

International cooperation and the fight against fraud : the role EU tax instruments

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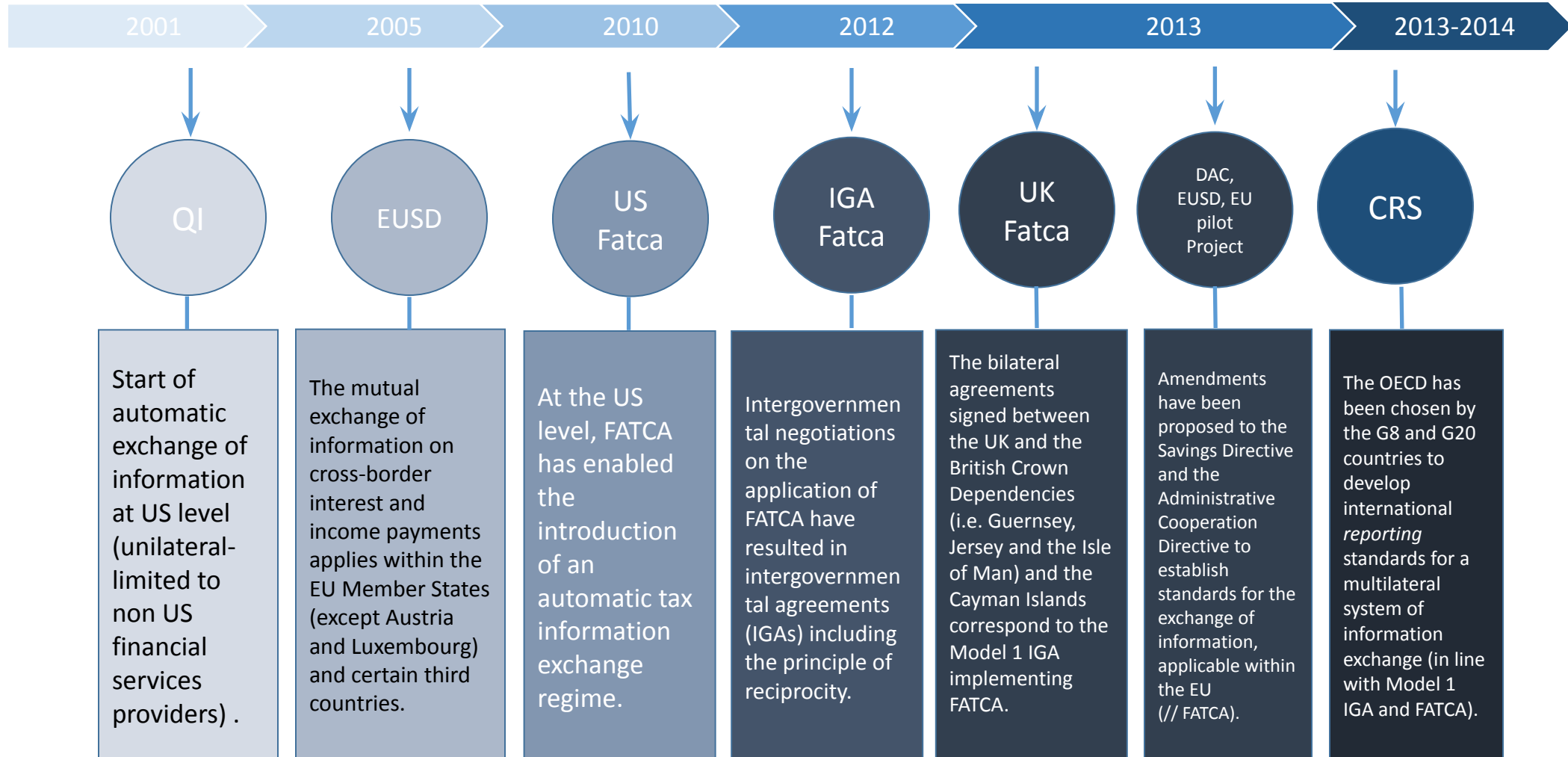
Kick-off meeting Project “101101784 — 2022-IT-FRED2”
Fraud Repression through EDucation2

31 May 2023

Exchange of information in tax matters –OECD and EU instruments

- The OECD Model Convention
- The OECD Tax Information Agreements
- The Exchange of Information at EU Level
 - The Council Directive 2011/16/EU on Mutual Assistance in the Assessment of Taxes in the field of Direct Taxation
 - The Council Directive 2003/48/EC on Taxation of Savings Income in the Form of Interest Payments
 - The Council Directive 2010/24/EU on Mutual Assistance for the Recovery of Tax Claims
- The 1988 OECD /Council of Europe Convention on Mutual Administrative Assistance in Tax Matters

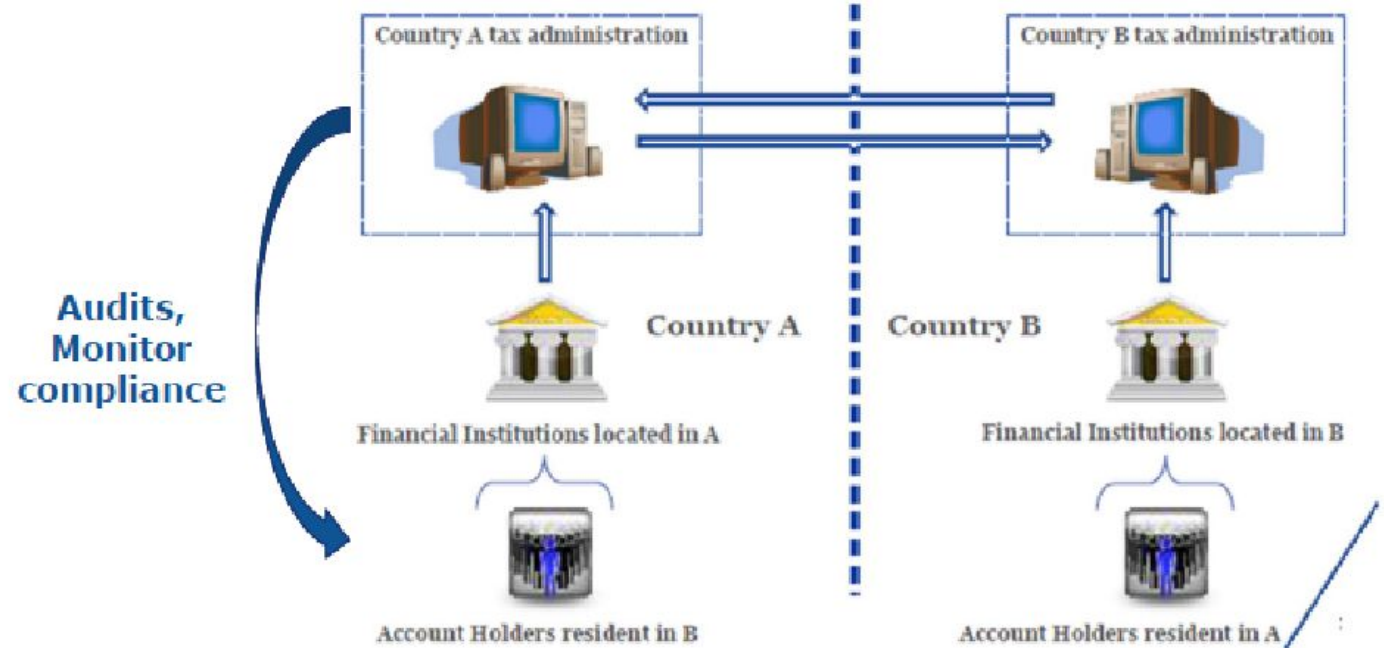
The breakthrough : 2001-2014



Automatic exchange of information as a global and EU standard

<http://www.oecd.org/tax/automatic-exchange/>

DAC – the basics



Council Proposal amending Directive 2011/16/EU
EESC - Brussels, 14.09.2016

Directive on Administrative Cooperation – DAC

DAC1	DAC1	DAC2	DAC3	DAC4	DAC5	DAC6
2011/16/EU NON AEOI	2011/16/EU AEOI ITEMS	2014/107/EU AEOI ITEMS	2015/2376/EU AEOI ITEMS	2016/881/EU: AEOI ITEMS	2016/2258/EU NON AEOI	2018/822/EU AEOI ITEMS
Applies:1/2013 All exchanges of info except Art. 8 *Exchanges on request *Spontaneous exchanges *Presence in adm. offices *Simultaneous controls *Request for notification *Sharing best practices *Use of standard forms	Applies:1/2015 1 st exchanges on 2014 by: 30.6.2015 Art. 8 *Automatic exchange of information on 5 non-financial categories: <i>*Income from employment</i> <i>*Directors fees</i> <i>*Pensions</i> <i>*Life insurance products</i> <i>*Immovable property (income and ownership)</i>	Applies:1/2016 1st exchanges on 2016 by: 30.9.2017 Art. 8, para 3a Automatic exchange on financial account information: <i>*Interests, dividends or other income generated by financial account</i> <i>*Gross proceeds from sale or redemption</i> <i>*account balances</i>	Applies:1/2017 1st exchanges by 30.9.2017 Art. 8a Automatic exchange of information (using a central directory as from 1.2018) of: *Advance cross- border rulings *Advance pricing arrangements	Applies:6/2017 1st exchanges on 2016 by: 30.6.2018 Art. 8aa Automatic exchange of information on country-by- country reports on certain financial information: <i>*Revenues</i> <i>*Profits</i> <i>*Taxes paid and accrued</i> <i>*Accumulated earnings</i> <i>*Number of employees</i> <i>*Certain assets</i>	Applies:1/2018 Art. 22, para 1a Access by tax authorities to beneficial ownership information as collected under AML rules	Applies:7/2020 1st exchanges by: 31.8.2020 Art. 8aaa and hallmarks in Annex 4 *Mandatory disclosure rules for intermediaries and *Automatic exchange of information on tax planning cross-border arrangements

DAC 2

Automatic exchange of information on financial account information since 1 January 2016 (Directive 2011/16/EU, art. 8.3a):

- Account balance or value as of the end of the reporting period
- Gross amount of income generated during the reporting period
- Gross proceeds from the sale or redemption of financial assets during the reporting period

DAC 3

- Automatic exchange of information of advance cross-border tax rulings and advance pricing arrangements as from 1 January 2017 (Directive 2011/16/EU, art. 8bis, as introduced by Directive 2015/2376/EU of 8 December 2015)
- As from 1 January 2018, secure central directory, where this information is stored, accessible to all the Member States and, to some extent, to the Commission (Directive 2011/16/EU, art. 21.5, as introduced by Directive 2015/2376/EU of 8 December 2015)

Directive (EU) 2016/2258 DAC5)

- grant access to anti-money laundering information by tax authorities for the identification of beneficial owners (DAC 5)

= the natural person(s) who exercises control over the entity

- For entities: control or ownership interest (often interpreted as >25% ownership)
- For trusts (and equivalent): settlor(s), trustee(s), protector(s), beneficiary(ies) and other natural person(s) exercising effective control over the trust

Directive 2018/822 of 25 May 2018(DAC 6)

- mandatory automatic exchange of information on reportable cross-border arrangements
- Hallmarks (generic and specific) :
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L0822&from=FR>
- Applicable to “intermediaries”, i.e. any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement.
- Pending case on the validity of the reporting obligations imposed on lawyers : ECJ, case C-694/20 (Opinion AG Rantos of 5 April 2022)

• DAC 7

- Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation
- DAC 7 objectives
 - To clarify the definition of foreseeable relevance in case of EoI on request
 - To introduce a mandatory automatic exchange of information for platforms operators and harmonizing reporting obligations to avoid disparities and enhanced compliance costs from domestic legislations.
 - Several MS have passed domestic legislation imposing reporting obligations to online platforms.
 - To provide a legal framework for joint audits
 - To ensure protection of exchanged data according to EU standards
 - To ensure adequate penalties in case of breach of reporting obligations



- DAC 8 Proposal, 8 December 2022, COM (2022)707
 - **Political agreement on May 16, 2023**
 - extending automatic exchange of information (Eol) to information on cryptoassets and e-money;
 - extending the automatic Eol of advance cross-border rulings and advance pricing agreements to cover cross-border rulings concerning high-net-worth individuals (HNWI)
 - [establishment of minimum penalties for infringement of domestic rules that transpose the Directive on Administrative Cooperation (2011/16)
 - Min. 50 000/150 000 depending on turnover (6 million €)]

