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Analysis of the Functioning of the Automatic Exchange of Information about Financial Accounts after Implementation of the Common Reporting Standard

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Abstract: The adoption of the Common Reporting Standard (CRS) by the OECD in 2014 raised many concerns. Banks were particularly obliged to implement many changes in order to properly collect and aggregate data on tax residence of their clients and correctly report them to the tax administration authorities. The aim of this article was to assess the functioning of the CRS, taking into account the benefits of implemented changes and critical voices regarding the functioning of the standard. The efficiency of the solution based on OECD data and a critical analysis of some aspects of the CRS were presented. The adopted research method was based on verification of official OECD documents and comparative analysis of data presented by the organization with the research conducted by scientific institutions and other private and public entities. According to the results of the research, the automatic exchange of financial information is not functioning optimally, and reforms need to be carried out. The additional revenues generated by the CRS are relatively low compared to the tax losses still generated by tax optimization

Keywords: Organisation for Economic Cooperation and Development (OECD), Common Reporting Standard (CRS), financial information, taxes, financial institutions.

1. Introduction

National tax systems no longer fulfil all their functions in a dynamically changing economic environment, in which cross-border capital flows play an important role. The need for mutual cooperation between different tax administrations in

the field of broadly defined financial information exchange is becoming more and more important. Large corporations and individual taxpayers take advantage of the inconsistencies and differences in the tax laws of specific countries to avoid paying due taxes or significantly reduce the tax base. Tax avoidance or evasion has taken on a very large scale in macroeconomic terms. Tax havens play a key role in such practices by receiving and concealing large companies' and individuals' capital funds. The international community has recognised the necessity of international regulations counteracting the erosion of the tax base. For this purpose, the Common Reporting Standard (CRS) was adopted in 2014 and became operational in 2017. The main objective of the changes was the efficient exchange of financial information between national tax administrations. In 2022, it was five years since the first exchange of financial account information was carried out after implementation of the CRS. Therefore, the primary research problem presented in this article is the significance of the CRS in the field of counteracting the global tax avoidance process. The goal of this article was to evaluate the CRS, taking into account the benefits of implemented changes and to present the weaknesses of functioning of the standard. For the purpose of this research, a basic question was formulated – how has the effectiveness of countering unfair practices to avoid taxation evolved over these five years? During the research, a comparative content analysis method was applied, by comparing the assumptions presented in official documents of the *Organization for Economic Cooperation and Development* (OECD). According to the adopted research hypothesis the CRS might only be considered a success if as many countries as possible participate in the standard and pay attention to due diligence while performing the financial information exchange. The CRS has been the subject of several monographs, among which: *Common Reporting Standard: Survivor's Guide to OECD Automatic Exchange of Information of Offshore Financial Accounts* by E. Aggarwal; *The OECD-Model-Convention and its Update 2014* by Michael Lang et.al.; *International Exchange of Information in Tax Matters. Towards Global Transparency* by X. Oberson from the University of Geneva. However, these publications were written between 2015 and 2017 (just after the adoption of the CRS) and focus on the direction of regulation rather than assessing the results of CRS implementation. There is a lack of a monograph that comprehensively describes the problem from the perspective of several years of the standard's functioning. The analysis of the effectiveness and efficiency of the CRS has been presented only in research results available in English-language academic papers published between 2019 and 2020. This text further refers to the main results of these studies.

2. The process of CRS adoption

According to estimates from 2013, 8% of global capital was located in the so-called "offshore zones", that is, the jurisdictions used for tax optimisation (Zucman, 2013, pp. 1321-1364). Depending on the data presented at the time, depositing the funds

in tax havens resulted in lower tax revenues in the relevant jurisdictions amounting to between 500 billion and 600 billion U.S. dollars annually. Approximately 200 billion US dollars of this amount was developing countries' financial losses. The owners of 25% of all deposits in tax havens were registered as residents of other countries (Johannesen & Zucman, 2012, p. 85). The problem was mainly money held abroad and not counted towards internal tax liabilities in their home jurisdictions or income not taxed anywhere. The international community recognised the need for international regulations to counteract the erosion of the tax base. As early as April 2009, G20 Group finance ministers announced at the summit in London that "the era of bank secrecy is over" and countries are determined to introduce sanctions to protect public finances and financial systems from dishonest entities (Johannesen & Zucman, 2012, pp. 65-68). Fraudulent taxpayers have taken advantage of the principle of bank secrecy and limited cooperation between national tax administrations. For this purpose, actions have been taken at international level to verify fraudulent tax practices more effectively. It has been recognised that cooperation is a crucial measure in the battle against tax evasion and its most important tool is the correct exchange of financial information.

The OECD was responsible for drafting international regulation because it has already conducted the most advanced works in this area. During the OECD Ministerial Council meeting in Paris on 6-7 May 2014, the Declaration on Automatic Exchange of Information in Tax Matters was adopted. The next step was the signing of a multilateral intergovernmental agreement. This was necessary for specific countries to implement the rules set out in the CRS into their domestic laws. This took place on 29 October 2014, at the meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes in Berlin. The Multilateral Competent Authority Agreement (CRS-MCAA) was signed by the representatives of 51 governments (OECD, 2016, pp. 2-3). The document obliged countries to implement a single global standard for automatic exchange of financial information. The primary purpose of the CRS has become to establish the tax residence of a client, which subsequently makes it possible to assess where his or her centre of personal interest should be, and where he or she should pay taxes. It is the responsibility of the financial institutions to verify the customer, accept a declaration of tax residency, aggregate data on the balances held in the accounts and transmit data to the national tax administration. According to data of July 5, 2022, 116 tax jurisdictions have signed CRS-MCAA (OECD, 2022a, pp. 1-4). However, in order to carry out the provisions of the agreement in practice, it was important not only to sign the agreement, but first and foremost to start exchanging information in accordance with the adopted standard. A period of several years was left for the signatory states to adapt and change their national legislations so that the institutions required to carry out operational activities would have a legal basis of collecting, exchanging and reporting financial information. Consequently, despite the fact that the majority of the governments signed the agreement between 2014 and 2016, the effective commencement of exchange of information took place

in 2017, covering 49 entities under international law at the time. In the following year, a further 51 tax administrations began exchanging information, bringing the total number of tax jurisdictions participating in the system to 100 by the end of 2018. A total of 108 countries or dependent territories participated in the CRS by the end of 2021 (OECD, 2022b, pp. 1-2). It should be emphasised that the adoption of the CRS procedure initially raised many concerns. In particular, the banks were obliged to make a number of changes in order to properly collect and aggregate data about tax residency of the customers and report it correctly to the tax administration authorities.

3. Financial results of the CRS

In June 2019, the OECD presented data on the practical implementation of the CRS for the first time. They covered the period between 1 January and 31 December 2018, when 100 tax jurisdictions participated in data exchange. The bodies of tax administration exchanged information about 47 million bank accounts with the assets amounting to about 5 trillion euros. In the subsequent year, the above value nearly doubled, national tax administrations gained access to data from 84 million accounts held abroad, with assets of around 10 trillion dollars. In 2020, data on 75 million accounts were exchanged, covering total financial assets of more than 9 trillion dollars. It was pointed out that the slight decrease in the number of exchanged information in 2020 was due to the problems of tax administrations occurring as a result of the Covid-19 pandemic (OECD, 2021, p. 12). The implementation of the CRS has led to 4,500 bilateral collaborations between tax administrations, which the OECD highlights as "the largest tax information exchange in history, and the result of more than two decades of international efforts to tackle tax evasion" (OECD, 2019a). Despite the success emphasised in official documents, questions are raised about the effectiveness of the CRS. Firstly, the practical use of data received by individual countries is highly uncertain. Every year, the jurisdictions exchange millions of items of information. The bodies of tax administration need to connect them with taxpayer data and identify those which are relevant. For this purpose, an analysis should be conducted by either IT data matching systems, or relevant teams within tax administration authorities, which leads to additional work that does not always identify the fraudulent taxpayer. Consequently, it can be considered with a high degree of probability that most of the exchange data does not lead to the prosecution of an individual or company for unfair tax practices. Unfortunately, in its reports, the OECD describes the performance measurement methods used in a rather limited way. There are no clear results on the impact achieved through the use of data, and whether this information was used on a large scale. The presented analyses focus primarily on the size of financial assets held in tax havens. According to OECD data, implementation of the CRS during its first three years of operation, resulted in a 22% reduction in the amount of bank deposits held in offshore zones (OECD, 2019b, p. 7). Moreover,

the very announcement of more effective information exchange between the states has led some people to withdraw funds from offshore zones. It was intended that the CRS would have precisely a preventive function by sending a warning signal to the individuals and companies that were planning unauthorised tax optimisation, in order to discourage such activities. In the early years of the 21st century, financial assets in tax havens were growing rapidly, reaching a peak of 1.6 trillion US dollars in 2008. According to the OECD estimates, they dropped by 551 billion US dollars in the years 2009-2019 – a decrease by 34% was a result of the implementation of the CRS (OECD, 2019b, p. 7). This brought 65 billion euros in additional revenue globally between 2014 and 2020 from paid taxes, interest and penalties imposed; approximately 25 billion euros from this amount were the receipts to developing countries' budgets (OECD, 2021, p. 12). While the value of 65 billion euros may give an impression of the effectiveness of the CRS, one should remember that it covers a period of as many as six years and is relatively low, given the number of jurisdictions involved in the information exchange process. Additionally, according to other data presented by the OECD, the value was 95 billion in 2019 – 30 billion higher. However, the period of analysis at the time was 2009-2019, not 2014-2020. Nevertheless, the discrepancy in the data shows that it is very difficult to clearly calculate the impact of the changes made on tax revenues of specific countries.

Therefore, it is worth referring to the results of academic studies independent of the OECD on the efficiency of tax information exchange after adoption of the CRS. A study prepared by three researchers from the University of Mannheim – E. Casi-Eberhard, C. Spengel and B. Stage – compared cross-border financial flows. It was based on data obtained from the Bank for International Settlements (BIS) for the period between the fourth quarter of 2014 and the third quarter of 2017. According to the research results, the implementation of the CRS led to an 11.9% reduction in cross-border deposits held in tax havens, which constituted an amount of approximately 46 billion US dollars (Casi-Eberhard, Spengel, & Stage, 2020, p. 27). Most significant was the reduction in the transactions carried out by citizens from OECD countries, which fell by 14% compared to the pre-CRS period. In contrast, financial flows carried out between tax havens were reduced by as much as 24.1%. However, the conclusions that can be drawn from the research were not entirely positive. New risks that emerged after adoption of the CRS were pointed out. In the first place, a significant increase in financial assets located in the United States was mentioned. The short-term growth of cross-border deposits held in the US increased by approximately 60 billion US dollars over the studied period. According to the researchers, the failure of the US to implement the CRS may undermine the effectiveness of the agreement, as tax evaders may move their deposits specifically there (Casi-Eberhard, Spengel, & Stage, 2020, p. 28).

Different findings were presented by L. Ahrens and F. Bothner from the Otto-Friedrich University in Bamberg. They reviewed financial flows made to offshore zones. Initially, they made a selection of countries and determined the features

of a tax haven. According to the adopted methodology, this is a country that does not meet at least one of two premise, namely internal legislation does not make it compulsory for banks to keep records of tax residence information, or there is no legal basis for the exchange of financial information with foreign tax authorities. Therefore, the premise adopted were in line with those included in the CRS, and identified 52 countries. Cross-border financial flows between 2009 and 2018 carried out just by individuals from the countries that have incorporated the CRS into their legal order were then verified. The research also relied on data from the Bank for International Settlements, the Coordinated Portfolio Investment Survey (CPIS) and documents from the International Monetary Fund (Ahrens & Bothner, 2019, p. 852). It is worth noting that the researchers did not verify the financial transfers carried out by the companies. The obtained results showed that there has been a halt to the dynamic process of increasing capital held in the accounts in tax havens by individual residents in tax jurisdictions that applied the agreement. The methodology of the study included the so-called 'counterfactual' scenario, where estimates were carried out with regard to what the situation would have been if the CRS had not been introduced. Consequently, the results of the study indicated that the non-adoption of the standard would have resulted in a 67% increase in the assets held by the individuals in offshore zones by the end of 2019. This was based on the rate of growth of funds that occurred in the pre-regulation period. Nevertheless, the researchers themselves pointed out that the absolute value of the assets in tax havens has increased during the research period. What is interesting, however, are the conclusions regarding attempts to evade tax by transferring assets to countries not participating in the CRS. According to Ahrens and Bothner, the decline in assets in tax havens is not offset by an increase in capital investment cases in other countries (Ahrens & Bothner, 2019, p. 863). These conclusions are in opposition to the results of the research conducted by Casi-Eberhard, Spengel and Stage, who emphasised the transfer of financial deposits to the United States. While analysing the above data, it should be stressed that an accurate calculation of the effectiveness of the CRS is very difficult. In general, all analytical results indicate a reduction of financial flows to tax havens. After implementation of the CRS, the number of financial transfers outside the OECD area has undeniably decreased. However, it is not possible to clearly determine whether this is a consequence of new regulations making tax evasion more difficult or whether the reasons are different. The same applies to the OECD's value of 65 billion euros in additional tax revenue. Narrowing the increase in tax revenue to only the implementation of the standard does not reveal the full picture. The possibilities for tax administrations to generate additional revenue are much more complex and, in many cases, result from changes to the national Tax Code.

4. Weaknesses of the CRS

In general, the CRS is not a solution that initially gained traction. Some doubts and comments on the standard were already raised in 2013-2014 by academics, financial institutions, publicists, entrepreneurs and journalists. Although the OECD now asserts the efficiency of automatic exchange of tax information, criticism in the public space continues and is motivated by various reasons. The issue most often raised is that of additional costs that financial institutions have incurred to comply with the standard. The imposition of the obligation to collect information about tax residency of the customers and to report them to tax administration authorities has necessitated changes to IT systems and, in many cases, the employment of additional specialists. Further costs arise from managing documentation, correcting tax residency information and the need to contact and deal with customers who have not previously filed a declaration. Even before implementation of the CRS, there was concern about whether financial institutions would pass on the excess burden to the customers by raising fees for the use of banking products. The OECD has not provided aggregated data indicating the costs of implementation of the total standard. Within this scope, only estimates by national bank associations are presented. For example, the CRS compliance of UK-based banks was estimated at a total of around 125 million US dollars (KPMG, 2015, p. 15). One must also add to this amount the costs of servicing, which amount to between 2 million GBP and 4 million GBP annually for each financial institution (HMRC, 2014, p. 4). Yet, in the public space, five years after commencement of reporting, there are no voices saying that implementation of the solution has significantly worsened the financial health of the banks or other financial institutions obliged to comply with the standard. The second type of criticism focused on the issue of limiting the fundamental principle that was immanent to the functioning of the system – bank secrecy. National tax administration systems can verify the amount of funds held on the clients' accounts, while the vast majority of people having foreign tax residency do not engage in tax evasion. It does not build trust in the state and indicates an erosion of the sense of community. According to the argument put forward by opponents of the CRS, if the transfer of tax residence to another country makes it possible to increase income, then it should not be subject to administrative restriction by the government. There is also certain controversy over alleged data protection violations as a result of providing information about tax identification number or account balance (Scarfone & Kerr, 2018, pp. 6-7). In response to these arguments, the OECD and the governments that have introduced CRS, present very different positions. In their view, the problem of tax avoidance by individuals and companies results in the unlawful deduction of potential revenue from national budgets. Consequently, the state is forced to impose additional burdens on compliant taxpayers. Therefore, implementation of the standard was aimed at restoring social justice, disturbed by the unfair practices of some individual and legal persons (OECD, 2010, pp. 2-4).

There are also objections to the overly narrow scope of the standard, which still allows tax evasion – despite the exchange of information about 85 million accounts. The experts from the think-tank Tax Justice Network assessed even before commencement of the reporting that the CRS contains too many ambiguous provisions. They presented a total of 26 reasons why it is not possible to speak of a full and effective exchange of information. First and foremost, the way of reporting account balances is ineffective. It does not allow tracking of international financial flows carried out over a specific time period. The timing of reporting by financial institutions is different in individual countries. They include the value of funds in the account established at the end of a calendar year or other reporting period. As a consequence, fraudulent taxpayers may manipulate funds in such a way as to reduce the account balance before reporting date. There is then a transfer of funds to jurisdiction, in which reporting to the tax administration takes place on a different date. Therefore, the system is not sufficiently effective in verification of annual income or attributing income to tax jurisdiction, in which the profits were earned (Morris, 2017, pp. 5-45).

Controlling the quality of the data provided by financial institutions is also a problem. Even the best law will not reduce the practice if data transferred to another tax administration are not reliable (Scarfone & Kerr, 2018, p. 6). The abnormalities within this scope have been identified not only in the developing countries, but even in the European Union. A report by the European Court of Auditors as of March 2021 indicated that "the information collected by Member States lacks in quality, completeness and accuracy". The majority of the Member States do not control reporting entities to ensure quality and completeness of data before forwarding to other countries. This means that many of financial institutions and tax administrations do not properly perform the due diligence obligation foreseen by the CRS (ECA, 2021, p. 5). As emphasised by team members from the European Court of Auditors, the problem is the control by the governments that do not sufficiently oblige financial institutions to report data of a better quality. Since such problems exist in European Union countries, it is difficult to imagine that the situation is better in other jurisdictions. Admittedly, monitoring the correct implementation of the agreement is carried out by the Global Forum on Transparency and Exchange of Information for Tax Purposes. However, it consists only in verifying legal and operational compliance with the requirements with regard to confidentiality and data guarantees and implementation of the operational framework. The Global Forum does not have the power to interfere in the work of financial institutions. The actual implementation of the regulation by some countries that have formally implemented the CRS is also worrying. In the European Union, for example, objections are raised against Malta (ECON, 2021, p. 6). Some of the countries participating in the CRS do not impose a tax liability on the entities with foreign shareholding assets. Therefore, the exchange of information is not really reflected in tax liabilities. The most common way to avoid reporting information about bank accounts is changing the country of

residence to one that has not implemented the standard. Furthermore, according to some research, there are many countries that formally participate in the exchange of information, but ignore the reports received from other tax jurisdictions (Knobel & Meinzer, 2014, pp. 30-32).

The fact that the United States has not adopted the CRS is also quite controversial. The results of the study conducted by Casi-Eberhard, Spengel and Stage presented above, showed a very large increase in financial transfers to accounts in the United States. The US position stands in contradiction to the principle of mutuality. Following the implementation of FATCA, foreign financial institutions are required to indicate the identity and financial resources of individuals who would potentially have to settle accounts with the US tax administration. On the other hand, the non-adoption of the CRS means that the US government cannot force US banks to disclose the identity and resources of customers with US bank accounts. In practice, the US receives information about the paid taxes and assets of its taxpayers in other countries, but does not provide equivalent information to other jurisdictions. With other countries moving towards transparency, which was the main argument raised during the works on FATCA, the US authorities pay disproportionately less attention to obtaining data on the beneficial owners of the US bank accounts. There are also some arguments that the US is slowly becoming the largest tax haven (Noked, 2019, pp. 118-133). Non-implementation of the CRS makes individuals and companies from countries that have implemented the standard to move to the United States. A number of incentives are applied in some states, including Delaware and Wyoming, and they are used by legal entities that want to reduce taxation or protect their assets against creditors. The United States appears to have used its strong position to unilaterally shape the obligations of other states without reciprocity.

5. Conclusion

Global implementation of the CRS standard is essential to tackle tax evasion effectively. The idea is that international financial information exchange regulations should ensure that all income subject to them is taxed in full in the specific country. The adoption of the CRS is certainly a step forward in counteracting tax evasion. It is a tool that many jurisdictions have implemented and the scope of exchange is much broader in comparison with previous solutions. An undeniable advantage of the standard is that it unifies and simplifies information exchange processes, resulting in greater efficiency. The adoption of different and inconsistent models would potentially impose significant costs on both governments and financial institutions to collect and handle necessary information. It should be emphasised that the preventive aspect of the CRS has the deterring effect on some potential tax offenders planning to evade taxes. Nowadays, financial fraudsters are aware that the scope of bank secrecy no longer exists to the same extent as in the past and the national tax administration can track their financial assets located abroad.

However, from the perspective of the five years since the beginning of exchange of information, it is clear that counteracting evasion is extremely complicated, and that those wishing to evade taxes are taking advantage of the new solutions. Consequently, agreed regulations need to be replaced by new ones, and financial institutions – banks in particular – must adapt to them. This can create an impression of confusion and lead to criticism of the CRS being formulated by many experts. Naturally, it should be emphasised that the standard is not a perfect tool. Regarding the weaknesses, the low quality of the data reported by financial institutions which then have become subject to exchange, should be mentioned first. The emergence of simulating activity by some governments is also worrying. There are many countries that have adopted the CRS but, at the same time, do not exercise due diligence in implementation of the assumptions of the standard. Although they are not formally regarded as tax havens, they carry out activities that in practice limit overall international exchange of tax information. Another reason for the incomplete effectiveness of the CRS is also the lack of participation in the process by all countries. The research hypothesis formulated in the introduction was therefore confirmed. Additionally, changes within the scope of exchange of information seem necessary so that in a few years' time the CRS will not be seen as a dead law. In the author's view, three initiatives are required to increase the effectiveness of CRS. Firstly, a review of the effectiveness of the CRS implementation in practice should be introduced, whose scope should cover the way the received information is used, and the tangible benefits achieved by each jurisdiction. Both the OECD and the Global Forum should look into these practical aspects in its reviews. By discovering how countries are maximising the use of data received, it would allow best practices and practical guidance to be established. The second suggestion is to standardise the IT systems that can be used to verify data. The exchange of information as a tool in the hands of tax administrations will be successful when all relevant jurisdictions deliver proper information and when all the participating jurisdictions have the necessary technical and administrative capabilities to use the received information in identifying the undisclosed assets and collect the taxes due. Therefore the OECD and the Global Forum should prepare a common IT system for data exchange and verification, adopted by all the countries that have implemented the CRS. The last suggestion concerns the participation of the United States in the CRS. The FATCA and CRS models need to be aligned. Convergence and reciprocity in both models are required. The subject of the CRS has the potential to be explored and developed in future research. This is primarily due to the fact that the CRS has only been adopted by just over 100 jurisdictions. According to United Nations data, there are currently 195 countries in the world. This means that almost half of the jurisdictions have not implemented the standard. Therefore, research should focus on financial flows to countries that have not implemented the CRS and verify the scale of capital transfers to those jurisdictions. This would constitute a study similar to the one carried out by Casi-

-Eberhard, Spengel and Stage, except that it would cover all countries that have not implemented the CRS and not merely tax havens. Data from the Bank for International Settlements could be used for this purpose.

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Analiza funkcjonowania automatycznej wymiany informacji finansowych po wdrożeniu wspólnego standardu sprawozdawczego (*Common Reporting Standard*)

Streszczenie: W 2022 roku upływa pięć lat od pierwszej wymiany informacji o rachunkach finansowych zrealizowanej po wdrożeniu Wspólnego Standardu Sprawozdawczego (*Common Reporting Standard* – CRS). Przyjęcie przez OECD w 2014 roku CRS budziło wiele obaw. Szczególnie banki były zobligowane do wprowadzenia wielu zmian, aby właściwie zbierać i agregować dane na temat rezydencji podatkowej klientów i prawidłowo raportować je organom administracji skarbowej. Celem artykułu jest ocena CRS, uwzględniająca korzyści z wdrożonych zmian oraz słabe strony funkcjonowania standardu. Zaprezentowano skuteczność i efektywność rozwiązania w oparciu o dane OECD oraz krytyczną analizę niektórych aspektów funkcjonowania CRS. Przyjęta metoda badawcza polegała na weryfikacji dokumentów OECD i komparatystycznym porównaniu danych prezentowanych przez organizację z badaniami prowadzonymi przez instytucje naukowe oraz inne jednostki niepubliczne. Zgodnie z uzyskanymi wynikami badań automatyczna wymiana informacji finansowych nie funkcjonuje optymalnie i konieczne jest przygotowanie zmian przez OECD. Uzyskane dzięki CRS dodatkowe przychody są relatywnie niskie w porównaniu ze stratami podatkowymi generowanymi w dalszym ciągu na skutek optymalizacji podatkowej.

Słowa kluczowe: OECD, CRS, wymiana informacji finansowych, podatki, instytucje finansowe.