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# Tax Transparency: Past, Present and Future

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# Tax Transparency: Past, Present & Future

- 1. How did we get here?**
- 2. Current state of tax transparency:**
  - a. AEOI regimes
  - b. Loopholes and weaknesses
- 3. Beneficial ownership registers:**
  - a. United States
  - b. EU and other jurisdictions
- 4. Tax administration aspects:**
  - a. What do tax authorities do with AEOI data?
  - b. Challenges and problems
  - c. Japan as a case study
- 5. The future of tax transparency**
- 6. Discussion and Q&A**



**How did we get here?**

# Trend toward tax transparency

- **Old paradigm:** bank secrecy; no AEOI, only EOI on request under a DTA/TIEA
- **Since 2008**, U.S. DOJ has increased enforcement actions against FIs: UBS tax scandal (2008-09); Swiss Bank Program (2013); Offshore Compliance Initiative (ongoing)
- **2009:** “The era of bank secrecy is over” (G20, London Summit)
- **2010:** The U.S. enacted FATCA
- **2014:**
  - FATCA implementation started
  - OECD published the CRS
- **2016-17:** CRS compliance started in ~100 jurisdictions.
- **2018:** DAC6; CRS MDRs
- **2022-23:** CARF and Amendments to CRS; DAC8
- **2024:** U.S. Corporate Transparency Act becomes effective (enacted in 2021)





# Current state of tax transparency

# Incomplete Tax Transparency

## Key tax reporting standards

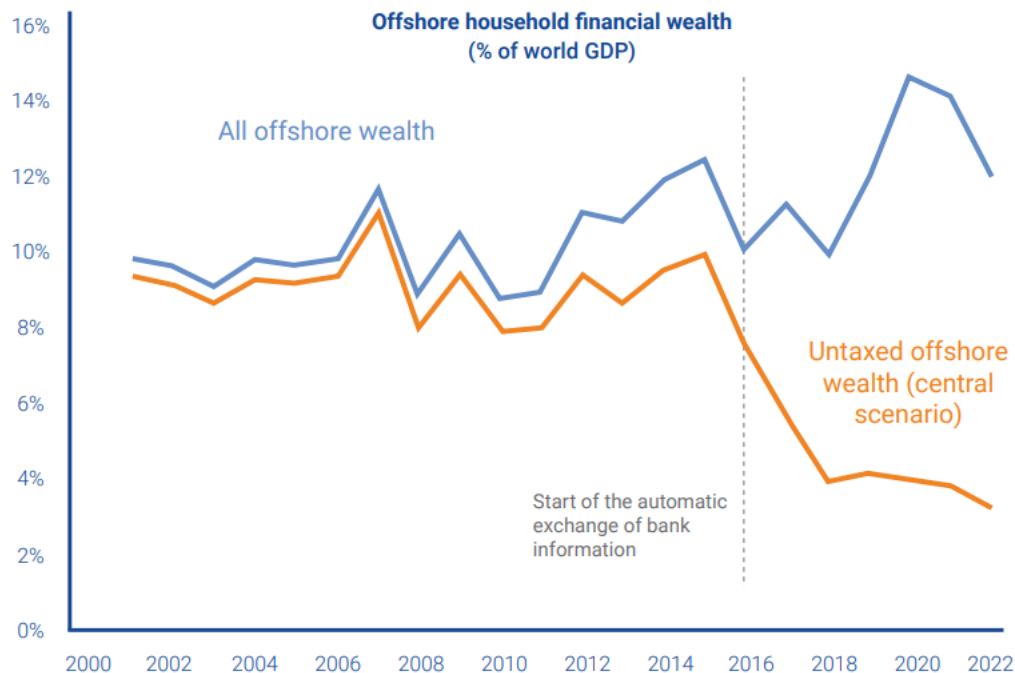
1. FATCA
2. CRS
  - 113 jurisdictions already implemented exchange by 2023
  - 12 jurisdictions committed to implement
  - No commitment by 45 jurisdictions (e.g., Vietnam & Philippines)
  - No U.S. participation
  - Amendments to CRS
3. Corporations: CbCR, exchange of tax rulings
4. Intermediaries: DAC6, CRS MDRs
5. Digital platforms: OECD Model Rules, DAC7, other countries
6. Crypto-Asset Reporting Framework, DAC8

# How do noncompliant taxpayers react?

## 1. Become compliant

**Figure 1**

The success of the automatic exchange of bank information



# How do noncompliant taxpayers react?

2. Continue non-compliance while avoid detection

- How tax evaders might avoid CRS reporting:

- a. Offshore non-financial assets which are not within the scope of AEOI:



- b. Using loopholes and noncompliance opportunities to continue holding offshore financial assets while avoiding AEOI:

- c. Onshore tax evasion.





# Loopholes and weaknesses

1. Out-of-scope assets
2. The U.S. tax haven
3. Loopholes in FATCA/CRS

# 1. Out-of-scope assets

1. Real estate
2. Collectibles
3. Precious metals
4. Crypto (but CARF is coming)

# 1. The U.S. Tax Haven

- **TJN Financial Secrecy Index:** U.S. is ranked as #1.
- **Characteristics of a Tax Haven** (OECD, 1998; GAO Report, 2008):
  1. Zero or nominal tax rates: ✓ (but only for foreigners; U.S. persons pay U.S. tax)
  2. Robust secrecy rules: ✓ (especially in some U.S. states)
  3. No obligation to exchange information: ✓ (Eol – yes under DTA/TIEA; AEOI – no)
  4. No need for a substantial local presence: ✓
- Empirical evidence:
  - Post-CRS: a decrease in cross-border financial assets in tax havens + increase in the U.S.
  - Cusi et al (2020); Hakelberg & Schaub (2018); O'Reilly et al. (2019), Beer et al. (2019).
- The Pandora Papers and other leaks.

**“While the rest of the world provides the transparency that the U.S. demanded, the U.S. is rapidly becoming the new Switzerland...”** (Bloomberg).

## 2. Loopholes and weaknesses in FATCA/CRS

1. Replacing third-party reporting with self-reporting:
  - a. “Shell Bank” Loophole
  - b. Custodial Institutions
2. Non-reporting of beneficial owners:
  - a. Active NFEs
  - b. Exempt FIs
  - c. Avoiding having reportable “controlling persons”
3. False information concerning tax residence:
  - a. Citizenship/residency by investment schemes
  - b. Other countries?
4. Custodial accounts: non-reporting of deposits and withdrawals

# Example: “Shell Bank” Loophole

French tax resident



100%

BVIco

Bank in  
Singapore



\$1,000,000

AML/KYC

Self-  
certification



INLAND REVENUE  
AUTHORITY OF  
SINGAPORE



*Liberté • Égalité • Fraternité*  
RÉPUBLIQUE FRANÇAISE

## Who should be reported?

1. **Passive NFE** – also report the “Controlling Persons”
2. **Active Non-Financial Entity (Active NFE)** – report only the entity
3. **FI** – no reporting at all by the Singapore bank; BVIco must report





# THE SHELL BANK LOOPHOLE

**Billionaire tax evasion scheme exposes how weak enforcement of the Foreign Account Tax Compliance Act enables wealthy tax cheats to hide income offshore.**

## “Shell Bank” Loophole

- USA v. Robert Brockman: the largest tax evasion case in U.S. history
- U.S. Senate investigation and report
- U.S. Treasury and the OECD can fix it
- Canada, Netherlands, Luxembourg



# **Beneficial ownership registers**

# Beneficial ownership registers: the EU & other countries

- The existing directive is the **Directive 2015/849/EU (the fourth AML directive)**, as amended by **the Directive 2018/843, the fifth AML Directive**.
- Under the 4th anti-money laundering directive of the European Union entered into force on 26 June 2017, all European countries were obliged to introduce legislation creating a register of the ultimate beneficial owners (UBOs) of structures.
- the Beneficial Ownership Registers Interconnection System ("**BORIS**")
- Access on the real owners across the EU that had been guaranteed by the 5th EU Anti-Money Laundering Directive (AMLD5) is now curtailed in many member states since **the 22 November 2022 decision of the Court of Justice of the European Union (CJEU)**. The decision annulled provisions of the AMLD5 that required public access to beneficial ownership information as means to prevent and detect money laundering and predicate offences.
- On 18 January 2024 the Council and the Parliament reached a provisional agreement on the **6th Directive** as part of the antimoney laundering package.

# Beneficial Ownership Registers: United States

- Corporate Transparency Act
  - Background
  - Private (Law Enforcement/Government) – Not Public – Not Automatic Exchange
  - Reportable Companies
  - Applicants and Beneficial Owners
  - Reporting
  - Penalties for Noncompliance
- Implementation, court challenges
- How will the CTA help fight domestic and foreign tax evasion?



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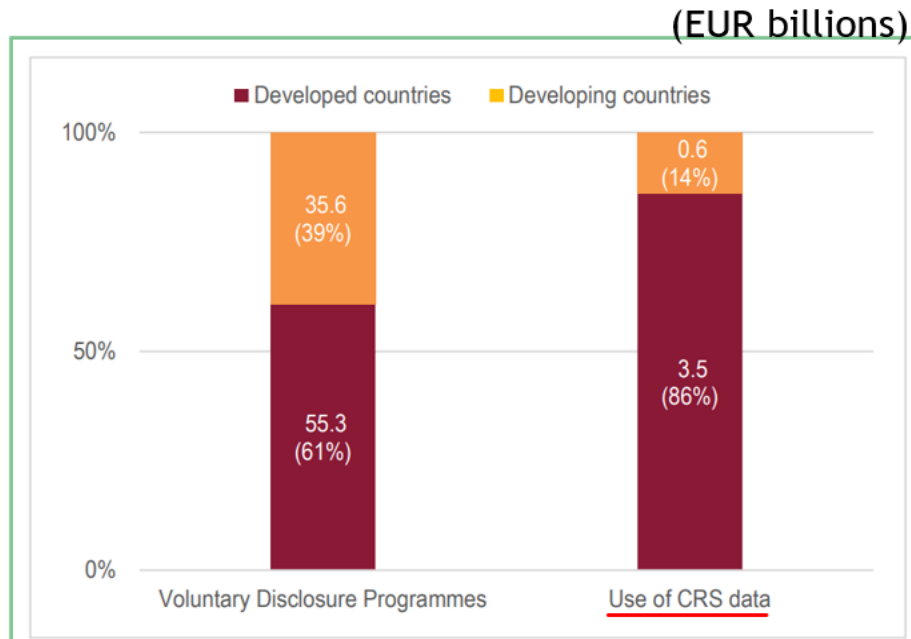
# **Tax administration challenges**



# Tax administration challenges

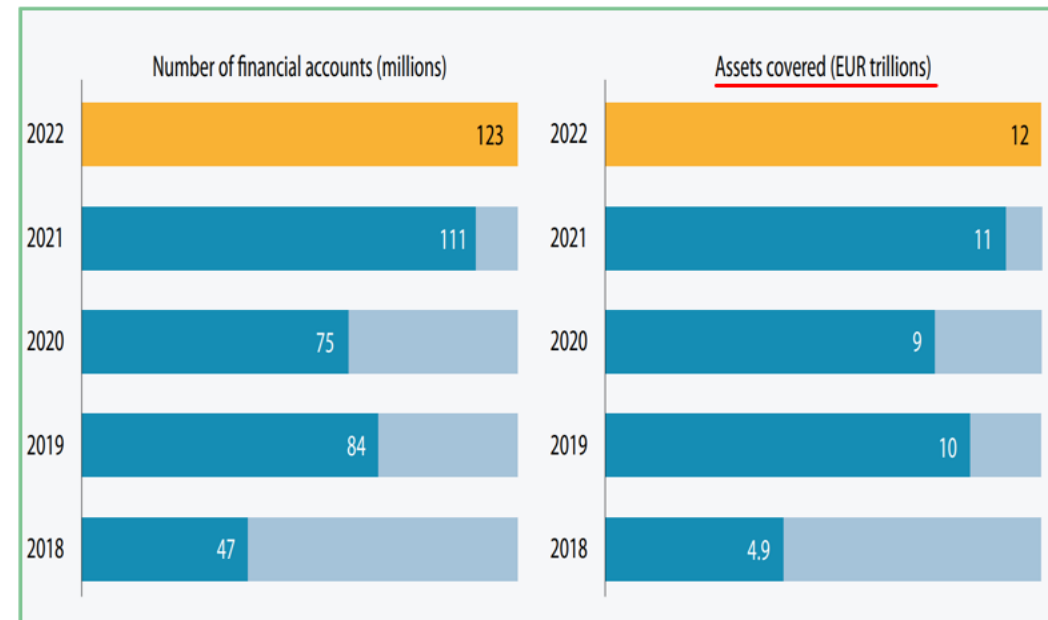
## • *Big Picture - AEOI (Global Forum)*

**Additional revenue** through automatic exchange of financial account information for 2014-2022



(Source: Update on the implementation of the 2021 Strategy on Unleashing the Potential of Automatic Exchange of Information for Developing Countries, OECD Global Forum (2023), p13)

Automatic exchange of financial account information, **key figures** for 2018-2022



(Source: 2023 Global Forum Annual Report, OECD Global Forum (2023), p38)

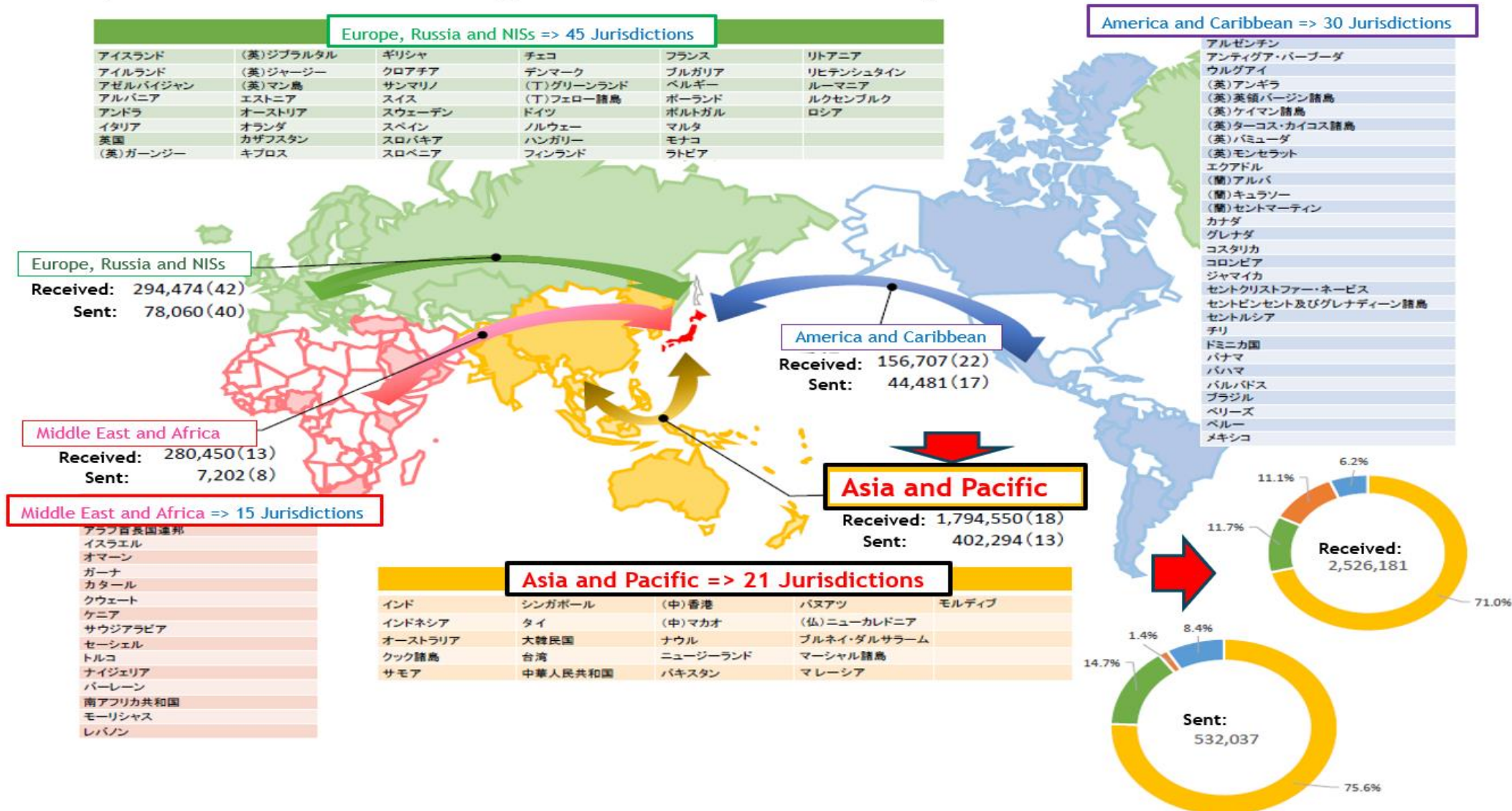
# Tax administration challenges

## • Trends -Information Exchange 【Japan】

Business Year				2015	2016	2017	2018	2019	2020	2021	2022
On Request	Sent	①		366	473	766	825	613	638	639	641
	Received	②		158	415	137	191	233	251	128	252
Spontaneous	Sent	③		186	272	157	126	106	106	73	131
	Received	④		33	549	574	9,666	394	20,351	448	812
Automatic (AEOI)	Sent	Traditional AEOI	⑤	188,359	531,081	705,309	853,207	871,161	687,987	767,611	750,791
		CRS		—	—	—	90,155	473,699	650,558	651,794	532,037
		CbCR		—	—	—	831	844	898	901	866
		(Total)		188,359	531,081	705,309	944,193	1,345,704	1,339,443	1,420,306	1,283,694
	Received	Traditional AEOI	⑥	117,563	205,153	123,639	162,942	157,846	112,910	99,019	77,103
		CRS		—	—	—	744,986	2,058,777	1,906,896	2,500,664	2,526,181
		CbCR		—	—	—	2,100	1,751	2,186	2,246	2,237
		(Total)		117,563	205,153	123,639	910,028	2,218,374	2,021,992	2,601,929	2,605,521

# Tax administration challenges

- No. of Accounts exchanged under CRS 【Japan】 <Business year 2022>







# The future of tax transparency

# Trends

## ***More tax transparency***

1. Efforts to improve existing standards:
  - Amendments to CRS
2. Efforts to enhance transparency with respect to out-of-scope assets:
  - CARF
  - Proposal for foreign-owned real estate
3. Targeting “enablers:”
  - EU proposals

## ***Pushback against more transparency***

- No public BO information in EU and offshore jurisdictions
- Major loopholes are not going away



# Amendments to CRS

## 1. Reportable assets:

- Digital financial assets: e-money products, Central Bank Digital Currencies (CBDCs).

## 2. Expansion of reporting requirements:

- The role of the controlling person.
- Whether the account pre-existing or new; whether a valid self-certification has been obtained.
- Is the account a joint account and the number of holders
- The type of financial account.
- Dual-resident account holders: must be reported in both jurisdictions – cannot rely on a tie-breaker rule.

## 3. Due diligence:

- Exceptional procedures where a valid self-certification was not obtained on “day one.”

## 4. Incorporating FAQs and OECD guidance on CBI/RBI into the CRS.

## 5. Optional new non-reporting FI category for genuine charities.

## 6. New Excluded Account category for capital contribution accounts.

# But what about other loopholes and weaknesses?

1. Replacing third-party reporting with self-reporting:
  - a. “Shell Bank” Loophole
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# CARF

- **CARF is coming:** 56 jurisdictions plan to implement it.
- **EU:**
  - DAC8 with an implementation date of 1/1/2026.
  - EU pressure for global participation?
- **United States:**
  - Is legislation required? If so, is legislation likely?
- **G20:**
  - “We call for a swift implementation of the [CARF] and amendments to the CRS.”
  - The Global Forum will publish the timeline; many countries aspire to start exchanges in 2027.
- **The problem:** CARF is flawed:
  1. Trading crypto without using reporting intermediaries
  2. Flaws inherited from CRS
  3. Weaknesses specific to CARF and the crypto industry

# Foreign-owned real estate

- **OECD (2023):** Enhanced International Tax Transparency on Real Estate
- **Proposed short-term improvements:** exchange of readily available information
- **Proposed long-term solution:**
  1. Exchange of information based on common due diligence and reporting requirements
  2. Direct access to relevant information in real-time



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**Discussion and Q&A**