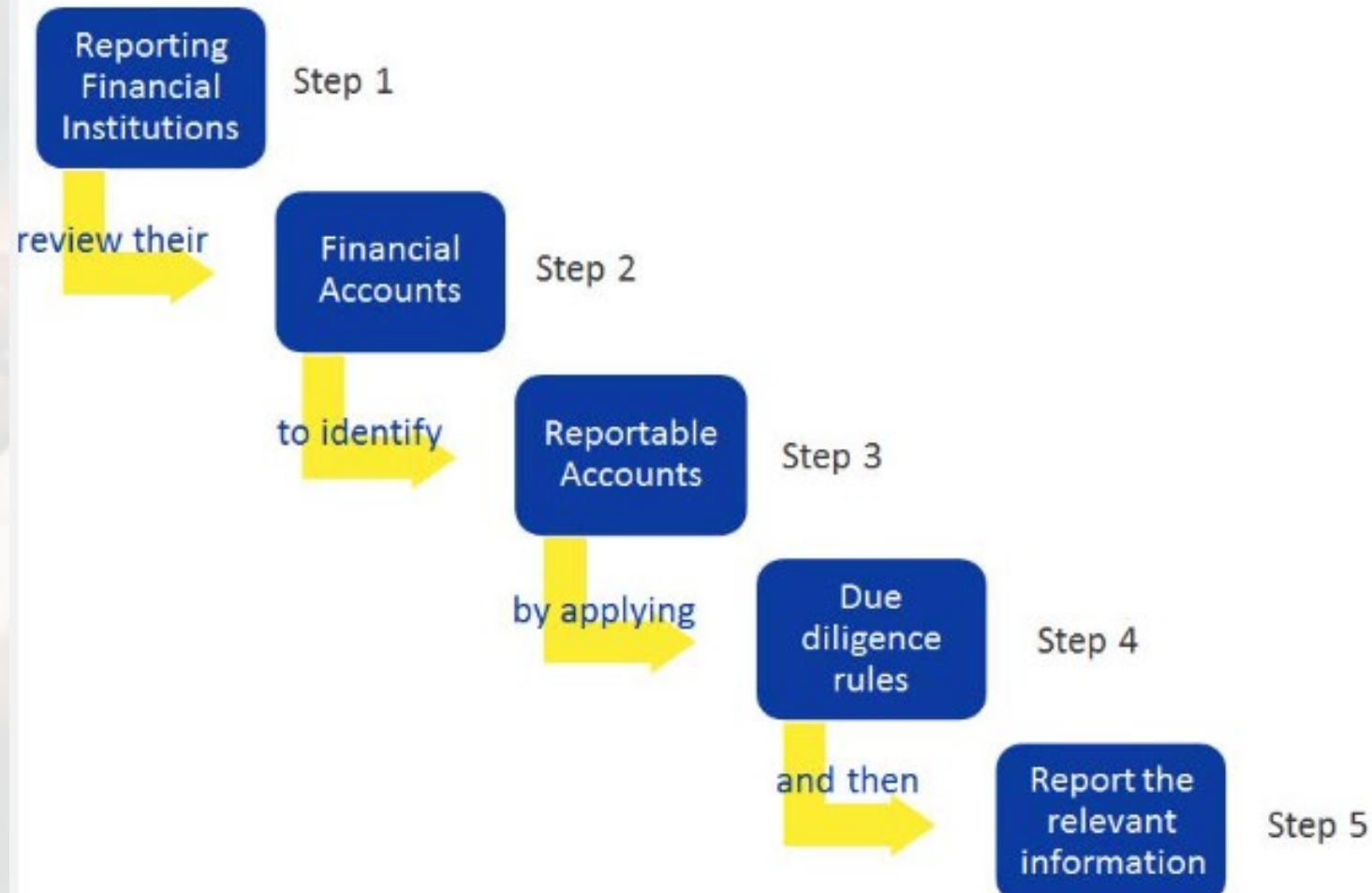
✓ Individual and corporate accounts

✓ Individual and corporate accounts for tax residents in any CRS-compliant jurisdiction

✓ Passive accounts for entities with economic substance in the US

✓ Passive accounts for entities with economic substance in any CRS-compliant country

HOW DOES CRS WORK



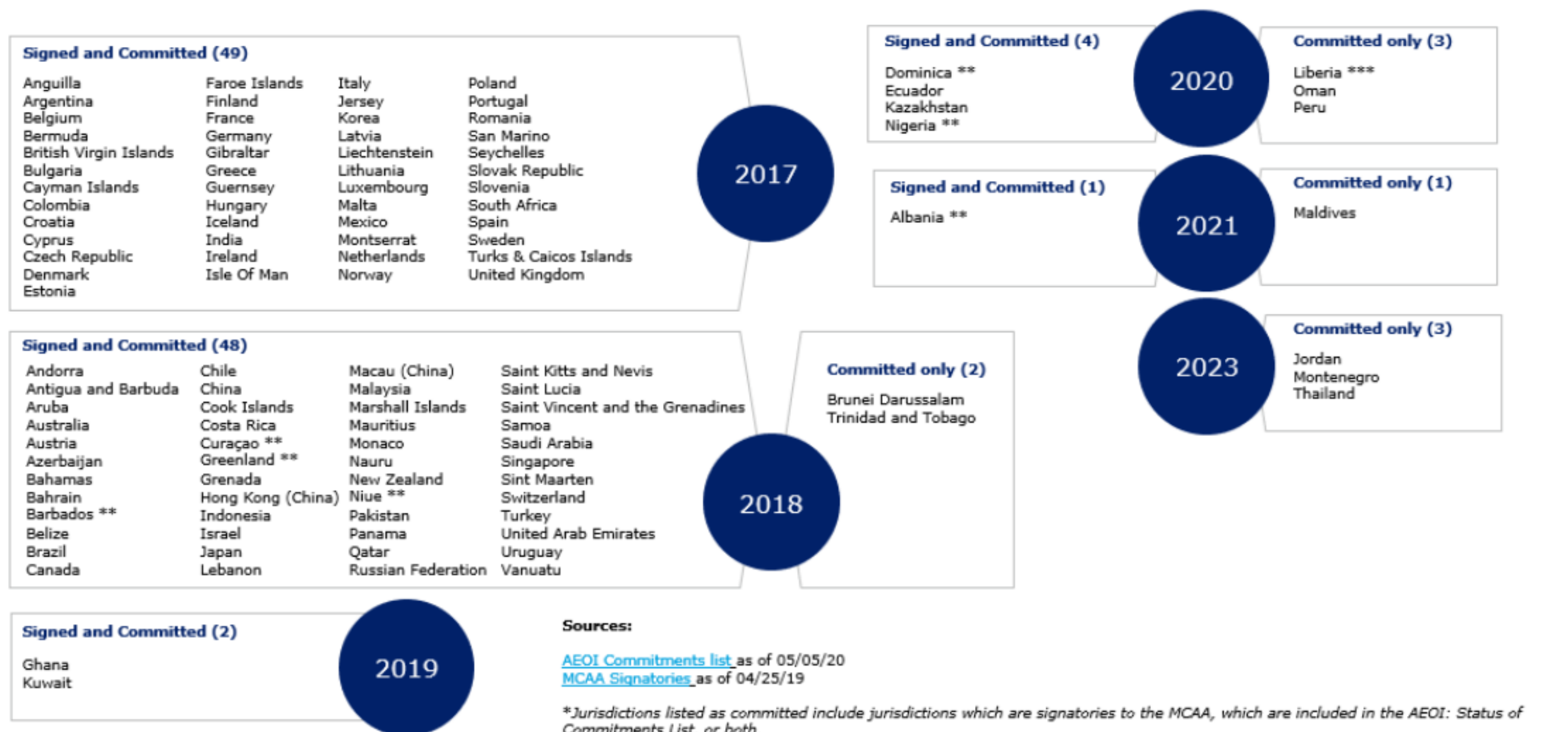
CRS IMPLICATIONS

- Governments
- Financial Institutions
- Other Entities
- Individuals



All European Union (EU) countries, China, India, Hong Kong, Russia and 109 countries altogether have agreed.

Countries to implement CRS (113*)



Sources:

[AEOI Commitments list](#) as of 05/05/20
[MCAA Signatories](#) as of 04/25/19

*Jurisdictions listed as committed include jurisdictions which are signatories to the MCAA, which are included in the AEOI: Status of Commitments List, or both.

** Countries on MCAA list with intended first information exchange listed under a different year on the AEOI Commitment List

***Countries on MCAA list with intended first information exchange under a different year **and** listed on AEOI under developing countries

CRS LOOPHOLES

Misinterpretation and Fraud

- (i) HK structure - using CLGs
- (i) Zero cash value insurance - PPLI. UBO is the policy holder not insurance policy (as per CRS FAQ dd Feb 2019, paragraph 12 and page 200 of the CRS Commentary on Sec VIII)
- (i) Gibraltar broad participation retirement plans - treated as a Non-Reporting Gibraltar Financial Institution and as exempt beneficial owners?
- (i) Fake residence and CBI
- (i) Captive insurance from Puerto Rico - IRS Dirty Dozen
- (i) Splitting below 25% with unrelated parties

Real

- (i) Non participating jurisdictions using Custodial Institutions
- (ii) US structures including US trustees with a foreign protector

WHAT IS CARF?

- The Crypto-Asset Reporting Framework (CARF), developed by the Organization for Economic Co-operation and Development (OECD), aims to bring transparency to the global crypto-asset market. It establishes a standardized method for countries to collect and automatically exchange information about crypto-asset transactions involving their residents.

- **KEY ASPECTS OF CARF**

1. **Prevent Tax Evasion:** By tracking crypto-asset transactions, tax authorities can identify and address potential tax avoidance related to cryptocurrency.
2. **Enhance Transparency:** CARF promotes transparency in the crypto-asset market, potentially deterring criminal activities such as money laundering and terrorist financing.
3. **Level Playing Field:** A standardized reporting framework ensures a consistent approach across different jurisdictions, creating a fairer environment for businesses and individuals.

WHAT IS CARF?

- **How It Works:**

1. Reporting Entities: Crypto-asset service providers (CASPs) are the primary entities responsible for reporting information to relevant authorities. CASPs include exchanges, brokers, and custodians that facilitate crypto-asset transactions for their clients.

2. Information Reported:

- Client identification details (similar to KYC/AML regulations)
- Transaction information (date, amount, type of crypto-asset)
- Account balances

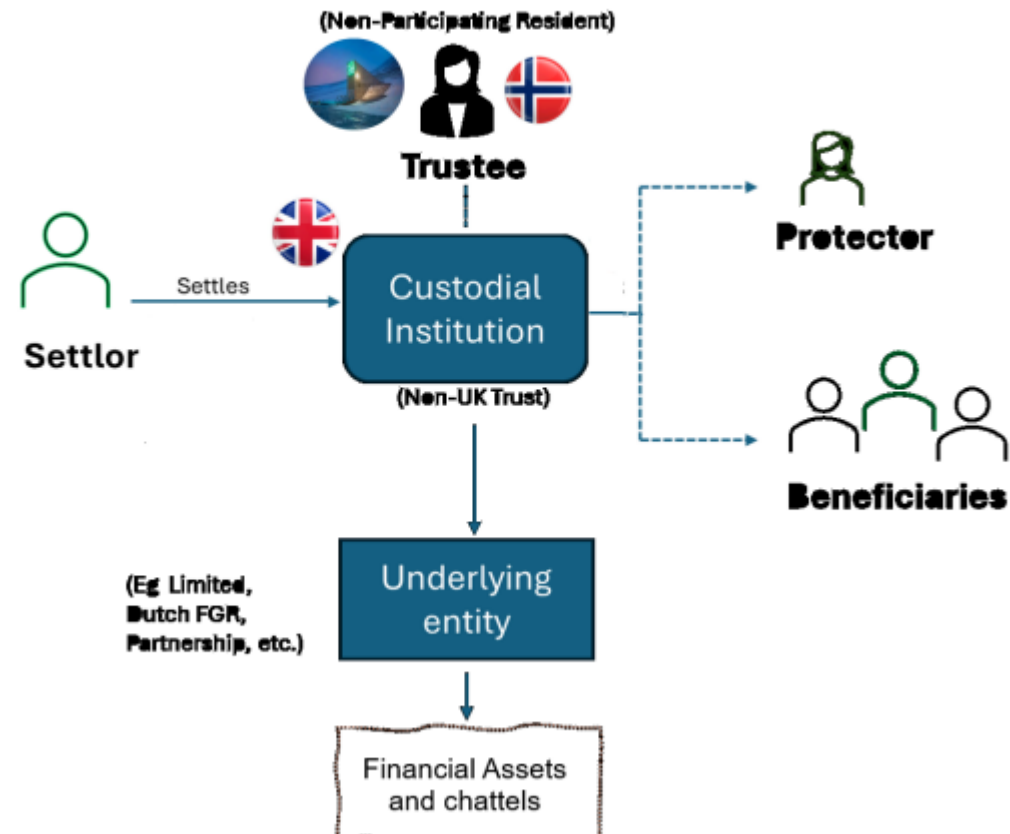
3. Automatic Exchange: Countries participating in CARF automatically exchange the reported information with each other. This enables tax authorities to identify residents who might be underreporting crypto-asset gains.

CARF COVERAGE

- As of October 2024, 61 Jurisdictions have committed to implement the CARF in time to commence exchanges in 2027 or 2028 as part of the Global Forum's CARF commitment process:
- Austria, Azerbaijan, The Bahamas, Barbados, Belgium, Bermuda, Brazil, British Virgin Islands, Canada, Cayman Islands, Colombia, Croatia, Cyprus, Czechia, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Iceland, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Mongolia, Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, Romania, Saint Vincent and the Grenadines, San Marino, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Switzerland, Thailand, Türkiye, Uganda, United Arab Emirates, United Kingdom and United States of America.

FATCA / CRS / CARF BLIND STRUCTURE

Non participating Custodial Institution trust



- The bank maintaining the financial assets does not report for FATCA /CRS because its account holder (financial account) is a FFI / FI - a professionally managed Investment Entity
- The underlying Professionally Managed Investment Entity does not report for FATCA because the equity interest is a FFI, a non-participating Custodial Institution. Note the shell bank loophole used by Robert Brockman was illegally filing a "nil report" at this stage. The Custodial Institution does not report for FATCA Not a FATCA IGA participating FFI
- Svalbard has no FATCA IGA with US. In fact Svalbard is excluded from CRS, EU, EEA, Schengen and Nato, despite being under the sovereignty of Norway,
- The non-UK trust above does not register with HMRC or TRS
- The UK beneficial owner register of a UK company (underlying entity above) lists only the trustee as the sole Person of Significant Control (PSC), which is the UK version of beneficial owner.
- UK company and trusts are dirt cheap to establish and maintain.
- The non-UK trust does not require any UK nexus, i.e. Notary, Corporate service provider, lawyer, attestation in UK, etc.
- Trustees of UK trusts can be in any country except N. Korea, Russia, Iran, Cuba, etc.
- Custodial Institution fees can be paid to unrelated third parties
- The Custodial Institution need not obtain a GIIN from the IRS
- There will not be any 30% withholding payment to the Custodial Institution as no payment is ever made to the Custodial Institution.
- There is no recalcitrant holder reporting by the underlying investment entity. A recalcitrant account holder is an account holder (other than an account holder that is an FFI) of a PFFI or registered deemed-compliant FFI that has failed to provide the FFI maintaining its account with the information required under Regulations section 1.1471- 5(g)
- There is no recalcitrant reporting by the non-participating Custodial institution, because... well its got no IGA with the US.
- US has no Double Tax Treaty with Svalbard (US mistakenly calls it Spitsbergen), so cannot obtain information upon request.



THANK YOU