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ABSTRACT

CLOSING PANDORA'S BOX: HOW TO IMPROVE THE COMMON REPORTING STANDARD

Menusch Khadjavi and Marjolein Vertelman

The 2021 pandora papers show that many wealthy individuals and even politicians use shell companies to hide their fortunes. In order to fight international personal tax evasion, the Common Reporting Standard (CRS) was implemented and it helped governments to collect USD 85 billion already. USD 182 billion are still missing from the government budget because of personal tax evasion. The individual implementation strategies of CRS compliant countries can endanger the effectiveness of the Automatic Exchange of Information (AEOI). Several loopholes are used to circumvent the CRS. There are amendments possible which increase the effectiveness by improving the implementation strategies and closing the loopholes. The enforcement of the CRS should become stricter by removing financial institutions' licenses to operate in cases of non-compliance. Beneficial ownership registers should increase transparency regarding investments and securities. Within the current momentum of international tax legislation, the CRS compliant countries may leverage the USA into signing the CRS as well. The USA could in turn demand a more effective CRS before signing it.

Keywords: Common Reporting Standard (CRS), Automatic Exchange of Information (AEOI), global tax evasion, improvements, loopholes

JEL classification: H20; H26

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1 Introduction

International tax evasion from both households and corporations costs countries USD 427 billion each year on a global level. A portion of USD 182 billion is due to tax evasion of private wealth and assets (Tax Justice Network, 2020). That is more than eight times the gross domestic product of the United States of America (USA) (US Bureau of Economic Analysis, 2021). If we zoom into the richest 0,01% households, they are estimated to evade taxes with 25% of their income. This implies two things; that the wealth distribution is significantly more unequal than thought before and secondly, that the richest evade taxes the most (Alstadsæter et al., 2017). Eliminating tax evasion by the most wealthy people would enable governments to have more tax revenue to be redistributed. The Common Reporting Standard (CRS) was implemented by over one hundred countries in 2017, designed to combat household tax evasion through offshore accounts. For the first time, an automatic exchange of information (AEOI) about accounts of non-residents was established between tax authorities. The CRS is the subset of regulations that makes the Automatic Exchange Of Information possible (OECD, 2017).

For example, imagine living in France and having USD 300,000 on a domestic account at your bank. However, you would prefer not to pay taxes over your wealth – so you open an account at a bank in Anguilla. Anguilla is a small tropical island where the tax rate is zero (Deloitte, 2017). Before 2017, France's tax authority would have had to specifically ask for information on your account. It would have been highly unlikely that the tax authority ever found out about your offshore assets. However, since the CRS was implemented, Anguilla automatically exchanges your account information with France and you have to pay taxes over your USD 300,000 anyway.

The design of the CRS is inspired by the Foreign Account Compliance Act (FACTA) of the United States of America (USA), which was introduced to combat tax evasion through offshore accounts. Soon other countries showed interest in such a policy. As a response to the G20 request, the Organisation for Economic Cooperation and Development (OECD) initiated the CRS (OECD, 2017). It requires financial institutions, which hold financial accounts of non-residents, to automatically report information about these accounts to the country of residence of the owner since 2017. The AEOI has fundamentally changed the international tax system (Christensen and Tirard, 2016). Currently, 109 jurisdictions are exchanging account information under the CRS (OECD, 2021).

With such an encompassing change within the realm of the exchange of financial information, one might wonder if the AEOI under the CRS is working effectively. According to the OECD (2018), over USD 85 billion extra tax revenue has been collected because of the CRS. However, the Tax Justice

Network (2019) shows that USD 182 billion are still missing from the government budget because of household tax evasion. Since many countries which are commonly considered as tax heavens signed the CRS as well, some scepticism might arise concerning loopholes and implementation strategies.

2 What implementation choices threaten the efficiency of the Common Reporting Standard?

The CRS does not always reach its full potential because of inefficient implementation choices made by individual countries (Casi et al., 2019). The countries which implemented the CRS in 2017 and 2018 already received the first round of peer reviews on their implementation strategy. The overall conclusion is that the CRS was implemented incredibly fast and the rapid feedback from peer reviews helped the countries to tackle deficiencies right away (OECD, 2020). Where to OECD focuses on the legal framework when it comes to the implementation of the CRS, scientific research suggests that individual implementation strategies are not restricted to the legal framework alone. Instead, six essential components of the implementation strategies are highlighted. Casi et al. (2019) include 41 countries and suggest to improve the implementation of the CRS as follow.

Not all countries chose a multilateral *legislative approach* of the CRS. A multilateral legal form implies that the country exchanges financial information of foreigners with every other country which signed the CRS. Almost every country went for this option except for the Isle of Man, Switzerland and Singapore. They chose to have an automatic exchange with most countries but only exchange information on request with others. The mixed legal form undermines the whole idea behind the Automatic Exchange of Information. Therefore, the more inclusive multilateral legal form should be mandatory (Casi et al., 2019).

An important factor in making the CRS function properly is the *enforcement level* countries use when financial institutions are not complying with the exchange of information. For example, if a bank does not have the software in place to deliver information on foreign accounts automatically, they are not complying. At the moment, it is up to the countries what the consequences of non-compliance are. This resulted in a wide range of enforcement strategies, it varies from low fines to high fines to even criminal prosecution or a combination. The severity of fines in case of noncompliance range from USD 762 to USD 2.5 billion. Research compares the wide variety of sentences by assuming a 100,000 accounts violating the CRS for 30 days within a financial institution. Disturbingly, twelve countries enforce the CRS with a fine below USD 100,000 and without any criminal prosecution (Casi et al., 2019). The implementation costs of the CRS are high; the information technology needed for AEOI is initially estimates to cost each financial institution USD 100 million. The start-up costs of implementing the AEOI system are estimated to be at least USD 8 million and at most USD 800 million (Finér and Tokola, 2017). What is the point of implementing the CRS if the costs of complying are higher than the fines when financial institutions do not bother to comply at all? A more effective manner to enforce the CRS would be to remove a financial institutions' licence to operate after several cases of noncompliance. At least a minimum fine should be established (Casi et al., 2019).

Another choice jurisdictions face when implementing the CRS regards the *scope of the CRS*. A country can take a narrow scope and only report on the accounts of residencies of countries within the CRS. The other option is the wide scope, in which financial institutions collect information of every reportable account regardless of that jurisdictions participation in the CRS. A vast majority of 70% of the countries within the sample implemented the CRS with a mandatory wide scope already. The main advantage of this strategy is the reduction of the implementation costs of the CRS. When a new country signs the CRS, financial institutions avoid having to start new processes to acquire the account information (Casi et al., 2019).

The reporting requirements determine which documents are used to collect the data of financial institutions. Each country within the CRS receives information of more than 250,000 financial institutions. To analyse the data and detect tax evasion, governments use an electronic risk assessment which considers the balance of the foreign account and the probability of having enough evidence for tax evasion. In order to conduct a proper analysis, the format of the data should be as homogeneous as possible. Two crucial documents are used to collect the data; a *self-certification form* to confirm the country of residence and a reporting scheme. A self-certification form is filled in by every international customer of a financial institutions. There is a standard form provided which simply asks people for their country of residence. Yet this seemingly simple procedure causes great inefficiencies since only three countries within the sample make the standard form mandatory. Other countries leave the choice of which form to use up to financial institutions. A bureaucratic nightmare arises when financial institutions have to check the validity of each incoming form. Tax authorities face issues as well when they spend time on reformatting forms which cannot be evaluated otherwise. Making the standard self-certification form mandatory would be a lot more efficient (Casi et al., 2019).

The OECD developed an universal CRS XML schema which both collects information on foreign account in a certain country and transmits the information to all other jurisdictions. The standard *reporting schema* is already adopted by more than half of the countries within the sample. However, a significant number of countries is not using the standard reporting scheme yet. Using different reporting schemes does not make a lot of sense since it may lead to non-usable data which has to be transmitted to usable data. The efficiency of the CRS would highly increase if all participating countries use the same reporting schema (Casi et al., 2019).

Countries have a highly heterogeneous approach when it comes to the *data retention requirements*. There is no universal mandatory number of years a financial institution needs to hold on to the collected data. The choice of the retention period is based on the need to have tax data available for future audits. Countries mostly keep the data for five to ten years while a few countries retain it for less than five years. Chile and Switzerland take an entirely different approach by not defining any data retention requirements. It is costly to retain data and therefore having a universal maximum data retention period would make the CRS more cost-effective (Casi et al., 2019).

Table 1. Overview of Suggested CRS Improvement.

Countries' implementation strategy element	How does it work?	What should be done to improve the efficiency of the CRS?
Legislative approach	Countries can choose between a multilateral, a bilateral or a mixed legal form	The multilateral legal form should be mandatory
Enforcement level	The legal consequences of non-compliance are up to countries themselves to decide	Removing a financials' institutions license to operate after several cases of non-compliance
Scope of the CRS	Narrow or wide scope	Wide scope should be mandatory
Self-certification form	Some countries let financial institutions chose which self-certification form they use	OECD self-certification form should be mandatory
Reporting schema	Some countries adapted the standard reporting scheme to local circumstances	Using the standard OECD reporting scheme should be mandatory
Data retention requirements	Countries use countless different data retention periods	Set a universal data retention period

3 Which loopholes are used to circumvent the Automatic Exchange of Information?

Despite the promising outlook of the AEOI, the legislation does not seem to be completely bulletproof yet. The effectiveness studies show that the amount of capital in tax havens diminished (Zucman, 2015; Casi, Spengel and Stage, 2020; Ahrens and Bothner, 2019; Beer, Coelho and Leduc, 2019; Hakelberg and Rixen, 2020). However, as Ahrens and Bothner (2019) point out, a reduction in capital in offshore accounts does not necessarily link directly to less tax evasion. Moreover, the Tax Justice Network reported that USD 182 billion are still missing from government budgets because of household tax evasion. When the CRS was implemented, tax evaders with foreign assets had three options. They either had to hide their financial assets in a more sophisticated way, or they had to withdraw their assets from the tax havens entirely and start to pay the domestic taxes. The third option would be to leave their assets on the foreign accounts but to pay taxes over them. It turns out wealthy people have some creative workarounds. These tax evasion strategies highly endanger the efficiency of the CRS.

Low-risk institutions do not have to comply with the CRS and countries themselves determine which financial institutions are low risk (Casi et al., 2019). However, the situation is not as problematic as it sounds because the OECD has established an anonymous whistle-blower portal that provides the Global Forum with useful tips. An example of a scheme used by tax evaders is the Occupational Retirement Scheme (ORS) in Hong Kong. The mechanism is relatively straightforward: a wealthy individual starts a shell company in Hong Kong and makes herself a director with a local employment contract. Afterwards, she can set up with a trust company which provides the ORS. Once all that is arranged, she can use the ORS as a flexible bank account (The Economist, 2017). The tax evasion constructions through low-risk financial institutions may be tackled by threatening financial institutions to withdraw their license to operate if they offer these constructions. When the OECD knows about the structures through the whistle blowers, it first has to be made illegal to be used by non-residents. Then the financial institution gets a warning. After two warnings, the financial institutions loses its license to operate. This type of strict enforcement will make financial institutions a lot more cautious than they are now. On top of that, CRS signatories could peer review each other's low-risk institutions lists.

If a tax evader wants to get rid of the CRS once and for all, the *golden passport* strategy might be the most effective one. If a wealthy individual becomes a resident of a tax haven, she can open an account there with the tax haven's passport. The major difference between migrating and having a golden passport is that a golden passport is used to be a tax resident without having a centre of vital interests in the tax haven. There are two schemes which tax havens may use to attract tax evaders: resident-by-investment schemes and citizen-by-investment schemes. Foreigners may acquire a passport of another country if they make an investment, pay a flat-fee or meet some resident requirements. Officially, using these constructions is illegal because the CRS requires all citizens to report a second nationality when opening an account. However, if an Italian citizen acquires a Maltese passport and uses that one to open an account at a bank in Malta, it is nearly impossible for the Italian government to know about it. The OECD already knows about the golden passport loophole and it is working on resolving the issue. By issuing the Mandatory Disclosure Rules, the OECD both tackles the current golden passport structures and prevents new structures to arise (Noked, 2018). The success of the Mandatory Disclosure Rules is highly dependent on how strict the enforcement rules of the individual countries are. An anonymous whistle blower construction could help to detect golden passport options as well.

The CRS requires banks to identify the beneficiary instead of the owner of an asset. However, there are several potential workarounds when it comes to beneficial ownership reporting. With regards to passive non-financial entities such as dividends and interest, financial institutions are always obliged to report the beneficial owner. Banks with lax *beneficial ownership* might not report the beneficial owner for wealthy customers and accept the low risk of the fraud getting detected. Tax evasion is more straightforward with an active business income. This type of income needs to be reported if the beneficial owner owns at least 25% of the companies interests. When beneficial owners have other means of controlling a legal entity it should be reported as well. For example, a beneficial owner could have a significant percentage of voting rights or have control over who's in the board of directors. (The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes & Inter-American Development Bank, 2019) This threshold keeps the secrecy around the investment industry and security trading intact. Tax evaders can dilute the ownership structure of the company and thereby circumvent being reported by tax havens. Full transparency on the individual ownership chain is needed from the end-investor to the financial institution to close this loophole. Any person who indirectly or directly owns any interest in an underlying financial asset, any interest in an investment fund and all the intermediaries between the owner and the security should be reported. This information should be accessible to all authorities (Knobel, 2019).

A sophisticated way to circumvent the CRS would be to use a *shell company*. This approach first became notorious when the Panama Papers leaked (Johannesen and Zucman, 2014). Households falsely attribute their asset ownership to a shell company or another legal entity and thereby the CRS does not apply anymore. Officially, financial institutions must look behind the corporate shell but in practice it is extremely hard to detect (Ahrens and Bothner, 2020). With the recent *Pandora Papers* leak, it became painfully clear trillions of US dollars are still hidden through this construction. It is especially disturbing to find out how crucial political actors use the shell company strategy as well. Precisely those who are supposed to protect citizens from wealthy people who refuse to pay their fair share, are the ones abusing the loopholes (Monteiro, 2021). A commonly used application of the shell company strategy is a domestic private investment entity. Tax evader could start a domestic private investment entity which invests in tax havens and does not report it. Furthermore, if the beneficiary controls the private investment entity, they are subject to self-reporting and the chance of getting caught if they do not self-report are low (Knobel and Meinzer, 2014; Noked, 2019a). Even when the tax evasion is detected, some countries face relatively low fines for not complying with the CRS (Casi et al., 2019). Another part of the solution could be peer reviews among the CRS signatories in which they review each other shell company possibilities and suggest improvements on detecting them. Obviously, tax heavens peer reviewing each other should be avoided.

As the US-American President Biden proposes a global minimum tax rate for corporations of 15%, the shell company issue might solve itself. His proposal already received support from a 130 countries and the OECD is enthusiastic about it (Alderman et al, 2021). The success of a global minimum tax rate heavily depends on its implementation and possible loopholes in the legislation. If the legislation is going to be based on the CRS, it should be stricter. The new global tax rate can learn from the mistakes of the CRS. Hopefully, this *unique momentum in global tax history* can turn the tables. The CRS signatories might be able to leverage the desire of the US for a global minimum tax rate by demanding the USA to sign the CRS first. The USA in turn, might leverage its position by making their participation in the CRS conditional. By demanding improvements in the efficiency of the CRS, the USA may use their power to make at least the implementation improvements. The best case scenario in this power structure would be that the CRS is revised to be implemented more effectively and close the loopholes as well.

Another loophole is that tax evaders could start to acquire *non-financial assets* to avoid reports of their wealth. Any real property or a commodity that is a physical good is excluded from the CRS. A prime example of avoiding the CRS through investments in physical goods is real estate. When renting out real estate, a foreign financial account is needed to collect rent. This account will be reported by the end of the year if the tax evader does nothing. Therefore, buying other non-financial assets might be done instead or another loophole is used (Noked, 2018). Precious metals which are directly owned are not considered in the CRS as well. Tax evaders could use their money to buy gold and thereby not pay taxes over their wealth. The same goes for artwork and collectibles (Noked, 2018). Another non-financial asset is cryptocurrency such as bitcoin which has great potential for tax evaders (Marian, 2013). If wealthy households want to use their fortune, they will have to transfer their non-financial assets into financial assets at some point. It is at the point of purchase and sale that the transaction should be recorded, for instance by lowering the maximum amount of cash that can be used for purchases.

When wealthy individuals shift their fortunes to a country that did not sign the CRS, it is called *asset shifting*. Each country which did not sign the CRS is a potential tax haven which can be used for asset shifting (Noked, 2018). The only high-income country which did not sign the CRS are the USA, which makes it a potential tax haven (Brinson, 2019). Instead, the USA have their own system, the FACTA in which countries exchange information on foreign accounts with the USA while the USA only give some information in return (Casi et al., 2019). In 2019, the U.S. Government Accountability Office (GAO) stated three arguments against replacing the FACTA with the CRS. Adopting the CRS would not have any additional value for the Internal Revenue Service (IRS) since the USA already receive account information from other countries. Moreover, financial institutions will be burdened by implementation costs they are not facing now. 'Further, adoption of CRS would create the circumstance where foreign accounts held by U.S. citizens with a tax residence in partner jurisdiction-including U.S. citizens who have a U.S. tax obligation-would not be reported to IRS. ' (GAO, 2019). The OECD noted that the latter concern is not necessary as defining US citizens as US tax residents is completely in line with the CRS (Noked, 2019b).

Other countries which did not sign the CRS are predominantly low-income countries in Africa and Latin America (Casi et al., 2019). Tax evaders might be hesitant to use their financial institutions because of instability of the economy, currency exchange control regulation and the threat of information leakage. However, it would still be valuable if these countries joined the CRS as well. The OECD has already initiated a 'buddy program' to implement the CRS (Noked, 2018).

Table 2. List of Loopholes.

Loophole	What should be done about it?
Low risk financial institutions	Peer reviews on the list of low risk institutions and stricter enforcement rules
Golden passport	Mandatory disclosure rules with high sentence, whistle blower option
Lax beneficial ownership	Full transparency on the individual ownership chain towards authorities
Shell companies	Increase enforcement and peer reviews
Non-financial assets	Can fix itself when wealthy households want to use their fortunes which are hidden in non-financial assets
Asset shifting	The USA's desire to tackle corporate tax evasion by setting a global tax rate of 15% creates an unique political momentum. The CRS signatories might take this opportunity and make their participation conditional on the USA signing the CRS as well.

4 Conclusion

The richest 7.6 million people on earth avoid taxes the most (Alstadsæter et al., 2017). Evading taxes for households became more difficult because of the implementation of the Common Reporting Standard (CRS). However, the richest households also have the most means to evade taxes. With several loopholes within the CRS as well as implementation inefficiencies, evading taxes is still feasible. If the CRS and therewith the Automatic Exchange Of Information (AEOI) were to be improved rigorously, we might finally stand a chance to catch even the most affluent tax evaders. After all, USD 182 billion are still missing from the budget of governments (Tax Justice Network, 2020).

First and foremost, many countries should have stricter enforcement rules for the CRS to function better. The most rigid and effective way to go about it is to threaten institutions with removing their license to operate in case of repeated non-compliance. The benefits of complying with the CRS must always outweigh the penalty of not complying. At the moment, even if data is automatically collected with the CRS, it is not always usable for all tax authorities because of different reporting methods. The reporting methods should become as homogeneous as possible. The wide legal approach should become mandatory and a universal data retention period should be set. These measures all together lower the implementation costs of the CRS which should increase compliance.

In order to close the most pressing loopholes, stricter enforcement, more transparency on beneficial ownership and more elaborate peer reviews should be implemented. Making these improvements may seem like low hanging fruit in some cases. However, it is important to keep in mind every tax haven agreed with the CRS for a reason. As frustrating as it may be, some political leaders evade taxes themselves which does not help the process of making improvements either. However, there still is hope. The USA's desire to tackle corporate tax evasion by setting a global tax rate of 15% creates an unique political momentum. The CRS signatories might take this opportunity and make their participation conditional on the USA signing the CRS as well. The USA can in turn demand improvements of the CRS before they sign as well, and the CRS signatories sign the USA's global corporate tax initiative. It is important that the global tax initiative learns from the mistakes made in implementing the CRS and the loopholes it enabled. If this works out, all countries can fight tax evasion in a more efficient manner, lowering the burden on all honest citizens and businesses.

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