

# War on Crypto Privacy Intensifies. Automatic Reporting of All Trades and Transactions Soon Mandatory.

**Massive overreach of international regulators to  
force all service providers in the industry to:**

- ✓ Record ALL crypto trades on exchanges, DEFI and DEXs;
- ✓ Record (large) purchases from private wallets;
- ✓ Record all transfers to cold storage and make lists with private wallet addresses;
- ✓ Send all this info annually to the (tax) authorities;
- ✓ And finally, they seek to force governments around the world to pass these rules into domestic law.

The war on privacy continues. The aim: to tackle anonymous spending and exchanging of crypto.

As you'll discover, these new regulations force upon us a system of complete surveillance and control.

This report explains exactly what to expect from the latest developments launched in October 2022...

Given that these are international standards that that have not been implemented in any national legislation, non of this publication can in any way be considered legal or financial advice.

## <What is Going On?\_

Last year, the crypto world was shaken to its core when the Financial Action Task Force (FATF), acting in behalf of the G20, released their guidance on virtual assets.<sup>1</sup>

This document laid out a set of rules regarding stablecoins, distinctions between private and hosted wallets, extensive KYC requirements, the tackling of privacy tools, and more.<sup>2</sup> FATF has also provided a final definition of the type of service provider tasked with reporting crypto: the Virtual Asset Service Provider.

Fast forward to today, and these rules are quickly being implemented across the world.<sup>3</sup> But as usual, it didn't stop there. Another international regulator, the OECD, is already building on this framework in an attempt to massively increase the grip of authorities on crypto.

### What is the OECD?

The Organisation for Economic Co-operation and Development (OECD) is a Paris-based international organisation that works to “build better policies for better lives.” Its goal is to shape policies that foster prosperity, equality, opportunity and well-being for all.<sup>4</sup>

Together with governments, policy makers and citizens, the OECD works on finding solutions to a range of social, economic and environmental challenges. From improving economic performance and creating jobs, to fostering strong education and **fighting international tax evasion**. The organisation provides a unique forum and knowledge hub within which to discuss and develop public policies and international standard setting.<sup>5</sup> This “international standard” setting is what we will look at next.

## **Automated Exchange of Financial Information with Authorities Since 2014**

In 2014, the OECD published the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*.<sup>6</sup> This publication created a “Common Reporting Standard” (CRS), which forces financial institutions to automatically exchange account information with the authorities of the country of residence of their account holders. The goal: to prevent persons from holding financial accounts in offshore jurisdictions and not reporting them back home. This is why all financial service providers request utility bills: they prove where you live, and hence where they have to report to.

All financial institutions that are subjected to these regulations are forced to **automatically report** to the authorities the name, address, Tax Identification Number(s), date and place of birth, the account number, and the **account value** as of the end of the relevant calendar year (or other appropriate reporting period).<sup>7</sup>

Now, there is no more hiding of accounts held with a foreign financial institutions. The authorities enlisted all financial institutions as involuntary (but powerful) assistants in collecting facts and evidence needed for tax compliance.

### **The Panama Papers; Just in Time to Boost Worldwide Implementation of Automated Reporting...**

After publishing their standards in 2014, the OECD needed to get countries and their financial institutions in line. By August 2015, the OECD had released the first version of a CRS Implementation Handbook.<sup>8</sup> It provided practical guidance to assist government officials and financial institutions in implementing CRS. But while the standards set by the OECD came into force in 2016 in early-adopting states, by March of that year these standards were still far from being fully integrated into the global financial system.<sup>9</sup> This was especially true in the offshore

jurisdictions that were the main target. What was needed was a shift in conscience...

On April 3<sup>rd</sup>, 2016, the International Consortium of Investigative Journalists published a giant leak of offshore financial records, better known as the Panama Papers.<sup>10</sup> These revelations caused public outrage. The G5, the five largest Western European countries, were quick to jump on the bandwagon and call for more international cooperation to tackle “tax dodging and illicit finance.”<sup>11</sup> The message did not fall on deaf ears; the next day, on April 15<sup>th</sup>, G20 Finance Ministers and Central Bank Governors met in Washington and issued the following Communiqué:

*“...we call on all relevant countries including **all financial centers and jurisdictions**, which have not committed to implement the standard on **automatic exchange of information by 2017 or 2018** to do so without delay and to sign the Multilateral Convention. We expect that by the 2017 G20 Summit all countries and jurisdictions will upgrade their Global Forum rating to a satisfactory level. We mandate the OECD working with G20 countries to establish objective criteria by our July meeting to identify non-cooperative jurisdictions with respect to tax transparency. **Defensive measures will be considered** by G20 members **against non-cooperative jurisdictions** if progress as assessed by the Global Forum is not made.”<sup>12</sup>*

Thus, within 12 days of the publication of the Panama Papers, the world’s 20 most powerful governments had collectively agreed to start pushing CRS reporting requirements aggressively, and to punish non-cooperative (offshore) jurisdictions—regardless of their local laws. This is how offshore finance was brought into the fold, and financial privacy died.

### **Why Can the OECD Regulate Financial Institutions Around the World? Isn’t this a Task of Democracy?**

The OECD isn’t a government agency of any individual country. As such, it cannot create law. It issues what is known as “soft laws,” or “recommendations” and “guidance.” Only when this

guidance is transposed into the laws of individual countries does it becomes “hard” law, with real world power.

In theory, this process is subjected to the formal (democratic) law-making processes of the implementing countries. However, countries that don't participate face restricted access to the financial system and ostracism from the international community. For this reason, almost all nations are compelled to implement these recommendations.

It must also be said that national governments, especially in the Western world, highly value this kind of international cooperation, and the control it gives them without the need to deal with the “inconveniences” of democracy. They simply hide behind the fact that these are “international standards” which they have to follow because “everybody” does. Neither does it help that few of our representatives, journalists and fellow citizens seem to understand the impact of these treaties. Those in the legal industry who do understand the implications just look at it as “business as usual” and a new way to generate income. As such, most standards are passed into domestic law with little opposition or delay.

### **International Standards Aim to Supersede National Law**

Once these treaties are accepted, they become part of a body of law called “international law,” which in many cases supersedes national laws. Unknown to the general public, international law is increasingly being used as a backdoor for passing invasive regulations such as those we are discussing here, and establishing a global bureaucracy with real power over our (financial) lives.

It is also worth noting that the people working for this Paris-based institution have not been elected, their procedures and budget are not subjected to democratic oversight, and they are almost impossible to remove from power. Like most international organizations, their operations fall under the Vienna Conference on Diplomatic Intercourse and Immunities.<sup>13</sup> As such, they enjoy immunity for their actions taken whilst in office, are exempt from

administrative burdens (such as taxes and fines), and enjoy less stringent (COVID) travel restrictions.

### **AUTOMATIC Exchange of Transaction Info For Crypto**

Last October 10<sup>th</sup>, the OECD published the “Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard.”<sup>14</sup> This applies the tax reporting guidance of the existing CRS to crypto—and makes it FAR more invasive...

The OECD first published a public consultation version of the document on 22<sup>nd</sup> March 2022.<sup>15</sup> The deadline for feedback from the public was 29<sup>th</sup> April 2022. This gave the public just over a month to analyze a 101-page document, figure out what it meant for them and their clients in multiple jurisdictions, and formulate a public statement on company letterhead. This is not a sign that the OECD takes public input seriously. When comparing the two documents, there is no material difference between the public consultation and the final version in the section that matters most, the actual rules...<sup>16</sup>

Public consultations give these recommendations the appearance of being widely supported by “stakeholders.” It creates the illusion that the public has a say in the matter. It doesn’t. When you read the questions carefully, they only seek feedback on details, such as which intermediaries are to be included or excluded, which type of NFTs are to be in scope, what reporting thresholds there should be, and how much time should be reserved for implementation.<sup>17</sup>

Furthermore, if you read the commentaries submitted, which can be downloaded [here](#), most respondents just talk their own book, trying to elicit amendments that perhaps exempt them from a specific reporting requirement, or trying to get a longer time-frame for implementation. In all fairness, there were also a number of industry insiders who highlighted the double standards created for the crypto industry, and how much of a burden the regulations would represent. In the end, none of this mattered. The regulations have been published and are now the new worldwide standard.

## <What Are The New Guidelines for Crypto?\_

As was the case with earlier regulations, Bitcoin will not be banned. Instead, the OECD builds on the approach set by FATF: to regulate the service providers who facilitate transactions.

In this instance, the OECD developed a **new global tax transparency framework** which provides for the automatic exchange of tax info on transactions in a standardised manner. This is the “Crypto-Asset Reporting Framework” or “**CARF**.”<sup>18</sup>

As previously mentioned, automatic exchange of information used to contain only the details of the individual and the account value. New reporting obligations, however, apply to **all transactions** in an account. This is a major extension of the reporting obligations that currently exist for non-crypto financial services.

### **Reporting of Transactions (and their Nature) by VASPS**

The OECD proposes that those providing crypto transaction services, for or on behalf of customers, are to report under the CARF. We are talking here about the reporting entities that are defined by FATF, i.e. “Virtual Asset Service Providers,” or “**VASPs**.”<sup>19</sup>

Before we look at the details of the information that is going to be exchanged, let us remind ourselves of what a VASP is:

*“VASP: Virtual asset service provider means **any natural or legal person** who is not covered elsewhere under the Recommendations, and as a business **conducts one or more of the following activities** or operations for or on behalf of another natural or legal person:*

- i. exchange between virtual assets and fiat currencies;*
- ii. exchange between one or more forms of virtual assets;*
- iii. transfer of virtual assets;*
- iv. safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and*

- v. *participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.*"<sup>20</sup>

As you can see, the definition of VASP is so wide that it covers many of projects currently operating in the crypto space. According to the OECD, reporting obligations also apply to companies facilitating Decentralized Finance and Decentralized Exchanges.<sup>21</sup>

### **What Transactions are to be Reported?**

What needs to be reported? In particular, the following three types of transactions:

- Exchanges between Crypto Assets and Fiat Currencies;
- Exchanges between one or more form(s) of Crypto Assets;
- Transfers of Crypto Assets (including Reportable Retail Payment Transactions).<sup>22</sup>

Transactions will be reported by type of Crypto Asset, and will distinguish between outward and inward transactions. In order to enhance the usability of the data for tax administrations, the reporting is to be split out between Crypto-to-Crypto and Crypto Asset-to-fiat transactions. Reporting service providers will also be forced to label transfers (e.g. airdrops, income derived from staking or a loan), in instances where they have such knowledge.<sup>23</sup>

In short, the CARF mandates that information on all trades, including the type of coin, the amount of coins, the market value, and what was paid, be submitted. This info is then aggregated and automatically exchanged.<sup>24</sup> The goal is to inform the tax authorities of how much you own and what kind of income you generated from your holdings.

And if that is not enough, the OECD allows lawmakers the option to request **lists of private wallet addresses** of users.<sup>25</sup>

## **Reporting of Retail Transactions from Private Wallets**

On a final note, the OECD has come up with a trick to limit the opportunity for crypto users to spend their coins anonymously. The CARF also applies to merchant providers facilitating crypto payment for goods or services. In such instances, the merchant provider is required to treat the customer of their customer as its own customer, and report the value of the transaction to the tax authorities of the buyer.<sup>26</sup> For now, this only applies to “large” purchases of over USD 50,000.<sup>27</sup>

## **What About US Citizens and Green-Card Holders?**

The CRS has been implemented worldwide. All developed nations and all international financial centers have been included in the list, leaving few of the world’s financial highways untouched.<sup>28</sup>

Surprisingly, the United States is not on that list. The reason is that the US came up with their own automatic reporting framework even before the OECD did. It is called the Foreign Account Tax Compliance Act, or FATCA, and requires that foreign financial Institutions and certain other non-financial foreign entities report on the foreign assets held by their U.S. account holders.<sup>29</sup>

Up until now, FATCA did not directly apply to crypto. But the new 2023 budget proposal seeks to amend section 6038D(b) of the Internal Revenue Code to require reporting for a new third category, namely any account that holds digital assets maintained by a foreign digital asset exchange or other foreign digital asset service provider (a “foreign digital asset account”).<sup>30</sup>

There is also another US-specific reporting obligation, the Report of Foreign Bank and Financial Accounts. Regarding FBAR, FinCEN has issued Notice 2020-2, stating that it also intends to make reporting foreign virtual currency accounts mandatory.<sup>31</sup> Moreover, US tax payers are already required to report their crypto transactions on their tax returns.<sup>32</sup>

The question is, will the United States also implement a CARF like system, as in the automatic reporting of all transactions? This question remains unanswered for now. But President Biden's Executive Order from earlier this year clearly stated that the current administration is committed to these international standards, including those commissioned by the G20 and FATF, and that the US has a leading role in developing and adopting these international standards on digital assets.<sup>33</sup>

Despite all this, it is still unclear what the regulatory landscape in the US will look like. Regardless, US-based companies with clients in other countries (i.e. most of them) will have to implement these policies. It is hard to imagine the US government not wanting to have this information for itself, especially since the legal framework is largely in place. But we will have to wait and see.

## **<What Will Be the Outcome of These Regulations?\_**

The outcome of these new international standards will be full transparency towards tax authorities. The aim of these standards is to get automatic insight into all your trades, even laying the foundation to prevent you from spending coins anonymously with retailers that use a third party payment provider. This means in practice that although you can hold coins in your private wallet, you cannot easily spend or exchange them anonymously. In short: no more privacy when you use third party services.

One might say this will be the death of third party services, because accepting online payments is as simple as installing a piece of code on your website and taking the payments yourself. But most companies do not have the capacity to run their own payment system, and are likely going to require payments through a regulated merchant.

As long as there isn't a Bitcoin standard, meaning accounting and payments regularly done in Bitcoin, there will be a need for fiat on- and off ramps. As such, even when you do business in crypto, your suppliers or clients are likely to make use of a service provider with reporting obligations.

As a result, expect far more scrutiny on transactions; from exchanges, but also from the people and businesses you are dealing with in everyday crypto activity. Even if you do not need to report on certain transactions, they might be forced to do so. You might be okay with accepting direct peer-to-peer transactions, but could run into issues later when you are obliged to prove where the payments came from.

### **Regulators Are Out of Control**

The reality is that these regulators are out of our control. Without (direct) democratic mandates or oversight they are flooding the world with regulation. Just like totalitarian

regimes, they effectively force private parties to police each other.

The service providers, forced into unpaid financial surveillance, carry the rising compliance costs. Obligated to make hard decisions as to whom they can take on as customers, they are likely to cut services to those they consider not worth the compliance costs, such as small or “high risk” businesses, and people in developing nations. The cost of compliance might become so great that at least some of them might want to facilitate transactions only with fully-vetted wallets tied to a digital ID, such as the EU is implementing.<sup>34</sup>

### **New Precedent: Centralized Surveillance of Individual Transactions**

This is a good example of regulations being built on top of one another, and raising the bar with each step. It should not come as a surprise if at some point regular financial service providers are forced into similar obligations to get in line with these new “international standards.” This step might be taken with the introduction of Central Bank Digital Currencies, currently being developed all around the world.<sup>35</sup>

### **Door Open to Further Monitoring and Restricting of Payments**

It is not hard to imagine that once all transactions are transparent, more actions can be taken as to which type of payments and type of persons are allowed or not. We can see this financial “cancel culture” already happening around the world.<sup>36</sup>

As a result of all this surveillance, it is not only privacy that is at risk right now; this starts to touch the very idea of maintaining a payment system where you can freely transact and engage in economic activity.

Only a massive and radical decentralization movement away from third party service providers can prevent this dystopia. Stay tuned for a next report and a roadmap for just that...

## <About the Author\_

### Wesley Thyse MSc



Wesley started his career in finance. He worked as a project controller at Multi Real Estate, a large developer of iconic shopping malls in Europe. He later settled in Dubai where, as a corporate service provider, he assisted entrepreneurs and high net worth individuals with international tax planning and legal structuring.

In 2014, he moved to Asia and started a small consultancy firm. He has since helped hundreds of SMEs, digital nomads, crypto investors and HNW-individuals with international tax and regulatory challenges.

In 2016, together with a partner, he launched a website focusing on explaining international tax regulations to a wide audience. Their [blog on transfer pricing](#) is now likely the world's most visited on this topic. He also co-wrote a textbook for students, a training course, and produced legal templates on the topic. The website and educational materials are published by the boutique tax law firm Thyse de Lange Limited, registered in Hong Kong, of which he is the Managing Partner.

In 2017, he started researching blockchain legal projects, and realized that most of them lacked real-world frameworks. He created the [decentralized legal system](#), a first framework of its kind for Decentralized Law.

Early 2021, he published the [The Crypto Sovereign](#), a unique book on using geo-tax-arbitrage to optimize your taxes, protect your assets, and increase your liberty by moving across borders.

Wesley holds a Master's degree in Management from the University of Greenwich, London.

### Contact me:

If you are worried about what regulations mean for you or your project, wish to discuss this topic on your blog or podcast, or need the opinion of someone who is at the forefront of crypto regulations, feel free to contact me:

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36 [author note: this week alone famous artist Kanye West saw his bank closed for this views, and Paypal contemplated fining their customers for spreading what they considered misinformation.]