Bank account registries in selected countries

Lessons for registries of trusts and foundations and for improving automatic tax information exchange

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Executive Summary

Promoting information exchange agreements is almost the only solution offered by the G20 and OECD countries since the financial crisis to tackle tax havens and tax evasion. Independent of the specific type of treaty selected, the effectiveness of such agreements relies totally on the availability and accessibility of the data at national level. In reality, facing international pressure to sign up to tax information exchange agreements, secrecy jurisdictions find it all too tempting to maintain business-as-usual by the simple expedient of not collecting the information required for effective information exchange.

This research looked into the existing systems of bank account registries and/or bank account reporting obligations of eleven countries (Argentina, Austria, Australia, Denmark, Finland, France, Germany, The Netherlands, Norway, Spain and the United States). To reach its conclusions and recommendations, the research analysed data from various sources. It collected data through a survey from the reviewed countries and analysed the experiences made with the European Savings Tax Directive (EUSTD), the envisaged amendments to the EUSTD, the 3rd Anti money laundering (AML) EU Directive, and the proposed regulations of the Foreign Account Tax Compliance Act (FATCA). The study's purpose was to create an initial body of empirical comparative data on the existing bank account reporting obligations in order to inform debates around automatic tax information exchange as well as debates on the design of trust and foundation registries.

[1] For any questions about this research please contact Mathilde Dupré at m.dupre@ccfd.asso.fr or Markus Meinzer at markus@taxjustice.net.

A main finding is the wide range of observed differences in bank account registry systems. While most countries (except Austria and Germany) require at least some interest payments on bank deposits to be reported routinely to the tax administration, only five countries operate one central database of bank accounts at the tax administration (Argentina, Denmark, France, the Netherlands and Spain). Four countries do not operate such a database, but have sometimes multiple databases at bank level (Germany) or a database of taxpayers which incorporates all interest payments (Finland). Two countries do not operate any comprehensive system (Austria and the USA). An increasing number of jurisdictions also use the interest reports to prefill tax return as a service to taxpayers (e.g. Finland, France, the Netherlands).

When compared to a report on bank account reporting obligations published in the year 2000 by the OECD, many countries have improved and expanded their reporting obligations and thereby enhanced financial transparency. Important progress was made by Australia, Spain and the Netherlands. Modest improvements were made by Denmark and Germany, though Germany has backslid from a major improvement when in 2009 it narrowed access to bank account registries in case of non-resident account holders and beneficiaries.

No substantial and apparent improvements were made by Austria, Finland, France and Norway, with the important difference that Austria has no bank account reporting mechanism available whatsoever, while Finland, France and Norway have far reaching bank account reporting obligations.

Since 2000, the USA experienced an overall deterioration in the reporting obligations through the introduction of the qualified intermediary's programme in 2001 (Grinberg 2012: 14). While in the year 2000, interest payments to non-resident aliens were not reported by failure to include them in the reporting obligations, the QI-rules were designed to bypass the usual reporting regime and created anonymous investment opportunities in financial assets and accounts by non-residents as a carrot to induce foreign financial institutions to cooperate with the IRS on US financial accounts. This situation with QI has not been remedied by recent 2012 IRS regulations to require the regular reporting of bank interest about certain non-residents from 1 January 2013.

It is noteworthy that among the six countries for which full information was available on all reviewed criteria (Argentina, Denmark, Finland, Germany, the Netherlands, United States), only one country (Denmark) imposes identical reporting obligations for residents and non-residents[2]. In all other surveyed countries, there is always a less stringent obligation imposed when non-resident beneficial owners/recipients are involved. This highlights the endemic nature of tax haven behavior in today's world. Denmark's bank account reporting and registry can therefore serve as a benchmark for other nations to follow.

[2] Except Austria, which simply has no reporting obligations for bank information whatsoever.

With respect to recommendations drawn for the design of bank account registries and/or reporting obligations, two broad principles can be distilled and a few detailed recommendations given. First, not least with a view to recent banking scandals with Swiss and UK banks, it is of paramount importance to ensure that countries have in place a system of bank account registration. Without such a system, it appears to be impossible to assess a bank's compliance with tax and anti-money laundering and similar obligations. This principle is fully in line with a recent recommendation given by the United Nations and the World Bank.

As a second principle, it should be ensured that access to any existing database or information on bank accounts is available to (tax) investigators in cases of civil tax matters and in early stages of criminal investigations, irrespective of the residency of the beneficial owner or account holder. Again, this recommendation has also been given by the United Nations and the World Bank.

The minimum information that should be collected by countries on bank accounts includes interest payments above a certain threshold (US$ 10), the account balance at year end, the average account balance, the maximum account balance, and the opening and closing dates of accounts. All financial accounts should be included. With respect to identification, it is imperative that all powers of attorney are recorded, and that each financial account can be attributed to one or a few beneficial owners who must be natural persons. In addition to the name, it would be crucial to collect either a valid taxpayer identification number of the person's proven country of residence, or the birthdate. The only exceptions to this rule should be made for accounts held in the name of government agencies and of certain listed companies which have a listing in a reputable stock exchange and are subject to far-reaching publication requirements about their shareholders.

With respect to supervision and sanctions for the bank account registries, there is a clear case[3] for disposing of criminal sanctions for willful misreporting above a certain threshold and for repeated misreporting. Systematic and periodic onsite inspections should be conducted to check the availability of beneficial owner verification documentation, and statistics on the frequency of supervisory action and results should be published.

With a view to the design of trust and foundation registries, it is important to make the legal validity of trusts and foundations contingent upon proper registration similar to corporate registration. Even if bank account registries required beneficial owners of bank accounts held by trusts and companies to be recorded, it is not in vain to require the beneficial owners of trusts and foundations to be recorded in a separate registry for trusts and foundations as well. The potential for human failure suggests that such a double registration requirement for beneficial ownership is warranted, since trusts are widely used for tax evasion, financial crime, corruption and avoiding legal proceedings.

[3] http://www.voxeu.org/article/criminal-sanctions-how-save-banks-without-rewarding-bankers; 16.8.2012.

A public registry of trusts and foundations is more desirable than administrative registries or reporting obligations without public disclosure, as the accuracy and timeliness of information can be maintained best if some information is available publicly. But not all of the recorded information should be made available online for inspection by the public (see further down for details about online information). If a company registry exists, it would be best to use the existing registry and to expand its scope to host also the registry of trusts and foundations unless there are good reasons against such expansion.

The registration requirement should comprise all legal entities and individuals who are by profession (lawyer, accountant, tax adviser, etc.) or license or for any other reason capable to act as trust administrators, no matter if the country offers proper trust law. The registration requirement should include any trust, foundation, fiduciary arrangement or asset management contract ("legal arrangements"; except for collective investment schemes). Every single individual trustee, foundation council member, every single fiduciary and every asset manager ("trustee"; except for collective investment scheme managers) should be subject to reporting obligations in their respective country of residence about all legal arrangements they participate in, without narrowing the reporting obligations to any "lead" trustee.

Not all of the following information should be made available online for inspection by the public (see further down for details about online information). However, reporting should include the value of total assets under management should be reported as well as all payments above a certain threshold, no matter what type of payment is made (e.g. emoluments, consultancy feeds, payouts, etc.). Furthermore, the trust deed including any letter of wishes and all foundation documents including any bylaws, and any written documents related to the legal arrangements should be submitted to the registrar in order to take effect.

Each participant to the legal arrangement should be identified each year and if new, their identity verified, including the settlor(s), the trustee(s), the beneficiary(ies), protector(s), fiduciary(ies), mandator(s), and any other intervening party ("participants"), with each of those participants being required to be a natural person, with no legal entities, nominees or other legal arrangements being allowed as participants. The named settlor(s) and the beneficiaries need to be the original ultimate beneficial owners of the initial asset contributions and the ultimate beneficial owners of payments, respectively. For each of these natural persons, their full names, a validated TIN or birthdate and –place or a validated passport number, and a certificate of their country of residence should be required.

Each trustee should be legally responsible for compliance with the reporting obligations. Criminal sanctions should be available in cases of gross negligence or intentional misreporting, in addition to escalating administrative fines for misdemeanours. The head of the registry (the registrar) would be the chief executive responsible for and vested with powers for supervising the compliance with reporting and documentation obligations and for applying sanctions and initiating criminal enforcement action. Comprehensive statistics about the frequency and results of supervisory activity, including onsite inspections of trustees, should be published online, including with a breakdown of supervisory results by category of total assets under management (above €100 million, above €10 million, above €1 million).

Mandatory annual reports filed by each trustee should be made online available in the residence country of each trustee for all legal arrangements whose overall payments either exceed €15.000 per year or whose underlying asset value exceeded €100.000 at any moment in the year. These reports should include the full names and birthdates and country of residence of each participant in the legal arrangement.

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1. Background and rationale for research

Automatic information exchange of tax related information about financial income is increasingly seen as the emerging international standard for cooperation in an environment of unrestricted cross-border financial flows. The G20 leaders stated in the June 2012 Los Cabos summit communiqué[4]: "We welcome the OECD report on the practice of automatic information exchange, where we will continue to lead by example in implementing this practice".

The current political agenda (revision of the third AML EU Directive, the debates around the extension of the EUSTD and the international negotiations around the new FATCA rules implemented by the USA) provides a wide range of opportunities for introducing a range of new tools required to make automatic information exchange effective.

Automatic information exchange could play a crucial role in reducing distortions in the global pattern of portfolio investments and in regaining national capacity to tax investment and capital income such as interest and business profits[5]. As a consequence, it could play a crucial role for mobilising domestic resources for development.

However, the OECD and its Global Forum have repeatedly claimed in the past that automatic information exchange is not feasible politically and/or technically, and instead promote information exchange upon request, which is portrayed by OECD/Global Forum as the "internationally agreed standard"[6]. This standard is usually satisfied with (legal) ownership information being accessible somewhere within the jurisdiction, without differentiating between situations in which relevant information is kept

a) in (public or administrative) registries by routine reporting obligations imposed on economic actors or
b) by company service providers, often lawyers[7], accessible exclusively upon specific requests.

However, it can be argued that any deterrent effect caused by international (tax) cooperation is dependent upon whether or not private actors such as law offices or shell companies can be used as a "screen" or "shield" between the identities of the beneficial owners and criminal prosecuting or tax authorities. If the identity information of the beneficial owners of legal entities and structures was held by

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[4] www.g20mexico.org/images/stories/docs/g20/conclu/G20_Leaders_Declaration_2012.pdf; 21.6.2012.

[5] IRS findings suggest that major revenue loss is associated with the ability to invest fresh undeclared and untaxed principal in financial assets by evading income taxes on business and corporate profits. AIE would allow tax administrations to tackle this problem by finding out about suddenly rising account balances (Grinberg 2012: 33-34).

[6] http://www.oecd.org/tax/transparency/; 6.8.2012.

[7] For more details about the flaws of the Global Forum peer review process, please read our Briefing Paper dating from March 2012, here: http://www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf; 5.6.2012.

public registries, and if the identity of bank account beneficiaries was recorded by administrative registries, a far higher deterrent effect could be achieved[8].

In the case of financial account registries, if banks are allowed to open and offer financial accounts without routine reporting and if account due diligence relies largely on banks' own internal risk based approaches, both a huge incentive is created and a large discretionary space opened for banks to act as and collude in creating smoke screens between accounts and assets on the one hand, and the actual beneficial owners on the other[9].

If state agencies such as tax administrations or public prosecutors or police have difficulties accessing information about the payments to and beneficial owners of financial (bank) accounts held in the name of individuals or firms or legal structures, investigations or prosecutions are likely to be delayed and possibly frustrated. What is more, if developing country residents can invest funds in bank accounts, say, in EU-nations without the payments and identities being routinely reported to any EU-state authority, there is a minimal chance of these accounts ever being discovered in the home country, thus inviting tax flight (both fresh deposits of untaxed principal as well as evading taxes on the investment income from these accounts), financial crime and corruption. De facto secrecy arises from the absence of payment reporting and attracts excessive foreign portfolio investments[10].

However, even if bank account registries and reporting obligations are working fairly well in a narrow technical sense, legal entities and arrangements such as trusts and foundations can be used to disguise the identities of the true and ultimate beneficial owners controlling financial assets such as bank account deposits. Neither current AML-standards[11], nor OECD's Global Forum peer review

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[8] This expectation relies, among others, on an IRS study quoted on pages 12-13, here: http://www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf; 5.6.2012.
[9] The ways this can be done include by "ownerless" accounts (such as in Switzerland where AML-requirements explicitly exempt widespread accounts by discretionary foundations and trusts from the obligation to report a beneficial owner, see page 2, para.3, here: http://www.taxjustice.net/cms/upload/pdf/Deutsch/2011-Deutsch-Schweizer-Abgeltungsabkommen-Analyse-Update.pdf; 11.7.2012), by accounts in the name of life insurances instead of the actual persons (such as in the recent case of Credit Suisse banks hiding German clients through Bermuda life insurances, see http://www.handelsblatt.com/unternehmen/banken/steuerhinterziehung-razzia-bei-deutschen-kunden-der-credit-suisse/6862646.html; 11.7.2012), or by offering unreported safe deposit boxes for assets, etc.
[10] For more details on the global implications of automatic tax information exchange, including concerning environmental considerations, please read pages 24-25 in this briefing paper: http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf; 6.6.2012.
[11] This appears largely to be a problem of compliance with FATF recommendations (WB 2011: 111), but not exclusively. While the new FATF recommendation 10 prescribes generally the requirement to identify beneficial owners even in corporate chains, there is an alternative treatment available if the attempts to identify a natural person having a controlling interest will fail. For instance in cases where no natural person can be identified to hold an ownership interest of more than 25% in any company, senior company managers will be identified instead: "Where no natural person is identified

process (TJN 2012: 14), nor the current EUSTD[12] (see German section in this report) tackle this issue adequately since corporate account holders are often accepted even though beneficial owners cannot be identified, especially if a foreign company owns a local company which is opening an account. As a consequence, most countries condone their banks operating financial accounts in the name of private companies without identifying the controlling and/or owning individuals. This problem has been highlighted by a recent World Bank investigation into over 150 grand corruption cases (WB 2011: 20, 33, 97-98, 111).

Trusts[13] pose a particularly serious problem. A trust typically involves three main parties. One party (the settlor or grantor or donor) - typically a wealthy person, hands over control of an asset to a trusted second party (the trustee), perhaps a lawyer, who in turn controls the property on behalf of a third party (the beneficiary) who might be the settlor's child, for example. The trustees are the *legal* owners of the asset (the trust property) but they are not the *beneficial* owners, and apart from fees the trustees should receive no benefits from the assets. Trillions of dollars' worth of assets are likely to be held through trusts worldwide – three to four hundred billion through Jersey-admnistered trusts alone – so this is an issue of global importance.

The absence of (public) registries on the beneficial owners of arrangements and entities (WB 2011: 102) and the underlying absence of systematic reporting obligations imposed on the trustees and directors and managers of such legal structures creates difficulties for law enforcement and tax administrations comparable to the difficulties created by the absence of bank account registries.

In the light of this, a two-tier identification system for beneficial ownership of financial assets appears to be warranted. Fungibility of financial activities as well as failures in any humanly designed system suggests it would be unwise to rely

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under (i.i) or (i.ii) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official." (FATF 2012: 61). It is completely open what happens if corporate directors would make a natural person unavailable.

[12] The EUSTD's requirement to report beneficial owners of account holders relies on EU's third anti-money laundering directive (EU 2005). This latter directive requires financial institutions to identify "[…] where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity […]". (Art. 8 (1) b). The beneficial owner is defined as a natural person owning or controlling a legal person or arrangement directly or indirectly (Art. 3 (6) a and b). However, there is increasing evidence that the implementation is failing especially in cases where chains of legal entities are involved (Deloitte 2011: 69-70; AML committee 2012: 5). There are various reasons for this failure, one of which is a possible "get out clause" in the directive itself in the same Article (8 (1) b) which mentions financial institutions "taking risk-based and adequate measures to understand the ownership and control structure of the customer". Other explanations relate to a lack of available beneficial ownership information for companies, to deficiencies in the transposition of the AML-Directive into national law, and to a lack of supervision and enforcement of the requirements.

[13] Learn more about trusts in TJN's blog "In trusts we trust", where this paragraph is taken from: http://taxjustice.blogspot.de/2009/07/in-trusts-we-trust.html; 20.7.2012.

only on one line of identification and reporting requirements imposed on only one category of financial actors, such as banks. Therefore, reporting obligations and/or registries of trusts and foundations should become a complement to bank account reporting obligations. In order to draw lessons for the design of and to create useful benchmarks for such registries, the extent and functioning of bank account registries is studied in this report.

Box 1: How can a developing country resident evade taxes through a German bank account?

At least for the last 50 years, a developing country resident was able to transfer funds in a variety of ways to German bank accounts in their name or in the name of a letterbox company without the German banks checking if the amounts have been properly taxed. This created huge incentives to both create undeclared profits and to transfer them to an offshore location. Furthermore, the invested amounts yield interest income which is tax exempt in Germany but would be taxable in most developing countries.

If the developing country tax administration now wants to find out if their residents have invested untaxed income in and receive undeclared interest income from foreign bank accounts, it could be reasonable to send a list of names of developing country residents likely to hold foreign accounts to the German tax administration and ask the German authorities to inform them if those residents maintain bank accounts in Germany.

However, Germany would not be in a position to answer that question because its bank account registry (in existence since 2003) since 2009 can only be used for a criminal tax matter where criminal proceedings have already begun in the requesting country. In order to initiate criminal prosecution, you would need to have some evidence about the existence of a German bank account plus a justified suspicion about this account being used for tax evasion. This is a classical hen and egg situation which prevents the tax evaders being brought to justice and being made to pay their fair share of taxes. Denying basic international tax cooperation about the existence of bank accounts in Germany helps tax evaders in developing countries to continue evading taxes, creates incentives to invest fresh untaxed income and as a consequence preserves poverty in the developing country.

2. State of research

Apart from an OECD report dating from 2000 (OECD 2000), there is no other source publicly available that compares or discusses aspects of bank reporting obligations. The OECD report stated that out of 29 OECD members in 2000, the majority (18 countries[14]) had some kind of bank reporting in place, while a minority (11 countries[15]) had no reporting in place (OECD 2000: 71-73). The OECD since then published two progress reports, one in 2003, and one in 2007, with a far reduced scope and less detail. There are no plans at the OECD to

[14] Australia, Canada, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Japan, Korea, the Netherlands, New Zealand, Norway, Spain, Sweden, United Kingdom, United States (OECD 2000: 71-73, own analysis; see Appendix IV).

[15] Austria, Belgium, Czech Republic, Germany, Iceland, Luxembourg, Mexico, Poland, Portugal, Switzerland, Turkey (OECD 2000: 71-73; own analysis; see Appendix IV).

publish further updates of this report, and it was claimed that "all that information is now being included in the Global Forum Peer reviews by country"[16].

However, in reality the peer review reports are often narrower in scope than the OECD (2000) report, as the examples of Germany, the Netherlands and the USA demonstrate. As a check on Germany's peer review report reveals, it does not contain a single word about the bank account registry system operating in Germany (GF 2011[17]) which would have been included if a study with the same scope as the OECD study of 2000 had been carried out in 2003 or later. Similarly, the GF report on the US does not mention the qualified intermediaries programme which, among other things, offers exemption for non-residents from reporting obligations under certain conditions, resulting in the possibility for non-resident investors to invest in bank accounts in the US without any reporting about those accounts taking place (Spencer 2011: 62[18]).

Another example of the reduced scope of the Global Forum peer reviews in comparison to the OECD 2000 report relates to the Netherlands. The Netherlands Global Forum assessment only mentions in a footnote the existence of a database that includes non-specified bank account information without giving any details about the scope of the reporting obligations (GF 2011h: 70). In contrast, the OECD 2000 report mentioned the Netherlands as requiring banks to report interest payments to residents, and our research revealed that in the meantime the Netherlands has made substantial progress in extending the scope of its reporting obligations to include also interest payments to non-residents.

Therefore, while some peer review reports may contain some basic information about bank registries or routine reporting, the inclusion of such information happens randomly and not systematically, in stark contrast to the OECD 2000 report. Out of the 18 countries with some bank reporting obligations, the OECD reported in 2000 that at least five countries operated centralised bank account databases:

> "Does the tax administration have a centralised data bank of bank accounts? Only France, Hungary, Korea, Norway, and Spain have such centralised data banks." (OECD 2000: 74, see also 36).

In addition, the OECD report of the year 2000 mentioned at four different places a "study of the use of withholding taxes and/or exchange of information to

[16] This was confirmed on 22.11.2011 by a contact within OECD.
[17] I searched the entire report for the terms „registry", "bank account", and "account".
[18] See the IRS instructions to file the form W-8BEN which is required by non-US-residents who invest in the USA through a QI: "You may also be required to submit Form W-8BEN to claim an exception from domestic information reporting and backup withholding for certain types of income that are not subject to foreign-person withholding. Such income includes: [...] Bank deposit interest." (Page 2, here: www.irs.gov/pub/irs-pdf/iw8ben.pdf; 12.6.2012). Importantly, this will still be true after the new regulations on the reporting of non-resident individual's bank deposit interest will enter into force on 1 January 2013 (see chapter on US for details).

enhance the taxation of cross-border interest flows" (page 3; page 9, para 5; page 30, para 58; page 45, para 109). However, such a study has never been published.

The lack of updated comparative research can be seen as a major obstacle in creating momentum for automatic information exchange because claims about the non-effectiveness of automatic reporting processes can be maintained more easily if details and analyses about experiences with domestic reporting obligations are not available.

The importance of some kind of bank account registry or reporting obligation is further underlined by a recent UN-WB (2011) report on the barriers to recovery of stolen assets. The problems associated with recovering assets stolen from developing countries by grand corruption are clearly illustrated in this passage:

> "Some jurisdictions require **overly specific information to implement requests for seizing or confiscating assets and bank accounts** (see Barrier 27). One reason for this requirement is that in the absence of specific information, the authorities trying to identify specific accounts **might have to query every bank** operating domestically. Needless to say, this process would be very long and tedious, particularly in larger jurisdictions and those with a large financial sector. At a minimum, therefore, most jurisdictions require that any request for restraint or seizure identify the financial institution(s) where the assets are thought to be held." (UN/WB 2011: 93; **own emphasis**).

In view of these problems, the World Bank report goes on to quote several practitioners arguing that bank reporting obligations could be very useful in this respect:

> "In many MLA [Mutual Legal Assistance] requests, the identification of the particular account holding the assets can be one of the most significant difficulties encountered in the early stages of a case. Several practitioners indicated that **central bank account registries would be highly useful tools in asset recovery cases** because they allow competent law enforcement authorities to conduct electronic searches using an individual's name or the identification elements of a specific bank account. Because criminals often use other individuals, attorneys, and legal persons to hide assets, such tools would be even more useful if they identify the beneficial owner of the account and any power of attorney related to the account. By helping to identify accounts, central bank account registries thus eliminate the need to impose overly specific property designation requirements on originating jurisdictions and speed the work of law enforcement authorities in asset recovery cases." (UN/WB 2011: 94; **own emphasis and [note]**).

Therefore, the empirical study of bank account registries and reporting obligations serves a dual purpose. The results could inform the debate on automatic information exchange and also inform the design of trust and foundations registries, as well as corporate registries. The research may also serve as inspiration for similar research for TJN-chapters in other parts of the world.

Given the relevance of bank account registries for international tax cooperation and international cooperation on criminal issues, the lack of publicly available and comparative research about existing systems of bank account reporting represents an important research gap to which this paper makes a first contribution.

3. Research methodology

The research process was based predominantly on a survey carried out through questionnaires (see Appendix III) distributed to the Ministries of Finance of 15 countries. In addition to the 11 countries covered by our survey (see below), four countries were addressed without receiving support and without sufficient information found on public record to include in our survey. These four countries were Belgium, India, South Africa and Sweden.

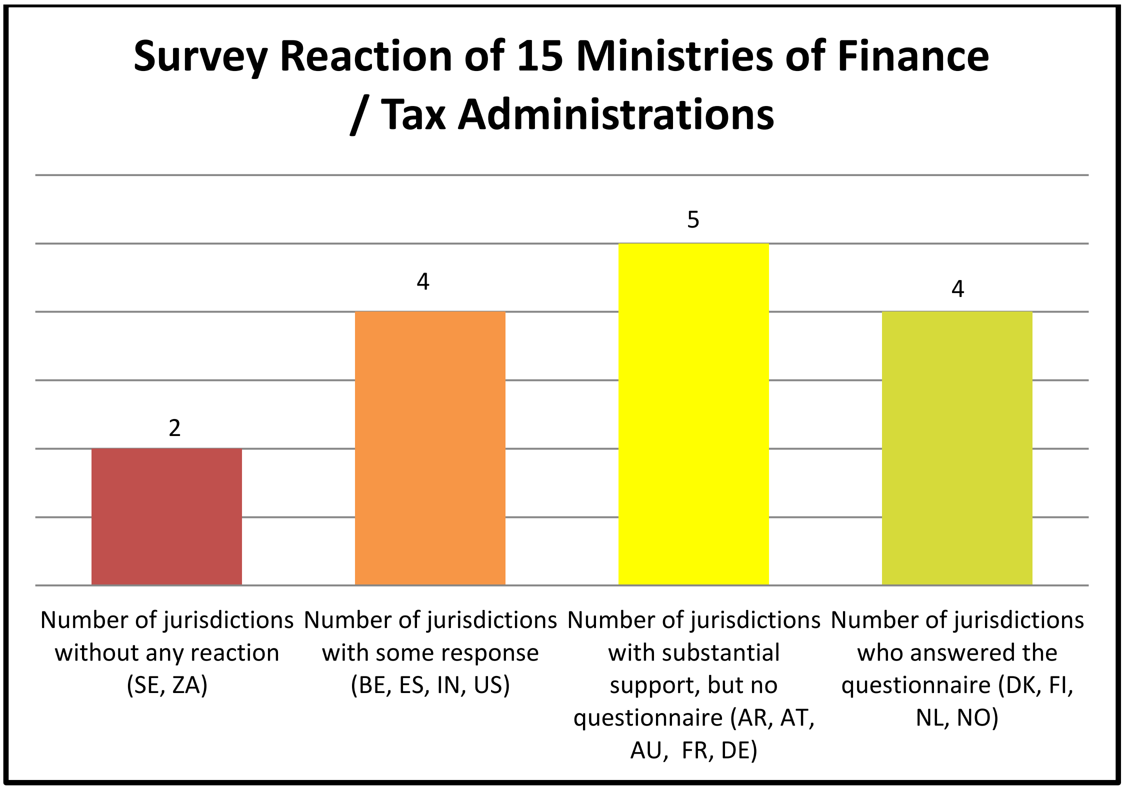
The following eleven countries were reviewed, while not all Ministries of Finance cooperated with the research:

1. Argentina
2. Australia
3. Austria
4. Denmark
5. Finland
6. France
7. Germany
8. Netherlands
9. Norway
10. Spain
11. USA

The information from the questionnaires was verified and complemented by extensive follow-up email exchanges, by Global Forum peer review reports on the particular country, and by analysis of legal and administrative rules and forms as well as in some cases by available academic literature or evaluation reports by national audit offices. Regional or national TJN-research contacts were involved often in either facilitating contacts to government or in reviewing draft chapters[19].

[19] Specific thanks are due to Koos de Brujin, John Christensen, Mathilde Dupré, Dick Harvey, Heather Lowe, Richard Murphy, David Spencer, Karoline Spies, Nicole Tichon, Mark Zirnsak. All remaining errors are mine.

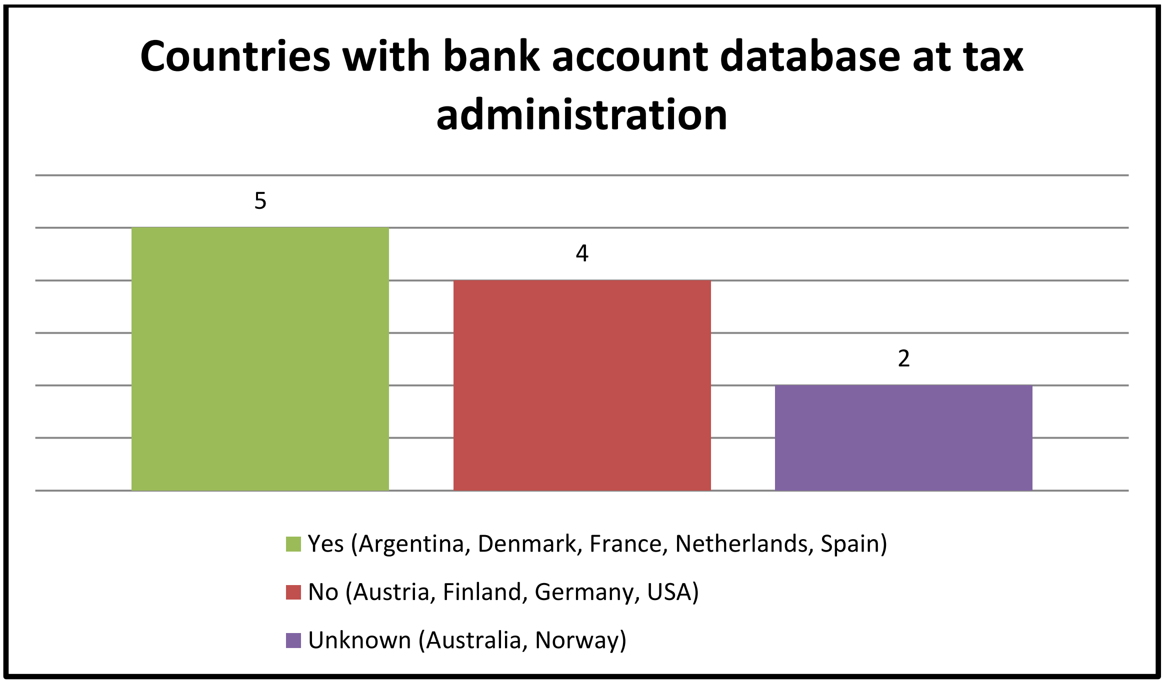
The choice of countries for the survey was based on various criteria. The most important criterion was the supposition about the existence of extensive bank reporting obligations and/or bank account registries in a particular country. Other criteria for the choice of the countries were (2) access to materials and laws (language) and/or previous good contacts to country experts or officials, (3) relative economic importance of the country, (4) budgetary and time constraints.



4. Summary of country reviews

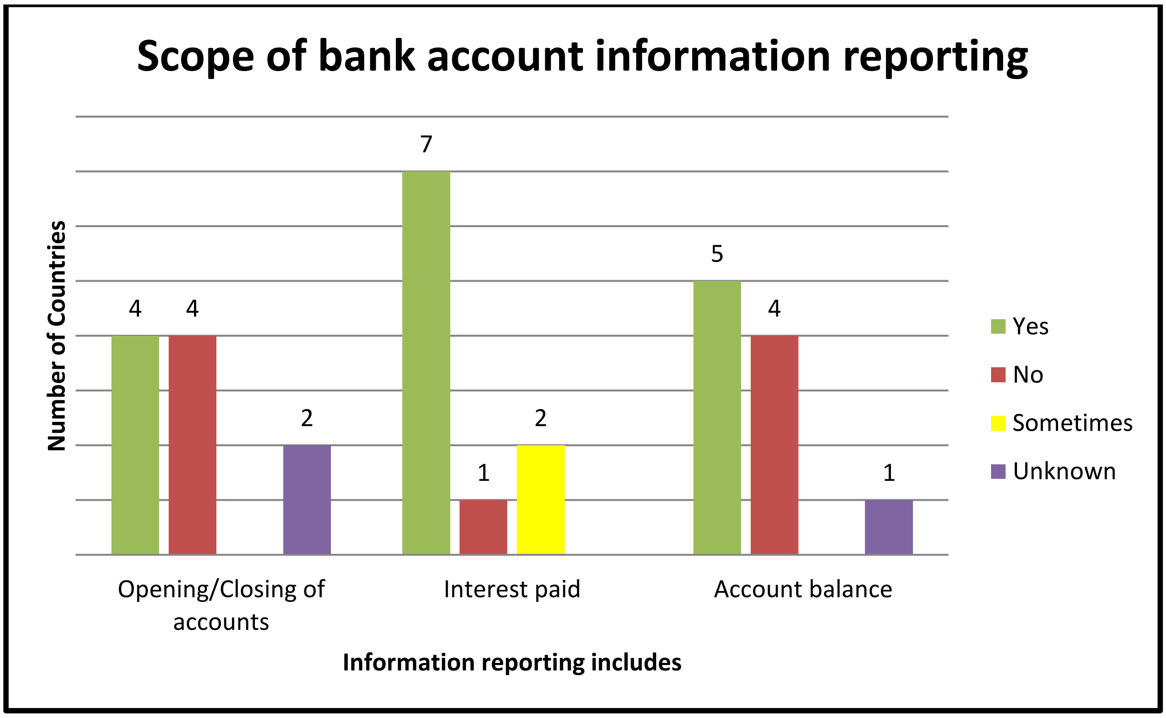
The varied level of publicly available information and of cooperation by surveyed tax administrations does not allow us to paint a full and comprehensive picture of all relevant aspects of bank account reporting in the 11 countries surveyed. A summary table of the country reviews can be found in Appendix I and II.

Out of eleven reviewed countries, 5 countries operate a database of bank accounts at the tax administration, while 4 don not operate such a database (see graph below). For two countries, it was not clear if the information reported by banks is organised in a bank account database at the tax administration level. Some of the countries without a bank account registry at the tax administration level nevertheless receive broad information on bank accounts but organize the data rather in taxpayer databases (Finland) while others (Germany) operate a bank account registry at banking level. An increasing number of jurisdictions also use the interest reports to prefill tax return as a service to taxpayers (e.g. Finland, France, the Netherlands).

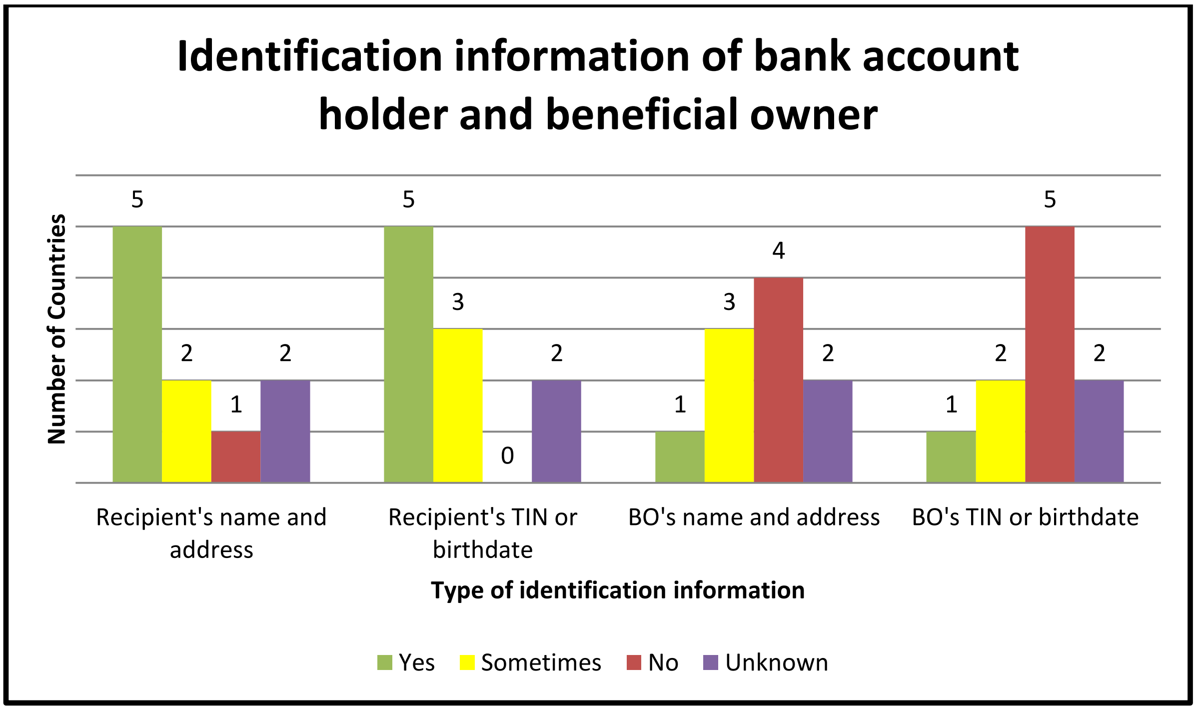


The results can be broadly categorised as follows (see Grinberg 2012: 17-18): the scope of the reporting obligations (**reporting**), the identification of the account holder and beneficial owner (**identification**), and the sanction and supervisory regime to enforce those obligations (**verification**).

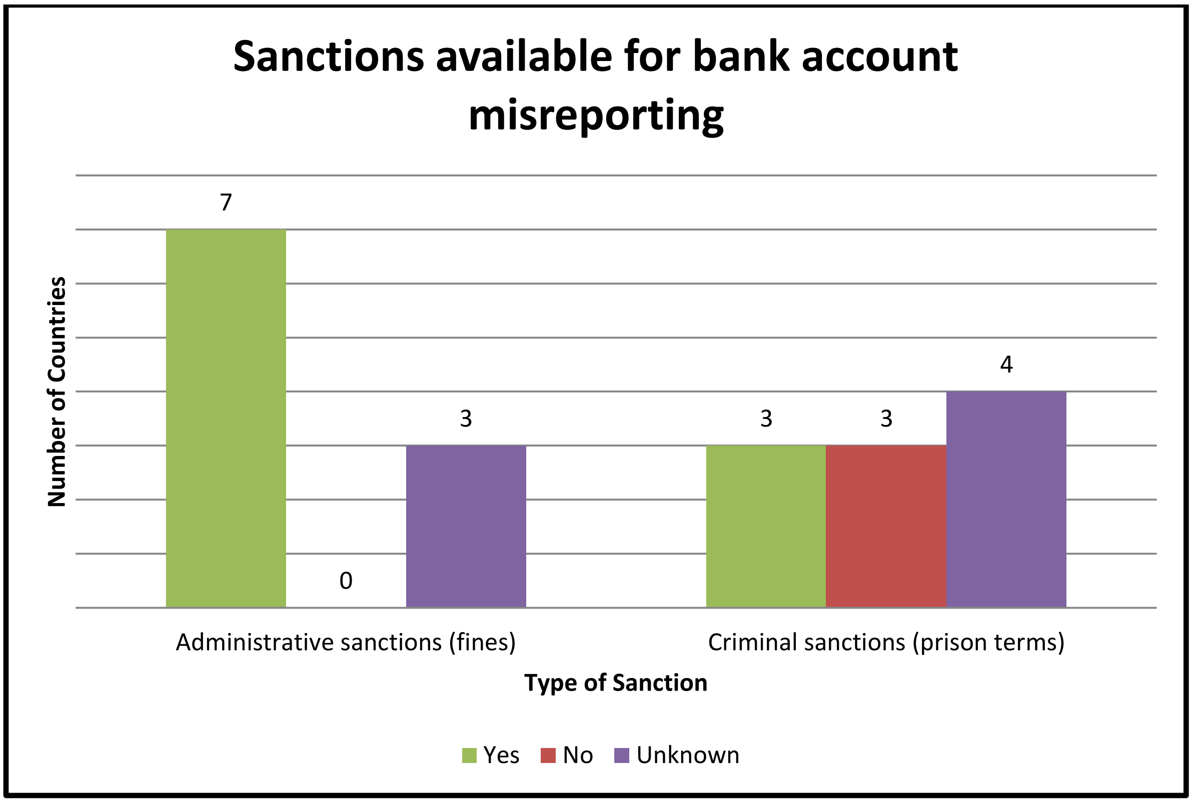
As regards the scope of the bank account registry **reporting**, the information most often reported are interest payments. All countries for which information was available include interest payments in their reporting obligations except Austria – which does not have any reporting system in place – and Germany. Other information items included occasionally are the opening and closing of accounts and/or the account balance.



A second important dimension of the reporting obligations relates to the **identification** requirements of the account holders and beneficial owners of the accounts. The requirements vary a lot and with the exception of Denmark there is no country which requires beneficial ownership information with the same level of detail independent of the country of residence of the beneficial owner. In other countries, for non-residents or non-European residents, either the beneficial owner need not be named (and only the account holder or recipient of interest payments instead), or only a limited range of identification data need be reported, for instance dispensing with a requirement to report the date of birth or taxpayer identification number (TIN) in addition to the name.



The third key characteristic of the bank reporting obligations concerns the supervisory regime and the sanctions available in case of breaches of the reporting obligations. While all countries apply some sort of administrative fines for failure to correctly report payments including payments to non-residents, only Denmark, the Netherlands and the USA were found to apply criminal sanctions for failure to correctly report interest payments to non-residents (unclear for Australia, Norway, Spain).



5. Full Country Reviews

5.1 Argentina

5.1.1 Institutional and research background

While the Argentinean tax administration (Administración Federal de Ingresos Públicos[20], AFIP) did not respond to our questionnaire, it provided valuable research support by highlighting relevant laws and regulations.

The main periodic reporting obligations by banks towards AFIP flow from the law on financial institutions (Art. 39, Law 21.526[21]) and the obligations are explicitly spelled out in an administrative "General Resolution" dating from 2007 (RG AFIP 2386/2007[22]). In addition, AFIP receives relevant information from the Argentinean Central Bank who, in turn and among other tasks, monitors the foreign exchange market (details in a Central Bank regulation, A3840 of 2002[23]; IV16).

[20] http://www.afip.gov.ar/home/index.html; 14.6.2012.
[21] http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16071/texact.htm; 18.6.2012.
[22] http://biblioteca.afip.gov.ar/gateway.dll/Normas/ResolucionesGenerales/reag01002386_2007_12_28.xml; 18.6.2012.
[23] www.bcra.gov.ar/pdfs/comytexord/A3840.pdf; 18.6.2012.

5.1.2 Overview

Financial institutions in Argentina are obliged to report a range of information to the tax administration on a **monthly** basis. This includes the following data for every financial account:

- Bank account number and type of account
- Bank routing number
- Number of stakeholders of the account
- Total amount of (fresh) deposits made if exceeding 10.000 AR$ (ca. 2200 US$)
- Number of credit cards per account and credit card turnover (if exceeding 3000 AR$ (ca. 660 US$)
- Account balance at end of month
- Details about fixed-term deposits exceeding 10.000 AR$ (dates, type, number, amount, currency).

In addition to this financial information, information about the account holders and account signatories needs to be transmitted to AFIP **every six months** including the following:

- Full names and information if they are residents
- Full address
- If an Argentinean taxpayer, the national TIN (“CUIT”)
- If a natural person without taxpayer status, either a national ID-number or in case of non-residents, the country code of the resident country.

No information about the beneficial owner need be reported. Furthermore, in case of a foreign legal entity without taxpayer status in Argentina, only the name and address appears to be reported and in addition, in case of a foreign natural person, the country of residence is reported.

5.1.3 Sanction and supervision of reporting obligations

For simple errors or omissions in complying with reporting obligations there are fines payable ranging from 50%-100% of the misreported amount, which increases to up to 400% in cases of legal entities which misreport cross-border transactions[24]. In cases of fraud, which presupposes malicious intent, the fine ranges from 200% to 1000% of the misreported amount. Criminal sanctions are not available.

Statistical information on supervision and sanctions is not available.

[24] Art. 45, here: http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/18771/texact.htm; 18.6.2012.

5.2 Austria

5.2.1 Institutional and research background

There is no separate centralised tax administration in Austria apart from the Ministry of Finance[25]. While filing the questionnaires has been agreed by an Austrian MoF-official in February 2012 (IV13), the questionnaires were never answered. Much of the information therefore rests on a phone interview with the same official on 7 December 2011. In addition, some of the information has been verified through the Global Forum peer review report on Austria (GF 2011e).

According to the Global Forum (2011e: 46-47), access to banking information for exchange purposes is regulated by the Administrative Assistance Implementation Act (ADG) which entered into force on 9 September 2009. All Austrian laws and regulations can be found at the website of the office of the federal chancellor[26].

5.2.2 Overview

Austria does not operate a bank account register nor does it require the reporting of either interest or dividend or royalty payments to the tax administration or another government entity. As a consequence, the tax administration has no knowledge about nor can it find out about who maintains an account with which Austrian bank except for individual requests if the credit institution holding the information is already known (IV13; GF 2011e: 50).

Generally, under the ADG Austria will employ the same "investigative action" to answer a request as it would use in a domestic tax context (GF 2011e: 46-47). Those powers are defined by the Austrian Federal Fiscal code (BAO; ibid.: 47).

In order to comply with requests submitted under the EU-Act on Mutual assistance in criminal matters between Member States[27], the Austrian government together with the association of private sector interests "Wirtschaftskammer Österreich" designed a method to search for financial accounts. Generally, there is a very high legal barrier, including an obligatory separate authorization by a judge, before the existence of a bank account in the name of a specified suspect can be checked with all financial institutions in Austria (Juhász 2009). The body representing the financial industry (Wirtschaftskammer Österreich) is the organization which forwards these queries to its member financial institutions (ibid.). This is applicable only for criminal proceedings. In administrative matters, such a query is impossible (ibid.).

Instead of reporting obligations, the banks operate a domestic withholding tax system which transfers withheld tax anonymously to the Austrian Treasury. In this respect, banks are prone to miscalculations, and have this tax requirement

[25] https://www.bmf.gv.at/steuern/_start.htm; 23.5.2012.
[26] http://www.ris.bka.gv.at/Bund/; 23.5.2012.
[27] http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33108_en.htm; 12.7.2012.

built in their IT-systems[28] (IV 13). However, interest paid to non-residents is tax exempt[29].

5.2.3 Sanction and supervision of reporting obligations

As there are no routine reporting obligations, there cannot be any sanctions for failure to report. However, the failure to respond to information requests by Austrian authorities is sanctioned as follows:

> "Non-compliance with the obligation to provide information on request of the tax administration can lead to administrative fines of up to EUR 5000 (s. 111(3) *BAO*). This sanction may apply regardless of whether the request relates to ownership, accounting, or bank information. […] In criminal procedures the refusal to comply with an order to provide bank information can lead to criminal sanctions of up to EUR 10 000 or in important cases to imprisonment of up to six weeks." (GF 2011e: 49).

Statistical information on supervision and sanctions is not available.

5.3 Australia

5.3.1 Institutional and research background

While the Australian Tax Office[30] (ATO) did not respond to our questionnaire, it provided valuable research support by highlighting relevant reports and regulation. Australia makes publicly available an extraordinary amount of information about its system of automatic tax information exchange and third party information reporting on ATO's website.

The Australian tax office receives third party data from various sources, including the Australian Annual Investment Income Reports (AIIR), Non-Resident Interest Dividend and Royalties (NRIDAR) Annual Reports and foreign resident withholding payments (ANAO 2010: 33).

5.3.2 Overview

Australia has in place interest reporting obligations on bank accounts for both resident and non-resident investors, irrespective of the nature of the recipient being a legal or natural person. However, it is not entirely clear what other information needs to be reported. Banks and other reporting institutions are not required to report a TIN or birthdate if the recipient is a non-resident investor. There is no indication that beneficial ownership information needs to be reported.

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[28] Banking records must be kept for a seven year period (GF 2011e: 38, 41). This corresponds to the general record keeping obligation for books and records of §132 BAO (Bundesabgabenordnung) - http://www.jusline.at/Bundesabgabenordnung_%28BAO%29.html; 1.6.2012.

[29] But non-residents are liable for withholding tax on dividends and royalties, see: http://www.secrecyjurisdictions.com/sj_database/Austria.xml#t46; 12.7.2012.

[30] http://www.ato.gov.au/businesses/pathway.aspx?pc=001/003/093&alias=annualinvestmentincomereport; 10.5.2012.

Instead, the recipient or shareholder (legal owner) is reported. Furthermore, it is not clear if the reported information is compiled in a comprehensive database of bank accounts.

According to the Global Forum, the Australian Tax Office has at its disposal a wide range of third party information, including the "amount of dividends, interest or royalties paid to non-residents" (GF 2011i: 46). Payers usually "withhold tax from interest, certain dividends and royalties paid to non-residents" and in addition report this information annually to ATO (GF 2011i: 26).

Generally, investment bodies are subject to file an AIIR with the Australian Tax Office[31]. Those investment bodies under obligation to file those reports include:

- financial institutions
- public companies (both listed and unlisted)
- solicitors
- government bodies
- bodies corporate
- trustee companies
- betting investment bodies
- unit trusts (mortgage trusts, share and equity trusts, bond funds, etc)[32].

Discretionary trusts as well as family trusts are exempt from the reporting obligation. The type of investment that must be reported by those investment bodies include:

- "interest bearing deposits and accounts with financial institutions
- a loan of money to a body corporate or government body
- a deposit of money with a solicitor for the purpose of being invested by the solicitor or lent under an agreement to be arranged by or on behalf of the solicitor
- units in a unit trust
- shares in a public company [both listed and unlisted]
- an investment related to betting or chance"[33].

The types of investment income from these investments that have to be reported include income from savings accounts, dividends such as interim and final dividends, income from bonds, units in a unit trust and capital gains on a unit trust distribution[34].

The Global Forum asserts that all Australian companies must report dividend payments irrespective of the recipient and in addition apply withholding tax with respect to non-residents (GF 2011i: 27). These information reports sent by each

[31] http://www.ato.gov.au/businesses/content.aspx?doc=/content/66391.htm&pc=001/003/093/001/001&mnu=0&mfp=&st=&cy=; 10.5.2012.
[32] http://www.ato.gov.au/businesses/content.aspx?doc=/content/66393.htm; 10.5.2012.
[33] http://www.ato.gov.au/businesses/content.aspx?doc=/content/66393.htm; 10.5.2012.
[34] http://www.ato.gov.au/businesses/content.aspx?doc=/content/66393.htm; 10.5.2012.

company, according to the Global Forum, "identify the name, address, date of birth and tax file number or Australian Business Number of all shareholders to whom dividends have been paid during a year of income." (GF 2011i: 26).

However, when analysing the corresponding section on AIIR in the Income Tax Regulation 1936 (Part 6 – Tax File Numbers, Regulation 56 on AIIR), in case of non-resident investors, Australian investment bodies appear neither to be required to provide a Tax File Number (or taxpayer identification number) nor birthdate- and place[35] of the non-resident investors when filing an AIIR. Currently, reporting under NRIDAR neither requires TINs nor birthdates nor address to be included for non-resident investors. It is anticipated that date of birth and address will be captured for the 2013 financial year (IV 18).

ATO provides detailed public information on how the information provided in AIIRs is used and what role the tax file number is playing in the process:

> "The tax file number (TFN) system is designed to detect non-disclosure of income and to enable the Tax Office to match the details of income disclosed in a taxpayer's income tax return with details received from other sources. These sources include employers reporting employment income and investment bodies reporting investment income. The purpose of the AIIR is to facilitate the matching process for investment income.
>
> For income matching purposes, the information which the investment body supplies in the AIIR needs to mirror the information which the investors provide in their tax return. When an AIIR is received, the investor's identity is matched to client records held by the Tax Office. This is done by using the TFN or ABN and name supplied by the investor or, if no TFN or ABN is supplied, by identity matching using the investor name supplied in the AIIR.
>
> If an incorrect TFN or ABN is supplied in the AIIR, the Tax Office will contact the investor, using the address supplied by the investment body, and advise them to correct their TFN or ABN with their investment body." (ATO website[36]).

5.3.3 Sanction and supervision of reporting obligations

The GF report only specifies that there are "significant sanctions for non-compliance" in case the ATO uses its powers under a request for exchange of information to compel information from third parties (GF 2011i: 45). The concrete sanctioning regime for failure to comply with these powers is described as follows:

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[35] http://law.ato.gov.au/atolaw/view.htm?rank=find&act=reg%2F19360094%2F%3F~Income%20Tax%20Regulations%201936%20%2894%20of%201936%29&criteria=AND~reg%2F19360094%2F%3F~provid~exact&target=reg/19360094/?&style=java&sdocid=REG/19360094/56&recStart=61&PiT=99991231235958&Archived=true&recnum=77&tot=200&pn=:::reg%2F19360094%2F%3F; 10.5.2012.

[36] http://www.ato.gov.au/businesses/PrintFriendly.aspx?ms=businesses&doc=/content/66391.htm; 18.7.2012.

"Failure to comply with this request generates the following penalty amounts:

- a fine not exceeding AUD 2200 for a first offence; or
- a fine not exceeding AUD 4400 for a second offence; or
- a fine not exceeding AUD 5500, and/or imprisonment not exceeding 12 months, or AUD 27500 for a company, for a third or subsequent offence." (GF 2011i: 48).

It remains unclear if these sanctions also apply to the regular reporting obligations of interest, dividend and royalty payments including to non-residents, or what other sanctions may apply in these cases.

Statistical information on supervision and sanctions is not available.

5.4 Denmark

5.4.1 Institutional and research background

The Danish tax agency is the Customs and Tax Administration (CTA; "Skatteministeriet"[37]). CTA answered our questionnaire thoroughly and was very supportive of the research including by being available for follow up enquiries.

The main sources for the findings were a) the completed questionnaire; b) follow up email communication with CTA, and c) an unofficial translation of the Tax Control Act ("Skattekontrolloven") which contains the reporting obligations and d) the Global Forum assessment of Denmark.

Currently, the tax administration has no information about the total number of accounts at Danish financial institutions (IV15).

5.4.2 Overview

Denmark receives information sent by a variety of economic operators and collects the financial information in a central database (GF 2011b: 50-51). Access to the database is granted to all relevant employees at the tax administration (including at local tax offices) by the head of division. The information is sent in standardised format depending on the kind of information reported. The banks have access on guides with instructions on the format required for different kinds of reporting (e.g. interest, sales proceeds, shares, etc.).

All kinds of financial institutions (including banks) are obliged to report once a year to CTA information on the interest accrued in the previous year and the account balance (including shares on deposit) at the end of the previous year or when the account is closed. This reporting is required for each account. Transaction information for the account is not reported (such as information on

[37] http://www.skm.dk/foreign/; 29.5.2012.

the transfer of securities, fresh deposits, some sales proceeds, etc.[38]). For each financial account, both the account holder and beneficial owner must be reported including his/her full name and, if the account was opened after 1 January 2004, including TIN or birthdate, birthplace and country of birth. If the account was opened before 1 January 2004, only the name and address needs to be reported.

The information in the database also comprises "details of interest accrued and identification of beneficial owners of customers who are not fully taxable but who receive credit or income from savings in Denmark or other countries, from financial institutions, finance companies, mortgage companies, securities exchanges, lawyers and others (s.8X)." (GF 2011b: 50-51).

There is no difference in the reporting obligations if either the recipient is a tax resident or tax non-resident, if it is a legal or natural person, or if the person lives in a certain treaty country or elsewhere.

5.4.3 Sanction and supervision of reporting obligations

The Global Forum wrote on the sanction mechanism:

> "If any person, including a bank, declines to comply with the provisions about automatic reporting of information to the CTA, it may impose a daily fine of at least DKK 1000 (EUR 135), which is scaled in accordance with the size of the company, until reporting occurs (Tax Control Act s.9). […] Whoever intentionally or with gross negligence fails to provide the CTA with information is punishable by a fine (s.14(2)).
>
> Anyone who intends to conduct tax fraud, or with gross negligence gives false or misleading information to the CTA, may be subject to a fine equal to the amount of the fraud. If the amount of the fraud is between DKK 250 000 and DKK 500 000, the person is also liable to imprisonment for up to 18 months (s.13 and s.14(1)). Particularly serious tax fraud is punishable under the Criminal Code s.289 by imprisonment for up to 8 years." (GF 2011b: 42-43).

While prison terms are generally applicable only if the fraud or gross negligence resulted in or would have resulted in Danish taxes being evaded (IV15), a Danish bank could be prosecuted for submitting false or misleading information about a foreign taxpayer's relationship if the reporting of false or misleading information would have been a criminal offense also in the residence country of the taxpayer. Criminal proceedings will normally be dealt with in the state who received the (misleading) information, but criminal proceedings can also be performed in Denmark pursuant to Penal Code § 8, No. 6.

So far, there have not been any criminal prosecutions (under §14, Para. 1) for the failure to (routinely) report tax information.

[38] Some sales proceeds are reported once a year (IV 15).

5.4.4 Notes

The reporting obligations extend to paying agents other than financial institutions. If a person or a company meets the criteria in the Tax Control Act they are obliged to report payments. The list of persons and companies obliged to report was not available in English language as of June 2012.

5.5 Finland

5.5.1 Institutional and research background

The Finnish tax administration[39] is the agency responsible for third party information reporting. The Finnish Government answered our questionnaire thoroughly and was available for an interview meeting and follow up enquiries.

The main sources for the findings were a) the completed questionnaire; b) the interview and follow up communication with the Finnish tax authority and Ministry of Finance, and c) an unofficial translation of the Act on Assessment Procedure (Law 1558, from 1995).

5.5.2 Overview

Finland has no centralised or decentralised database of bank or financial accounts (IV11). However, there are very broad reporting requirements including by financial institutions on interest payments.

Generally, the Finnish tax administration[40] is relying heavily upon third-party information reporting requirements. The income information is used to pre-fill tax returns (IV11). Often, the taxpayers receive a pre-filled form which they are only reviewing. The information reporting usually is taking place once a year with differing deadlines (early in each year; e.g. interest income taxed at source by mid February, the employer annual reporting by the end of January, whereas the corrections to pre-filled tax returns during April-May).

Chapter 3 (Act on Assessment Procedure) specifies the third party reporting obligations and the types of payments covered. §15 establishes "The general obligation to report income information to the Tax Administration" and concerns "all physical and legal persons" (Act on Assessment Procedure). The reporting concerns

> "[…] any payments of cash or cash equivalents […]. For this purpose, 'payments of cash or cash equivalents' refer to wages, in-kind benefits, fees, compensation, prizes, grants, financial support for students, allowances for expenses, pensions, payments covered by long-term savings contracts, and taxable income, social benefits, dividends, shareholder loans, yields from joint funds making investments, **interest**, rent, and insurance indemnities, and royalties payable for copyrights,

[39] http://www.vero.fi/en-US/Tax_Administration; 21.3.2012.
[40] http://www.vero.fi/en-US/Tax_Administration; 21.3.2012.

patents, mining licenses or similar privileges." (§15 Act on Assessment Procedure; own **emphasis**).

The list of persons and economic entities subject to broad reporting obligations extends in practice to financial intermediaries acting in a fiduciary and custodian capacity (banks), insurance companies, investment funds, and stock brokers. In addition, all companies must report dividend payments. Royalty payments are reportable by individuals and companies, in the latter case however only if paid to individuals and not if paid by a company to another company.

All payments must be reported to the tax administration (centrally) and the reports must include the name, surname and TIN (taxpayer identification number of the country of residence) of the recipient of the payment. If there is no TIN available, at least birthdate must be reported, as well as address in the country of residence. In case of payments under the EUSTD, the "actual beneficiary" of the payment must be identified[41] as recipient (unless it is a payment to another paying agent). For other payments, the form to be filled by payers (e.g. banks) allows discretion as to whether to report the account holder ("recipient") or beneficial owner ("beneficiary") of the payment. The opening and closing of accounts does not need to be specifically reported. Before 2006-2007, the bank account balance had to be reported as well. But this requirement was dropped when wealth tax was abolished (IV11).

All entities either registered or formed in Finland are considered to be tax resident and are therefore obliged to report, as well as permanent establishments of foreign entities. Similarly, reporting requirements are also triggered by being an employer (wage reporting). Apart from royalties, in practice there is no difference in the reporting liability depending on whether the payment recipient is a natural person, legal person, tax resident or tax non-resident.

While the law generally obliges all persons and economic entities to report income payments, the tax authority has wide powers to detail and specify reporting obligations and issues annually instructions about details on the current year's reporting obligations. Each year, the tax authority can also vouch some of the reporting requirements.

The total number of bank accounts in Finland is unknown to the MoF / tax division (IV11). There are no systematic analyses as to the fiscal effects of the reporting because the pre-filled tax return is presented rather as a service to the taxpayer than a control tool.

The information reported can be accessed and used by all law enforcement agencies, including for criminal investigations and prosecutions. More information

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[41] See section "Payments under the Savings Directive" here: http://www.vero.fi/en-US/Precise_information/Forms/Employer_Payroll_Report_and_other_annual_information_return_forms/Annual_information_return_for_payments_t%2820100%29; 6.6.2012.

on the public disclosure can be found in legislation (Act on the public disclosure and confidentiality of tax information).

5.5.3 Sanction and supervision of reporting obligations

Compliance with reporting obligations is controlled mainly if discrepancies are discovered by taxpayers reviewing their pre-filled tax returns, or during on-site supervisions. A willful failure to report may result in a maximum fine of 15.000€ (Act on Assessment Procedure 22a§). Statistical information about the results of on-site supervision and fines is not available.

5.6 France

5.6.1 Institutional and research background

The French tax administration "Direction générale des finances publiques"[42] (DGFIP) is responsible for managing the French bank account registry which is in operation since 1982. DGFIP did not respond to our questionnaire. However, the French government publishes substantial amounts of information about its bank account registry FICOBA in the internet[43]. Furthermore, the Global Forum (2011g) report on France also provided useful summary information. Ultimately, a book chapter written by Hervé Robert has been analysed to compile this section (Robert 2010).

5.6.2 Overview

DGFIP operates a bank account registry system called FICOBA ("Fichier national des comptes bancaires et assimilés"). FICOBA registers all financial accounts which are open on French territory, including accounts held in the name of natural and legal persons, as well as for non-residents. The database is fed by fiscal reports sent by account managing institutions (banks, stock exchange companies, etc.). The number of natural persons holding accounts with FICOBA is more than 80 million, while the number of companies having accounts with FICOBA remains unknown (Robert 2010: 2, FN2). The information contained in the registry includes the dates of opening and closing of accounts and of modifications of key account characteristics. The information includes[44]:

- opening and closing dates of accounts
- name and address of the institution who manages the account
- bank account number and type of account
- full name and birthdate and -place and address of the account holder
- in case of legal entities and businesses, trade name, legal form, address and a business ID (SIRET).

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[42] http://www.impots.gouv.fr/portal/dgi/home; 18.6.2012.
[43] http://www.cnil.fr/en-savoir-plus/fichiers-en-fiche/fichier/article/ficoba-fichier-national-des-comptes-bancaires-et-assimiles/; 18.6.2012.
[44] http://www.cnil.fr/en-savoir-plus/fichiers-en-fiche/fichier/article/ficoba-fichier-national-des-comptes-bancaires-et-assimiles/; 18.6.2012.

While the Global Forum claims that the payment of income from transferable securities would be seen as a modification which triggers reporting (GF 2011g: 44, FN 59), Robert's report does not suggest that any payment information is reported to FICOBA. Beneficial owner information is not explicitly required.

In general terms, the identification and verification requirements imposed on French banks usually require an official identification document from the client as verification of the identification of the client of the bank. In case of bank accounts held by companies, the full company constitution or a recent extract from the company registry is required, including the trade name, legal form, business address, and the identities of the shareholders and directors (Robert 2010: 5-6).

Access on FICOBA is allowed directly for tax investigators and customs officials and indirectly for criminal police, judges, bailiffs and a number of additional state agencies (Robert 2010: 7-8). While FICOBA can be used for international legal assistance, it remains unclear if it is also available for early information requests in civil tax matters (ibid.: 9-10).

With respect to interest paid on customers' savings accounts, the Global Forum reports that there are additional reporting obligations of such payments (GF 2011g: 57).It has been confirmed that interest payments are used to prefill tax returns (IV 19). However, the reporting obligations' scope and details remain unknown.

5.6.3 Sanction and supervision of reporting obligations

Information about the sanctions regime in case of failure to report correct information to FICOBA has not been found. Statistical information on supervision and sanctions is not available.

5.7 Germany

5.7.1 Institutional and research background

Various agencies of the German government (including Ministry of Finance) responded to some survey questions in great detail and some were ultimately available for phone interviews.

There is no centralised tax administration in Germany. Rather, every state (Bundesland) operates its own tax administration. Some IT-services are handled centrally at the Bundeszentralamt für Steuern[45] (BZST).

[45] http://www.bzst.de/DE/Home/home_node.html; 14.6.2012.

The main legal source for the reporting obligations on bank accounts is the law on financial intermediation (KWG[46], particularly §24c) and access rights for tax purposes are regulated in the Fiscal Code (Abgabenordnung, AO[47], §93).

5.7.2 Overview

Since 1 April 2005[48], Germany operates a decentralized, bank-based electronic registry of financial accounts (bank accounts and securities custody accounts) that contains basic account data. Germany's financial institutions manage around 582 million accounts[49] which are covered by this registry system (data as of early 2011; IV5).

The following data is included in these registries:

- Account number
- Date of account opening and closure
- Name of account holder and of one other account signatory
    - If natural person: birthdate
- Beneficial owner (if different from holder or signatory), at least name, and if in records also address (depending on risk based assessment by banks; see §24c KWG[50], and §4 (5) GWG[51]).

Bank customers are obliged to "immediately" report any change in the relevant information (§4 (6) GWG), and the banks are required to create a new record "immediately" if any of the relevant information changes (§24c (1) KWG). In practice, a daily update is required (IV 3). Before 2003, there was no way German tax authorities could systematically check the existence of financial accounts in Germany, beneficially owned either by residents or non-residents.

While this registry (which is rather a series of decentralised registries held at the level of individual financial institutions with a common interface) does not contain data on payments or account balances, it adds value by disclosing the existence of German financial accounts held by a specific person. The system is used frequently by public prosecuting agencies, tax authorities and other state agencies (see table below) with good feedback about the usefulness of the data (BAFIN 2007: 197).

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[46] http://www.gesetze-im-internet.de/kredwg/__24c.html; 12.12.2011.
[47] http://www.gesetze-im-internet.de/ao_1977/index.html; 12.3.2012.
[48] Law for improving tax honesty of 23 December 2003; see http://www.bzst.de/DE/Steuern_National/Kontenabrufverfahren/Vorschriften/gesetz_zur_Foerderung_der_Steuerehrlichkeit.pdf?__blob=publicationFile; 12.12.2011.
[49] This number has been collected by BAFIN on another occasion and is no precise number, and may include some estimates. The accounts covered are all types of financial accounts as defined in AO §154 (http://www.gesetze-im-internet.de/ao_1977/index.html; 12.3.2012).
[50] http://www.gesetze-im-internet.de/kredwg/__24c.html; 12.12.2011.
[51] http://www.gesetze-im-internet.de/gwg_2008/__4.html; 12.12.2011.

Access to this registry is strictly limited to specific uses of the information. With respect to tax issues, there is a difference in the access rights depending on whether the issue involves a criminal or an administrative tax situation.

The registry is constituted in §24c KWG and this is also where the use of the registry for all criminal and financial supervisory purposes is regulated[52]. The agency carrying out the access requests under this law is BAFIN. §24c (3) No. 2 allows the use of the registry for international legal assistance in criminal matters. The law for international legal assistance (IRG[53]) specifies in Art. 1 that international legal assistance covers criminal issues and tax crimes in turn are defined as criminal issues in §369 (2) AO[54]. Therefore, the bank account registry can be used for international assistance in criminal tax matters according to §24c (3) No. 2 KWG. In practical terms, this enables the German authorities to respond in criminal tax matters to requests for information about the existence of bank accounts based on the name of the account holder (and possibly of a beneficial owner) without specifying the bank.

Access to the registry for administrative tax purposes is far more restrictive and is legally defined in the fiscal code (§93 (7) and (8) AO[55]). The agency carrying out the access requests under this law is the Bundeszentralamt für Steuern (BZSt; §93b AO[56]).

Under §93 (7) and (8) it is clear that it cannot be used on the basis of an administrative information exchange request. While paragraph 8 specifies the use of the registry for other German state agencies in charge of administering welfare services (through the BZSt; such as social support, education support, rent support), paragraph 7 relates to access for tax purposes. It allows the use of the registry **only** in the following, narrowly circumscribed cases:

1. If a German taxpayer claims an individual income tax rate below 25% for capital gains (§93 (7), No.1);
2. In other specific matters in connection with the special income tax rate of 25% for capital gains;
3. For old cases up to and including tax year 2008;
4. To collect tax revenue based on national taxes (only collection, not assessment);
5. If the taxpayer gives his/her consent.

It has been confirmed that in practice, since 1.1.2009 when these provisions entered into force, a foreign tax authority was no longer able to rely on the bank account registry system for finding out about its residents' bank accounts in

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[52] According to §24c (2) and (3), the registry can be used for providing information to foreign counterparties in cases of money laundering prevention and for financial supervision purposes if the case is urgent.
[53] http://www.gesetze-im-internet.de/irg/__1.html; 20.12.2011.
[54] http://www.gesetze-im-internet.de/ao_1977/__369.html; 20.12.2011.
[55] http://www.gesetze-im-internet.de/ao_1977/__93.html; 12.12.2011.
[56] http://www.gesetze-im-internet.de/ao_1977/__93b.html; 12.12.2011.

Germany if the foreign tax administration enquired in an administrative tax matter. Instead, in addition to the name of the taxpayer, the requesting tax authority needs to possess and provide at least the name and location of the German bank at which the account of a suspected taxpayer is held (IV2; see Appendix V for more details on this tier of information exchange). This situation will materially remain the same in 2012[57].

Before January 2009, the situation was different and a foreign requesting authority was able to make use of the banking registry system in administrative tax matters, i.e. it did not need to know the financial institution where the account is held. In view of roughly 2000 financial institutions in Germany this appears to be of substantial relevance for the efficiency and effectiveness of information exchange. However, neither the Ministry of Finance, nor the BZSt keep a statistical breakdown on how many foreign requests were processed through the banking registry before 2009 (IV2). Similarly, BAFIN does not have a statistical breakdown of how many of such inquiries were based on a foreign request (IV3).

	2005	2006	2007	2008	2009	2010
Civil tax matters: number of processed retrievals according to §93AO (7):	8610	25283	27440	31510	37291	48558
Criminal tax matters: number of processed retrievals according to §24c KWG:	10008	11838	13061	10936	11691	13673
Civil tax matters: number of accounts reported through retrievals:	NA	NA	NA	NA	NA	NA
Criminal matters: number of accounts reported through retrievals:	485000	665000	817000	753000	NA	NA
Criminal matters: number of total retrievals:	62410	81156	93560	83938	NA	NA
Criminal matters ratio: average accounts per retrieval:	7,8	8,2	8,7	9,0	NA	NA

5.7.3 Sanction and supervision of reporting obligations

The agency responsible for the supervision of the bank account registries is BAFIN. However, there are no publicly available statistics about the frequency of inspections and the results of these inspections (IV3,5). It has only been confirmed that the bank account registries are checked regularly and that BAFIN has the expertise to do so (IV3).

If a financial institution does not correctly implement the registry and access thereon, KWG §56 (Abs. 3 Nr. 7a, 7b) classifies such a breach of law as a misdemeanour. The corresponding sanction for this misdemeanour is a monetary fine of up to 150 000€.

[57] A small change abrogates in 2012 a minor point (in §93 (7), Nr 2) relevant only for German taxpayers in relation to the treatment of charitable givings (IV2).

5.8 The Netherlands

5.8.1 Institutional and research background

The Netherlands tax administration ("Belastingdienst")[58] centrally receives third party information. The Netherlands government answered our questionnaire thoroughly and was available for follow up enquiries.

The automatic reporting obligations of financial institutions for interest payments to residents are detailed in Article 53, paragraph 2 and 3 of the General State Tax Act (GSTA), Article 10.8 of the Income Tax Law and Article 22 of the Income Tax Decision (Q2012). Since 2012, payments to non-residents are subject to the same automatic reporting obligations through Article 8 of the Netherlands International Assistance (Levying of Taxes) Act. Beforehand, automatic reporting of interest payments was narrower for non-residents than for residents.

5.8.2 Overview

The Netherlands have no centralised or decentralised database of bank or financial accounts (Q2012). But there are very broad reporting requirements including by financial institutions on interest payments.

Increasingly, the Netherlands tax administration ("Belastingdienst")[59] is using the bulk information reported by financial institutions not only for supervision and enforcement purposes, but also in order to pre-fill tax returns. The information reporting is required to take place once a year at the latest on 31 January of the year following the tax year to which the information applies (Income Tax Decision, Art. 22, Para. 4).

The information reported comprises a broad range of fiscal relevant information including the bank and deposit balances at the beginning of the year and the interest and dividend paid. In addition, identifying information is also transmitted including for residents the tax identification number of the account holder(s) as well as their name and surname, and for non-residents in addition to the aforementioned information the full address, including PO box number and country code and under the Savings Directive if no TIN is available their birthdate and –place (IV14).

As of the year 2011, financial institutions also have to report with respect to non-EU non-residents the TIN of their country of residence or if no TIN is available, the birthday and –place of the natural person, as indicated in the passport or similar document (Art. 3 of the Regulation of 22 December 2011, published in the National Gazette 2011, nr. 6741). The bank account numbers have also to be reported. There is no reporting obligation for the opening and closing of financial

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[58] http://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/; 22.3.2012.
[59] http://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/; 22.3.2012.

accounts, nor is any information transmitted on the beneficial owner if he or she is another person than the account holder.

Since 2012 no distinction is made between whether the recipient is a tax resident or non-resident, a legal person or a natural person, or resident in a specific treaty country with the exception of the differing identification data as described above (only under EUSTD birthdate and –place if no TIN is available, and for residents TIN obligatory).

The automatic provision of bulk data by the financial institutions to the tax administration is considered to have a beneficial effect on tax compliance. In the coming years, the bulk data will not only be used for the administration and enforcement of tax laws, but it will also be used to prefill the tax returns as a service to the (resident) tax payers.

The tax administration in conjunction with the financial institutions prescribes the use of a standard format for each of the various reporting obligations. The tax inspector has the power to compel a financial institution to make available all relevant data carriers for in depth checks (Article 47 jo. 49, jo. 53 GSTA jo. Article 8 NIAA).

5.8.3 Sanction and supervision of reporting obligations

Chapter IX of the GSTA provides for criminal sanctions for failing to provide information to the Tax and Customs Administration. These sanctions apply to any person. Defaulters can be penalised in the event of failure (Arts.68 and 69):

- to provide information, data, or indications or if these are provided incorrectly or incompletely; or
- to provide books, records and other data carriers for consultation or if these are falsified.

If the failure is unintentional, defaults may be sanctioned by a term of imprisonment of up to six months, or a fine of the third category (EUR 7 600).

If the failure is intentional, defaults may be sanctioned by a term of imprisonment of up to four years (or six years in case of falsifications) or the highest of the following amounts: a fine of the fourth category (EUR 19 000), or of the fifth category (EUR 76 000) in case of falsifications, or 100% of the unlevied tax (IV14). Statistical information on supervision and sanctions is not available.

5.9 Norway

5.9.1 Institutional and research background

The Norwegian tax administration ("Skatteetaten"[60]) receives third party tax information. Sections 6-4 and 6-15 of the Tax Assessment Act of Norway define banks' and other financial institutions' obligations to give information to the tax authorities (GF 2011c: 54). The Norwegian Ministry of Finance answered some questions in our questionnaire but declined any further engagement with the research.

5.9.2 Overview

The Global Forum describes the reporting obligations by banks as follows:

> "Section 6-4, subsection 2, of the Tax Assessment Act provides that banks and other financial or security trading institution are to provide information on deposits and loans, and interest, commission, etc. relating to the deposits and loans, to the tax authorities unsolicited. There is no distinction between deposits and loans belonging to residents or non-residents." (GF 2011c: 54).

Another passage in the same report gives more details about the reporting obligations. All of each client's accounts must be reported:

> "All financial institutions, including banks, insurance companies and securities firms, have an obligation to report, unsolicited, to the tax authorities details of their clients' economic standing, for example the amount of debit and credit balances for each account, capital invested, debt incurred and interest accrued (Tax Assessment Act, S.6-4)." (GF 2011c: 50).

However, it is not entirely clear what kind of identity information of account holders or beneficial owners of financial accounts banks are required to transmit to the tax authority.

The Norwegian MoF reported that there is no statistical data available to them regarding these reporting obligations (e.g. total number of persons, of accounts, accumulated amounts of funds, etc.) and declined to comment on general experiences or problems arising with the reporting obligations. The reporting obligations as detailed above have not changed substantially since 2000.

5.9.3 Sanction and supervision of reporting obligations

The Global Forum reports the following:

> "Non-compliance with reporting obligations under the Assessment Act is sanctioned by coercive daily fines of NOK 860 (EUR 108)(s.10-6)." (GF 2011c: 50).

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[60] http://www.skatteetaten.no/en/International-pages/; 14.6.2012.

Another passage also discusses criminal charges in connection with failure to comply with third party information requirements:

> "Banks and other financial institutions that are obliged to provide information unsolicited can be imposed a fixed daily penalty charge for each day the information is not submitted. […] Non-compliance with the duty to provide third party information is also subjected to criminal charge (*Tax Assessment Act*, chapter 12; *VAT Act*, s.21-4)." (GF 2011c: 55).

It is not entirely clear if "third party information" comprises routine reporting by banks in this context and what prison terms may result for non-compliance. Statistical information on supervision and sanctions is not available.

5.10 Spain

5.10.1 Institutional and research background

The Spanish tax administration ("Agencia Tributaria", AT[61]) operates a bank account registry. While AT did not respond to the questionnaire, the administration kindly assisted in finding relevant information on their website. Furthermore, the Global Forum report on Spain contained relevant information, based on a variety of different legal obligations

5.10.2 Overview

Spain operates a centralised bank account registry based on extensive reporting obligations by banks. The information includes data on account balance, interest payments, the opening and closing of accounts, and a very strictly enforced obligation to submit TINs. The Global Forum specified these reporting obligations in 2011:

> "The tax administration itself possesses in its central database a certain amount of banking information periodically provided by banks in tax information returns. First, banks and credit institutions must annually provide the tax administration with the list of all the opened bank accounts. [FN 26: They must also provide information on accounts opened in Spanish banks abroad, except for accounts opened by non Spanish tax residents and without a permanent establishment in Spain.] The information returns also indicate the balance of the account on 31 December and the average balance over the last quarter of the year.[62]
>
> They must subscribe another annual information return that lists all the loans provided above EUR 6000 and all cash deposits above EUR 3000

[61] http://www.agenciatributaria.es/AEAT.internet/Inicio.shtml; 28.3.2012.

[62] [FN 27: Section 37 of the General Regulation on Tax Auditing; the corresponding tax returns No. 196 and 291 are regulated by Order EHA/3300/2008 of 7 November (BOE of 18 November) and Order EHA/3202/2008 of 31 October (BOE of 10 November) respectively.]

with details of the dates and bank accounts involved. [FN 28: Section 38 of the General Regulation on Tax Auditing; the corresponding tax return No. 181 is regulated by Order EHA/3514/2009 of 29 December (BOE of 31 December). The tax administration also receives annual returns informing them of the use by businesspersons and professionals or a credit or debit card for more than EUR 3000, pursuant to section 38bis and the corresponding form No. 170 (Order EHA/97/2010 of 25 January (BOE of 30 January)). Banks must also annually inform the tax administration of some checks above EUR 3000 (section 41 General Regulation on Tax Auditing).]

These annual returns must include the complete identification of the account holders, authorised persons and beneficiaries, i.e. name and surname of natural persons, full name of legal entities, as well as their tax identification number.

130. In some cases, the information must be provided quarterly. For instance, a person who wishes to open a bank account (or otherwise enter into a relationship with financial institutions in Spain [FN 29: This obligation applies to Spanish financial institutions as well as foreign institutions operating in Spain through branches or under the freedom to provide services.]) must present a TIN within 15 days of the operation, and no transaction can be carried out until the TIN is provided (or the passport and tax residence certificate for foreigners). Financial institutions are required to report on a quarterly basis to the tax administration the clients that have not provided a TIN, or provided it after 15 days. […]

In addition, Spanish law requires banks to annually inform the tax authorities of the interests they paid and to whom, any income paid by banks and from any foreign securities when these institutions have received them in deposit or to operate them as account managers, the issuing and transfer of securities including public debt, and the transfer of mortgage securities in which credit institutions intervene. […]

As a result, the tax administration knows to which bank account number a taxpayer relates. […] In practice all those tax returns are filled in and transmitted electronically to the tax administration, which consolidates the information into its database." (GF 2011f: 38-39; [footnotes in GF-report]).

Spain operated broad reporting obligations already in 2000[63]. In 2012, these information reporting requirements by banks have been confirmed and further specified by the Spanish tax administration (IV12). The main forms to be filled in by banks are models 171, 189, 192, 193, 194, 195, 196, 198, 199, 291, 296 and

[63] The OECD reported in 2000: "Any income paid by banks or from any foreign securities when these institutions have received them in deposit or to operate them as account managers. The reporting requirements also cover: the issue subscription and transfer of securities including public debt, the transfer of mortgage securities in which credit institutions intervene." (OECD 2000: 72-73).

299. These forms can be found on the website of the Spanish tax administration[64] with a short description in Spanish.

According to the tax administration the most important form is model 196 which is the "main form for reporting of revenue from bank accounts and for reporting of signing authority of bank accounts.[65]" (IV12). The language found in a random check on the model forms used by banks for third party reporting does not confirm Global Forum's assertion that beneficiaries of accounts need to be reported, including with TIN or passport information. Given the complexity in the multiple reporting obligations and forms, and in the absence of explanatory cooperation by the Spanish tax administration, it remains questionable whether GF's assertions are accurate.

Furthermore, it remains unclear whether a bank is required to transmit the birthdate and –place or a passport ID-number of a non-resident account holder and a non-resident bank account beneficiary to the tax administration. Similarly, it is unclear if the address needs to be included in such cases.

It is also unclear how the data is used: is it used routinely for tax assessment and enforcement of tax laws and/or is it used for pre-filling of tax returns and for (spontaneous) information exchange?

5.10.3 Sanction and supervision of reporting obligations

It has been impossible to find out about the sanction and supervisory regime covering the bank reporting obligation and to what extent onsite inspections and sanctions have been imposed.

5.10.4 Notes

The Spanish tax administration offers on its website a checking tool ("Cobol[66]") that allows financial institutions to validate the consistency of the information before sending it to the tax administration. This tool is updated annually to match each year's reporting requirements.

In addition, in April 2012 it was reported that Spain introduced an obligation for individuals and companies to declare all assets held abroad and backed this obligation by sanctions[67].

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[64] https://www.agenciatributaria.gob.es/AEAT.sede/Inicio/Procedimientos_y_Servicios/Impuestos/Declaraciones_Informativas/Declaraciones_Informativas.shtml; 28.3.2012.

[65] The Spanish language description of this model says:
"Annual summary of withholding and income paid into accounts on the basis of revenue on mobile capital and of rents obtained through the operation of bank accounts in all kinds of financial institutions, including those rents based on operations with financial assets, and annual information declaration of persons with account signing authority and of account balances of all kinds of financial institutions." (own free translation from this source: https://www.agenciatributaria.gob.es/AEAT.sede/procedimientos/GI15.shtml; 28.3.2012).

[66] http://www.aeat.es/AEAT.internet/Inicio_es_ES/_Configuracion_/_Acceda_directamente/_A_un_clic_/Descarga_de_programas_de_ayuda/Prevalidacion_Cobol/Prevalidacion_Cobol.shtml; 28.3.2012.

[67] http://www.nytimes.com/2012/04/14/business/global/14iht-fraud14.html?_r=1; 27.4.2012.

5.11 United States

5.11.1 Institutional and research background

The Internal Revenue Service[68] (IRS) receives third party tax information. The US Treasury did not respond to our questionnaire. The main legal source for reporting requirements is the US Internal Revenue Code[69] (IRC), Treasury Tax Regulations and Official Tax Guidance by the IRS[70] (revenue rulings, revenue procedures, notices and announcements).

Generally, a variety of different legal obligations are documented in the Global Forum (GF) report on the US which result in some reporting obligations of interest payments especially for US residents (e.g. GF 2011d: 31-32).

However, the Qualified Intermediary's programme, which granted foreign financial institutions the opportunity to offer their clients anonymous investments in US financial accounts since 2000 was not considered by the GF report.

On 19 April 2012, the IRS published new regulations on the reporting of interest paid to non-resident individuals with US bank deposits which will enter into force on 1 January 2013 (IRS 2012; Spencer 2011).

5.11.2 Overview

I) US-internal interest payments

There are no hints suggesting that the USA is operating a registry of bank accounts. However, the USA operates broad information reporting requirements for US tax residents, while the reporting obligations for tax non-residents are weaker or absent in many cases. The situation in the US is complex because a) different rules apply to (i) interest paid to non-resident aliens on bank deposits in the United States and (ii) interest paid to non-resident aliens on other interest bearing obligations of U.S. payors; b) the requirements to report bank deposit interest paid to non-resident alien individuals are currently being changed; and c) these requirements, both before and after the new changes will enter into force, can be circumvented in certain cases by the Qualified Intermediaries programme (QI) which continuously offers foreign investors the possibility to invest in US bank accounts with certain foreign financial institutions which are Qualified Intermediaries, without the corresponding interest payments being reported.

Spencer (2011) wrote about the extent of current reporting obligations of interest payments in the USA. Interest paid "on bank deposits within the U.S. […]" is already required for **U.S. resident individuals** who must provide their U.S. TIN to the payor of interest (see Section 3406(b); Regs. 31.3406(b)(2)-1;

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[68] http://www.irs.gov/; 11.5.2012.
[69] http://www.law.cornell.edu/uscode/text/26; 16.5.2012.
[70] http://www.irs.gov/taxpros/article/0,,id=98137,00.html; 16.5.2012.

1.6049-3; 1.6049-4), and by Reg. 1.6040-8(a) for nonresident **aliens** who are residents of **Canada**" (Spencer 2011: 32; **my emphasis**).

II) US-dividend reporting

As relates to reporting obligations of dividend and other payments, the GF (2011d) reports about the rules applicable to US residents:

> "Chapter 61 of the Internal Revenue Code provides a comprehensive information reporting regime for tax purposes. I.R.C. section 6041(a) provides that persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, or other fixed or determinable gains, profits and income [including interest and dividends] of USD 600 or more in any taxable year must file an information return showing the name and address of the recipient of such payment. I.R.C. section 6042(a)(1) provides that every person who pays dividends of USD 10 or more to any other person during any calendar year, or who receives payments of dividends as a nominee and who makes such payments to any other person with respect to the dividends so received must file an information return stating the name and address of the ultimate recipient. I.R.C. section 6045 generally requires stockbrokers and companies closing real estate transactions to file similar information returns with respect to gross proceeds of transactions. I.R.C. section 6049 provides similar rules with respect to payments of interest. In 2009, more than 3 billion information returns were filed with the IRS." (GF 2011d: 30-31; [TJN-note]).

While interest is mentioned as being included in section 6049, the IRS reports section "6049(b)(2)(B) and (5) provides that, except to the extent otherwise provided in regulations, reportable interest does not include interest paid to nonresident alien individuals on deposits […]." (IRS 2012: 23393).

Other reporting requirements apply to payments made to non-resident aliens (except for interest):

> "Where a person having control, receipt, custody, disposal, or payment of any item of dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, or income (FDAP) makes payments to a non-resident alien, another information reporting regime (Chapter 3 of the Internal Revenue Code) applies. Payments made to foreign nominees are covered by the Chapter 3 information reporting regime, which is reinforced with a 30% withholding tax [subject to certain exemptions such as interest paid to unrelated parties (the "portfolio interest exemption") and subject to reduction or elimination as provided in an applicable U.S. income tax treaty]. […]

> A foreign person who is the beneficial owner of income subject to Chapter 3 withholding must provide one of three varieties of W-8 forms to the payor of the income. The W-8 forms call for identification of the beneficial owner by name, residence address, mailing address, country of organization, type of entity (if applicable), and EIN [Employer Identification Number] or other taxpayer identification number." (GF 2011d: 31; [TJN-note]).

However, the chapter 3 obligations only require some reporting from the recipients of payments to the payors of the income (i.e. financial institutions), but the payors are not required to routinely pass on this information to the US tax administration. Section IV below on the qualified intermediary's programme provides more details on the limits of (dividend) reporting obligations.

III) New IRS interest reporting obligations

In addition to dividend reporting, end of April 2012, the IRS issued final regulations on new reporting requirements about interest payments to be implemented from 1 January 2013 (IRS 2012). These regulations appear to provide the US tax administration with basic information on interest paid on bank accounts held by certain non-resident individuals. Not all financial accounts or interest bearing instruments will be included and reported, nor will all non-resident recipients of interest payments be covered. Similarly, the Qualified Intermediary Rules (see below) will remain unchanged so that foreign financial institutions and non-US branches of US financial institutions still have the opportunity to avoid reporting of bank deposit interest (as well as dividend and capital gains reporting and other types of passive income). The summary wording of the regulations explains:

> "[…] final regulations regarding the reporting requirements for interest that relates to deposits maintained at U.S. offices of certain financial institutions and is paid to certain nonresident alien individuals. These regulations will affect commercial banks, savings institutions, credit unions, securities brokerages, and insurance companies that pay interest on deposits." (IRS 2012: 23391).

This language does not explicitly refer to beneficial owners and therefore may only refer to the account holders. In the course of the administrative rule making process and after input by stakeholders and lobbyists, the proposed regulations of 2011 were changed in an important way before being issued by the IRS as "final regulations". Instead of requiring the reporting of interest paid to all non-resident alien individuals, the final regulations only require the reporting of interest payments to those non-residents who are resident in a country that is listed on two lists to be issued by the IRS in a Revenue Procedure.

The first list mentions all those candidate countries which have in force a treaty with the US allowing for the exchange of tax information. The second list is a sub-list of the first list and will contain those countries for which the IRS deems it to be appropriate to enter into automatic information exchange processes based a) on the confidentiality regulations and track record of the treaty partner country and b) on the level of reciprocity of information exchange by the treaty partner (IRS 2012: 23393).

Therefore, the new reporting obligations for interest payments in the US scheduled to enter into force on 1 January 2013 will continue to be very narrow in scope. Interest payments made in relation to US government and corporate obligations will not be covered. Only the interest paid to certain treaty partner non-resident individuals are covered. Corporate or other legal entity recipients are not included, nor are natural person recipients included who are residents of countries other than those specified in a special IRS-Revenue Procedure.

Most importantly, the Qualified Intermediary rules (see below) will not be affected by the new regulations. Therefore, nonresidents continue to be able to invest without reporting in bank deposits in the US through non-US financial institutions or through non-US branches of US financial institutions[71] (Spencer 2011: 62).

IV) US-Qualified intermediary Programme

The statutory reporting requirements on dividends and interest, including the new IRS requirements, are bypassed through the qualified intermediary programme which offers foreign financial institutions exemption from these reporting obligations under certain conditions. TJN's database reported on USA in 2011[72]:

> "A financial institution outside of the United States, such as a foreign (non-US) financial institution or a foreign (non-US) branch of a US financial institution, can become a qualified intermediary (QI) by submitting an application to the US Internal Revenue Service and agreeing to comply with the QI requirements in the US Internal Revenue Code. The advantage of QI status is that foreign persons (individuals and companies) can invest in the United States through the QI, with the QI complying with Know Your Customer requirements (KYC).
>
> The QI maintains outside of the United States information about the identity of each foreign investor and the KYC information about each foreign investor, but the QI invests in the United States in the name of the QI rather than in the name of the foreign investor. Therefore, the financial institution and other payers of interest income in the United States, and other intermediaries in the United States handling such payments to the QI, do not have information about the identity of the foreign person making such investments. As a result, the US Internal Revenue Service

[71] http://www.eduardomorgan.com/blog/wp-content/uploads/2012/05/PEER-REVIEW-April-26-2012.pdf; 16.5.2012.
[72] http://www.secrecyjurisdictions.com/sj_database/USA.xml#t30; 14.5.2012.

> does not have information to exchange with foreign governments, and does not have access to such information. This of course is a "sophisticated" form of bank secrecy (Spencer / Sharman 2006: 31-32; GAO 2007)." (Mapping Financial Secrecy 2011[73]).

These rules remain firmly in place and factually overturn the other statutory reporting requirements.

5.11.3 Sanction and supervision of reporting obligations

Administrative and criminal sanctions apply when reporting obligations are not met. Under tax reporting obligations, the available sanctions range from a fine of up to 1000US$ to a maximum prison term of one year (USC 26, §5762 (6)(b)[74]).

The general sanctions/penalties rules apply to all persons who fail to correctly file forms when required, to withhold taxes when required, to provide information when required by tax laws. This applies equally to QIs and withholding agents, etc. However, there are no statistics available nor about the nature or frequency of onsite inspections nor about the results of such inspections.

In addition, in the past the US threatened to employ the Racketeer Influenced and Corrupt Organizations Act in connection with foreign banks (such as UBS) which failed to properly implement the QI-provisions and helped US clients evade US taxes. This Act provides for extended criminal sanctions for the leaders who ordered others to commit crimes as part of an ongoing criminal syndicate[75].

6. Conclusions

Out of the 11 countries reviewed, when compared to the 2000 OECD report, many countries have improved and expanded their reporting obligations and thereby enhanced financial transparency. Important progress was made by Australia, Spain and the Netherlands. Modest improvements were made by Denmark and Germany, though Germany has retreated from a major improvement in 2009 when it narrowed access to bank account registries for non-resident account holders and beneficiaries.

No substantial improvements were made by Austria, Finland, France and Norway, with the important difference that Austria has no bank account reporting mechanism available whatsoever, while Finland, France and Norway have far reaching bank account reporting obligations.

Since 2000, the USA experienced an overall deterioration in the reporting obligations through the establishment of the qualified intermediary's programme in 2001 (Grinberg 2012: 14). While in the year 2000, interest payments to non-

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[73] http://www.secrecyjurisdictions.com/sj_database/USA.xml#t30; 14.5.2012.
[74] http://codes.lp.findlaw.com/uscode/26/E/52/G/5762; 13.6.2012.
[75] http://en.wikipedia.org/wiki/Racketeer_Influenced_and_Corrupt_Organizations_Act; 13.6.2012.

resident aliens were not reported by failure to include them in the reporting obligations, the QI-rules explicitly bypassed the usual reporting regime and created anonymous investment opportunities in financial assets and accounts by non-residents as a carrot to induce foreign financial institutions to cooperate with the IRS on US financial accounts. This situation with QI has not been remedied by recent 2012 IRS regulations to require the regular reporting of bank interest about certain non-residents.

It is noteworthy that among the six countries for which full information was available on all reviewed criteria, only one country (Denmark) imposes identical reporting obligations for residents and non-residents[76]. In all other surveyed countries, there is always a less stringent obligation imposed when non-resident beneficial owners/recipients are involved. This highlights the endemic nature of tax haven behavior in today's world.

7. Recommendations for account registries

The survey of 11 countries does not give a sufficiently clear picture to allow definitive recommendations on how bank account registries and/or trust and foundation registries should be designed. However, a few lessons can be drawn and should be considered by policy makers and future research projects.

First of all, it is important to make sure that access to any existing database or information on bank accounts is available in cases of civil tax matters and in early stages of criminal investigations both at the domestic and international level. This recommendation is in line with a recommendation made by the United Nations and World Bank in 2011:

> "Jurisdictions should also be willing to provide information from such registries to foreign jurisdictions conducting investigations **without requiring a formal MLA request**. This minimizes delay without alerting the asset holder to the investigation, thereby avoiding the risk that the assets will be moved or dissipated before the investigation is complete.
>
> Operational Recommendations
>
> a) Jurisdictions should establish a national bank registry to retain account identification information, including beneficial owners and powers of attorney.
>
> b) Requested jurisdictions should enact legislation or develop policies and procedures that make available from its national bank registry account identification data, beneficial owner information, and powers of attorney without the submission of a formal MLA request by the appropriate, competent authorities in another jurisdiction." (UN/WB 2011: 94).

[76] Except Austria, which simply has no reporting obligations for bank information whatsoever.

These two basic recommendations by the World Bank should be fully endorsed as a fundamental requirement in any assessment of bank reporting obligations and bank account registries. Ideally, information reported on bank accounts would be also used for automatic information exchange processes with suitable countries.

We identify Denmark as the ideal benchmark example of a bank account registry. Denmark is the only country among those reviewed which appears to operate a disclosure regime that does not distinguish between residents and non-residents[77].

Regarding the three broad dimensions to describe the reporting obligations and/or registries in place, the following best practice scenario can be inferred from the reviewed countries, from an analysis of the EUSTD, its envisaged amendments the revision of the 3rd AML EU Directive, and the proposed regulations of FATCA.

1. Reporting

Inclusion of

- interest payments above a certain threshold
- account balance
- average account balance
- maximum account balance
- opening and closing dates of accounts.

2. Identification

For all financial accounts

- disclosure of all powers of attorney and
- disclosure of all ultimate beneficial owners, each with full name, TIN and birthdate and –place, their country of residence (proven by certificate or national ID) and requiring availability of verification documentation in the banks' possession, to be checked on demand
- disallowance of "ownerless" accounts (all accounts need to have at least one beneficial owner, except for accounts held by companies listed on reputable stock exchanges and by government agencies).

3. Supervision and sanctions

- Criminal sanctions for misreporting above a certain threshold, including for misreporting of beneficial owner information
- Escalating administrative fines for misreporting (escalation depending on the amounts misreported and the frequency of failures) backed by criminal sanctions if misreporting is repeated more than once

[77] This assertion has a small caveat because some of the countries did not respond comprehensively enough to our questionnaire or sufficient information was not available on public record. France and Norway could potentially operate a similar system.

- Systematic and periodic onsite inspections should be conducted to check the availability of beneficial owner verification documentation
- Publication of statistics on the frequency of supervisory action, of supervisory results including breakdowns by category of account balances, and on the use of sanctions.

8. Relevant benchmarks for the design of trust and foundations registries

A public registry of trusts and foundations is more desirable than administrative registries or reporting obligations without public disclosure. The design of such registries requires answering the following questions. Some indications on how best to resolve these questions are provided in bullet points below:

1) **Choice of state agency**: Where to locate the registry?

   Who is the agency responsible for collecting the information? Is it operated by the tax administration or by a corporate registry or by the securities regulator? How can it be ensured that registries receive the substantial additional funding required for verification of the information?

   - If a company registry exists, it would be best to use the existing registry and to expand its scope to host also the registry of trusts and foundations unless there are good reasons against such expansion.
   - Similar to corporate registration, the legal validity of the trust/foundation/fiduciary or asset management contract should be made contingent upon registration.

2) **Choice of scope[78]**: Who is obliged to report and what information should be reported?

   Is everyone obliged to report who receives or makes a payment on behalf of someone else, with or without threshold? Is the list of persons and entities restricted to those who hold certain licenses to make payments on behalf of others in professional capacity (lawyers, law firms, accountants, tax advisers, or any for profit agency)? Is there a list of reporting entities and persons who are obliged to report, both in generic terms in the law, and in administrative reality? Is there a publicly available list of persons and entities which are obliged to report such payments, and who compiles this list and how often is it updated? Could the list of financial market operators which the Financial Stability Board compiles play a role here? In case of trusts or foundations, would the trustees and/or foundation council members be obliged to report? Would it be one trustee or all trustees? Are corporate trustees allowed to report or must it be an individual? Is it

[78] The criteria 2-4 are inspired by Grinberg 2012: 17-18.

possible to shift the reporting obligation and registries to those countries who offer trust laws or whose common law allows trusts to be formed?

- All legal entities and individuals who are by profession (lawyer, accountant, tax adviser, etc.) or license or for any other reason capable to act as trust administrators should be subject to reporting obligations for any trust, foundation, fiduciary arrangement or asset management contract ("legal arrangements"; except for collective investment schemes). Every single individual trustee, foundation council member, every single fiduciary and every asset manager ("trustee"; except for collective investment scheme managers) should be subject to reporting obligations in their respective country of residence about all legal arrangements they participate in, without narrowing the reporting obligations to any "lead" trustee.
- The value of total assets under management should be reported.
- All payments above a certain threshold should be reported, no matter what type of payment is made (e.g. emoluments, consultancy feeds, payouts, etc.).
- The trust deed including any letter of wishes and all foundation documents including any bylaws, and any written documents related to the legal arrangements should be submitted to the registrar in order to take effect.

3) **Identification requirements**: What information is required about the participating parties?

Should there be an explicit obligation to report the beneficiaries (defined as natural persons) of the trust or foundation, or can legal entities be beneficiaries? Is there a requirement for each participant in a trust and foundation to be a natural person (individual) who is fully liable for the capacity (s)he is signing up for (ruling out nominees and corporate bodies or other trusts)?

Are all participants required to be identified, regardless of their residency, nationality, or other characteristics, including settlors, founders, trustees, members of the foundation council, protectors, enforcers, beneficiaries, or other significant stakeholder? Is there an obligation to provide the full name and address of each participant, and is there an obligation to provide the birthdate and –place and/or the TIN and/or passport ID of each natural person participating in the trust/foundation? Is there a requirement to record all trust and foundation documents, including letters of wishes or other relevant communication among parties to a trust/foundation?

- Each participant to the legal arrangement should be identified each year and if new, their identity verified, including the settlor(s), the

trustee(s), the beneficiary(ies), protector(s), fiduciary(ies), mandator(s), and any other intervening party ("participants"), with each of those participants being required to be a natural person, with no legal entities, nominees or other legal arrangements being allowed as participants.
- The named settlor(s) and the beneficiaries need to be the original ultimate beneficial owners of the initial asset contributions and the ultimate beneficial owners of payments, respectively.
- For each of these natural persons, their full names, a validated TIN or birthdate and –place or a validated passport number, and a certificate of their country of residence should be required.

4) **Verification policy:** What kind of supervision and sanction regime is applied to verify compliance with reporting obligations?

   Who is responsible for the supervision of the reporting obligations? Is it only one agency, or are multiple agencies involved? What is the documented frequency of onsite inspections? What supervisory strategy and policy is applied apart from onsite inspections? What are the result and the outcome of the onsite inspections and are the results publicly disclosed in a systematic way? What administrative and criminal sanctions are available for breaches of the reporting obligations, and will the names of those who are prosecuted and fined be listed anywhere on public record?

   - Each trustee should be legally responsible for compliance with the reporting obligations. Criminal sanctions should be available in cases of gross negligence or intentional misreporting, in addition to escalating administrative fines for misdemeanours.
   - The head of the registry (the registrar) would be the chief executive responsible for and vested with powers for supervising the compliance with reporting and documentation obligations and for applying sanctions and initiating criminal enforcement action.
   - Comprehensive statistics about the frequency and results of supervisory activity, including onsite inspections of trustees, should be published online, including with a breakdown of supervisory results by category of total assets under management (above €100 million, above €10 million, above €1 million).

5) **Online Availability**: What information should be included in the online inspection?

   Is all the information on all trusts and foundations, except for transaction information, available for less than 10 US$ on the internet?

- Mandatory annual reports filed by each trustee should be made online available in the residence country of each trustee for all legal arrangements whose overall payments either exceed €15.000 per year or whose underlying asset value exceeded €100.000 at any moment in the year. These reports should include the full names and birthdates and country of residence of each participant in the legal arrangement.

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References II: Interviews and Questionnaires

Unless stated otherwise, most parts of the country chapters are based on the answered questionnaires and follow-up emails and phone calls with the corresponding officials. Occasionally, a reference to specific interviewees (either by email or phone) was made by indicating the IV (=interviewee) and a number. The list below gives a rough indication of the kind of institution the corresponding interviewee represents. The questionnaire can be found in Appendix III below.

Interviewee-Code	**Institution**	**Country**
IV1	Tax Administration	Germany
IV2	Ministry of Finance	Germany
IV3	BAFIN	Germany
IV4	Tax Administration	Germany
IV5	BAFIN	Germany
IV6	Ministry of Finance	Germany
IV6	Ministry of Finance	Germany
IV7	Tax Administration	Germany
IV8	Tax Administration	Germany
IV9	Tax Administration	Germany
IV10	Private Bank	Germany
IV11	Ministry of Finance	Finland
IV12	Tax Administration	Spain
IV13	Ministry of Finance	Austria
IV14	Ministry of Finance	Netherlands
IV15	Ministry of Finance	Denmark
IV 16	Tax Administration	Argentina
IV 17	Academic	USA
IV 18	Tax Administration	Australia
IV 19	Civil Society	France

Appendix I: Summary Table of Country Reviews

	Database on bank accounts at tax admin	Information reporting including							Supervision and sanction of reporting obligations		Resident/ non-resident difference ?
		Opening / closing of accounts	Interest paid	Account balance	Recipient's name and address	Recipient's TIN or birthdate	BO's name and address	BO's TIN or birthdate	Administrative sanctions (fines)	Criminal sanctions (prison terms)	
Argentina	Y	Y	Y/N	Y	Y	Y/N	N	N	Y	N	Y
Australia	?	?	Y	N	Y	Y/N	N	N	?	?	Y
Austria	N	N	N	N	N	N	N	N	N	N	NA
Denmark	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Finland	N	N	Y	N	Y	Y	Y/N	Y/N	Y	N	Y
France	Y	Y	Y	?	Y	Y	N	N	?	?	N
Germany	N	Y	N	N	N	Y	Y/N	N	Y	N	Y
Netherlands	Y	N	Y	Y	Y/N	Y	N	N	Y	Y	Y
Norway	?	?	Y	Y	?	?	?	?	Y	?	N
Spain	Y	Y	Y	Y	?	?	?	?	?	?	?
United States	N	N	Y/N	N	Y/N	Y/N	Y/N	Y/N	Y	Y	Y

Appendix II: Table of Country Reviews

	Database on bank accounts at tax admin	Information reporting including							Supervision and sanction of reporting obligations		Resident/ non-resident difference ?	Notes
		Opening / closing of accounts	Interest paid	Account balance	Recipient's name and address	Recipient's TIN or birthdate	BO's name and address	BO's TIN or birthdate	Administr a-tive sanctions (fines)	Criminal sanctions (prison terms)		
Argentina	Y	Y	Y/N	Y	Y	Y/N	N	N	Y	N	Y	Monthly reports include all (fresh) deposits per financial account (not only interest), account balance, and the names and addresses of account holders and in case of Argentinean taxpayers, it also includes their TIN or national ID. Reports about accounts of nonresident individual account holders are not required to include any identification number.
Australia	?	?	Y	N	Y	Y/N	N	N	?	?	Y	In case of non-resident investors, birthdates or TINs are not required. It is unclear if the same sanctions apply to routine reporting obligations as apply for failure to comply with requests for information. In the latter case, the third offense leads to criminal sanctions.
Austria	N	N	N	N	N	N	N	N	N	N	NA	
Denmark	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Birthdate and birthplace and country of birth or TIN are only required for accounts opened after 31 December 2003.
Finland	N	N	Y	N	Y	Y	Y/N	Y/N	Y	N	Y	There is a difference in the identification requirements between EU and non-EU recipients of interest payments. While payments made under the EUSTD require the beneficial owner of payments to be reported, payments which do not fall under EUSTD allow financial institutions discretion as to whether to include the account holder or beneficial owner of the bank account as the recipient of the payment.
France	Y	Y	Y	?	Y	Y	N	N	?	?	N	The identification information relates only to France's bank accounty registry FICOBA, where account holders need to be identified. Interest on savings deposit accounts is reported independent of the central bank account registry FICOBA.
Germany	N	Y/N	N	N	N	Y	Y/N	N	Y	N	Y	Germany requires each financial institution to operate a standardized database containing minimal data on all financial accounts, including identity information of account holders and the names of beneficial owners and the date of opening and closing of accounts. Address of BOs is not always required, nor is BO's birthdate required. Since 2009, the database can no longer be used for administrative cooperation with foreign authorities, but only in cases of criminal procedures.
Netherlands	Y	N	Y	Y	Y/N	Y	N	N	Y	Y	Y	Since 2012, there are broadly the same interest and bank reporting obligations for financial accounts held by residents and non-residents. Beneficial owners other than account holders need never to be reported, while account holders are always reported with TIN or birthdate/place, and for non-residents in addition the full address .
Norway	?	?	Y	Y	?	?	?	?	Y	?	N	It is not entirely clear if the criminal charges available for failures to comply with requests for information are also applicable for the routine reporting of information.
Spain	Y	Y	Y	Y	?	?	?	?	?	?	?	The opening of accounts needs to be reported on a quarterly basis if no TIN is provided (which may be the case for non-residents). It is unknown if non-resident account holders and/or beneficiaries of accounts need to be identified including with a passport number and/or birthdate and -place and/or address.
United States	N	N	Y/N	N	Y/N	Y/N	Y/N	Y/N	Y	Y	Y	There is a general difference between US resident individuals on the one hand and all others on the other. For US tax resident individual beneficial owners interest payments must be reported, including the US TIN of the beneficial owner, while under general reporting obligations certain non-US recipients must be identified only by name and address, while (diverging) non-resident beneficial owners of interest payments do not need to be named. In addition, QI arrangements offer an exemption from all reporting for all non-US residents investing in US bank accounts (and other passive investments) under certain conditions.

Appendix III: Bank Account Registry Questionnaire

1. Does your country's tax administration or central bank or other state agency (please specify) operate a **registry of financial accounts**, e.g. bank accounts? Please specify its scope (what information is recorded) and guide us to the legal source and/or administrative regulations implementing this registry.

2. Does your law and/or administrative practice require financial institutions such as banks to **report information automatically** to tax authorities or other state agencies (please specify)? Please specify the scope of such a reporting requirement and guide us to the legal source and/or administrative regulations implementing this reporting requirement.

3. Does your law and/or administrative practice require financial institutions such as banks to operate a **standardised database containing information on the financial accounts** held by it? Please specify the scope of such a database and the access rights state authorities may have on this database, and guide us to the legal source and/or administrative regulations implementing this database requirement.

4. Could you provide us please with **statistical information** about the use of the mechanisms mentioned above under questions 1, 2 and 3? Of specific interest would be the total number of persons about whom data is held or reported, split in natural and legal persons, the total number of accounts held by natural and legal persons, the amount of funds in these accounts, and the frequency in which the mechanisms are used.

5. Are the mechanisms mentioned above under questions 1, 2 and 3 dependent in their scope and/or access rights on whether a **natural person** under inquiry is a **tax resident or a tax non-resident** of your country? Please specify the differences and guide us to the legal source and/or administrative regulations implementing them.

6. Are the mechanisms mentioned above under questions 1, 2 and 3 dependent in their scope and/or access rights on whether a **legal person** under inquiry is a **tax resident or a tax non-resident** of your country? Please specify the differences and guide us to the legal source and/or administrative regulations implementing them.

7. Are the mechanisms mentioned above under questions 1, 2 and 3 dependent in their scope and/or access rights on whether the inquiry relates to a

criminal or civil tax matter? Please specify the differences and guide us to the legal source and/or administrative regulations implementing them.

8. Are the mechanisms mentioned above under questions 1, 2 and 3 dependent in their scope and/or access rights on whether the inquiry relates to a **specific international treaty/convention** or not? Please specify the differences and guide us to the legal source and/or administrative regulations implementing them.

9. Are the mechanisms mentioned above under questions 1, 2 and 3 dependent in their scope and/or access rights on **any other condition**? Please specify the condition and guide us to the legal source and/or administrative regulations implementing it.
10. What r**esources** are necessary to run the mechanisms mentioned under the questions 1, 2 and 3? Is there any **cost estimate or staff estimate** to run the mechanisms, and/or to introduce them?

11. How have the mechanisms mentioned under the questions 1, 2 and 3 **changed since the year 2000**? Please provide us with a rough timeline of substantial changes, if possible with a URL- or pdf-source.

12. What are the **general experiences** with the mechanisms mentioned above under questions 1, 2 and 3? Are there any **problems** arising? What are these? Do you have any other comments?

Appendix IV: OECD 2000 Overview Table – "3.1.1 Types of information automatically reported by banks to tax authorities" (OECD 2000: 72-73)

	Opening / closing of accounts	Interest paid and to whom it is paid	Account balance at year end	Other	Notes
Australia		x			
Belgium				x	"Where banks have to withhold tax on income from capital, they have to declare the type of income, the taxable income and the justification of the tax exemption if any. The identity of the beneficiary must not, however, be provided to the tax administration."
Canada		(in most cases)		where tax withheld must be reported	
Denmark	x	x	x	x	"Where information on interest paid by a taxpayer to the bank and the debt claim on which the interest is paid, information on transfer of bonds and securities has to be reported."
Finland		x		x	"The following types of interest must be reported by banks: interest paid by the client to the bank and the balance of the capital at the end of the year; interest paid on deposits that are not subject to the withholding tax on interest income; and if interest is paid to a non-resident, the tax administration gets annual reports which are then sent for control purposes to foreign countries by the tax administration."
France	x	x		must report all income from capital	
Greece	x			x	
Hungary	x				"Banks are required to report to the tax administration the date an account is opened, the account number, name and address of the account holder within 15 days of the opening of the account."
Ireland		x			"Except when deposit interest retention tax has been deducted or where paid to a non-resident person on foot of a statutory declaration by the person to that effect (which must be retained for Revenue inspection)."
Italy				x	"Banks must transmit to the Ministry of Finance RAD Models concerning withholding taxes on dividends paid to non-residents when the bank acted as a broker in the transaction. All information relevant to transactions to and from abroad concerning money, securities and bonds over £ 20 million."

	Opening / closing of accounts	Interest paid and to whom it is paid	Account balance at year end	Other	Notes
Japan		x			
Korea		x		tax withheld from interest paid	
Netherlands		paid to residents			
New Zealand		x			
Norway		interest accrued at year end	x	interest on loans	
Portugal					"use of household savings for other purpose"
Spain		x		x	"Any income paid by banks or from any foreign securities when these institutions have received them in deposit or to operate them as account managers. The reporting requirements also cover: the issue subscription and transfer of securities including public debt, the transfer of mortgage securities in which credit institutions intervene."
Sweden		x	x	interest on loans	
United Kingdom		x		x	"Except where individuals have made a declaration that they are not ordinarily resident in the United Kingdom and request that the information should not be passed to the Inland Revenue."
United States		x		x	"For U.S. persons who are not exempt recipients and non-resident aliens who are residents of Canada. Banks also required to report certain other types of interest paid to U.S. persons."
Slovak Republic	x				"account number, name and address of account holder"

Source: OECD (2000: 72-73).

Appendix V: Germany's second tier of access on banking information

The second tier of access to banking information relates to actual account balances and payments made and received and underlying documentation. This mechanism is based on a "upon request" system. Generally, §93 (1) AO obliges all persons to provide the relevant information which are necessary for assessing any tax. §117 (2) and (4) AO in turn empowers the tax authorities in the context of an international information request to make use of the same general information gathering powers as applicable to German tax situations (GF 2010: 57, Para. 200).

Neither the tax secrecy enshrined in §30 AO nor the requirement for tax authorities to show special regard to the confidentiality of bank information (§30a AO) prevent the access on banking information. Specifically, §30a (5) AO clarifies that notwithstanding the special duty to show regard to the confidentiality of bank account information, the general provisions contained in §93 to gather information are applicable to bank account information as well. This view is confirmed in the administrative guidance AEAO from 17.7.2008[79].

The same administrative guidance specifies that tax authorities are not required to have a justified suspicion for tax evasion in order to request information from banks or other parties. It is sufficient that the tax authority deems, by way of prediction, the request to be necessary for tax purposes based on concrete circumstances of the individual case or based on general experiences (AEAO 2008 §93 – 1.2). However, before requesting the information from third parties (i.e. banks), the tax authority has the duty to first ask for the relevant information directly from the person concerned, unless such a direct request is not successful or does not promise to be successful. Again, a direct request does not promise to be successful if the tax authority deems so based on concrete circumstances of the individual case or based on general experiences (AEAO 2008 §93 – 1.4)[80].

As regards the condition of assistance on the existence of a specific treaty, §117[81] (AO) in principle allows the tax authorities to provide administrative and legal assistance in tax matters also independent of specific tax and legal assistance treaties (AO §117 (3)). In practice, however, this does not seem to play a relevant role (IV2).

Appendix VI: OECD 2000 – Selected Text Fragments

Obligation to report foreign bank accounts
"More than half of member countries (Belgium, Canada, Denmark, Finland, France, Iceland, Ireland Italy, Luxembourg, Mexico, Norway, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States) require taxpayers to inform the tax authorities whether they have foreign bank accounts, usually on the annual income tax return." (OECD 2000: 42-43, para 99).

[79] Page 63, AEAO zu § 93 – 1.6, http://www.bundesfinanzministerium.de/nn_95330/DE/BMF__Startseite/Service/Downloads/Abt__IV/AEAO__1,templateId=raw,property=publicationFile.pdf; 13.12.2011.
[80] The same language used to apply until 1.1.2009 to the use of tier 1 information requests making use of the bank account registry (AEAO 2008 §93 – 2.3).
[81] http://www.gesetze-im-internet.de/ao_1977/__117.html; 12.12.2011.

Banks required to reveal whether account held by named person
"All Member countries require banks to reveal whether a named person keeps an account with it except: Austria, Luxembourg, and Switzerland which require the disclosure in criminal cases; Belgium, which will require the disclosure in exceptional cases, especially where there exists a presumption of the existence or preparation of tax fraud, and Portugal (except in criminal cases where a judge can decree the lifting of bank secrecy)." (OECD 2000: 37-38).

Appeal rights against bank information requests
"Several Member countries (Germany, Hungary, Korea, Luxembourg, Netherlands, Portugal, Sweden, United Kingdom, United States) must notify the taxpayer of an exchange of bank information under certain circumstances. […]In general, a taxpayer has the right to appeal the exchange of information in countries that require notification except in Sweden. The taxpayer has no appeal right concerning a request for bank information in most Member countries. Further, the bank has no right of appeal under domestic law if the bank does not want to comply with a request for information in most Member countries." (OECD 2000: 39-40).

China
"The Chinese State Administration of Taxation (SAT) is in the process of establishing a bank information sharing system between SAT and the State Administration of Foreign Exchange. This system will enhance the ability of tax authorities to get access to bank information concerning the transfer of payments to foreign countries by domestic entities and individuals and provide such information to a treaty partner upon request or automatically provided the broader exchange of information provisions are introduced in the tax convention between China and the concerned tax treaty partner." (OECD 2007: 20).

France
"France requires financial institutions managing stocks, bonds or cash to report on a monthly basis the opening, modifications, and closing of accounts of all kinds. This information is stored in a computerised database which is used by the French tax administration for research, control and collection purposes." (OECD 2000: 36).

Korea
"Korea has a separately designated database within the tax administration's overall database which contains the information reported automatically by banks with respect to their interest payments (i.e., the amount of interest paid, tax withheld on the interest, bank account to which interest accrued, identity of accountholder together with his/her resident registration number or business registration number). This database is utilised mainly for the verification of income tax and inheritance tax returns." (OECD 2000: 36-37).

United Kingdom
"The scope of the United Kingdom's "automatic" information powers in relation to interest payments and receipts has been significantly extended by the Finance Act 2000, for interest paid or received with effect from the tax year 2001-2002.

Previously individuals who were not ordinarily resident in the UK for tax purposes could elect for details of interest paid to them by bank and building societies (as well as interest distributions from UK collective investment vehicles) to be withheld from "automatic" information returns made to the Inland Revenue. Now the Inland Revenue is able to require institutions to extend the information returns they make to cover interest (and interest distributions) paid to individuals ordinarily resident in other countries. The new information powers will also apply to other forms of savings income including income from bonds and from foreign dividends. For 2001/2002 the Inland Revenue will receive information for 31 countries." (OECD 2003: 13-14).