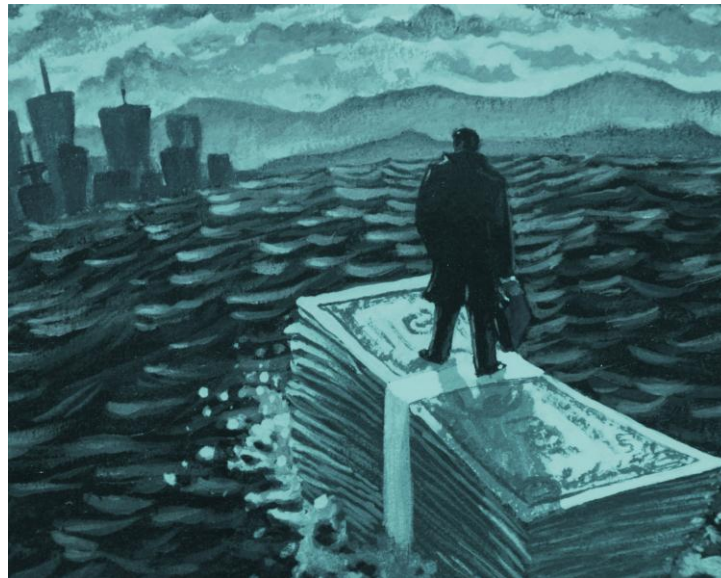


**1 December 2012, Linz**

# **Towards multilateral automatic information exchange**

## **Current practice of AIE in selected countries**



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**TJN, International Secretariat**

[www.secrecyjurisdictions.com](http://www.secrecyjurisdictions.com)  
[www.financialsecrecyindex.com](http://www.financialsecrecyindex.com)

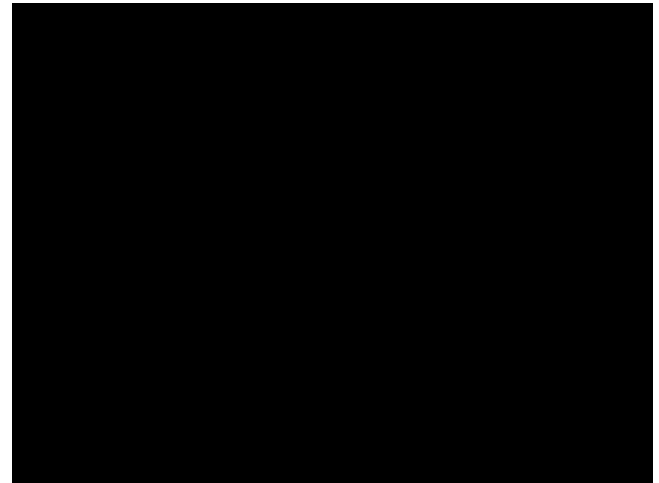
# Content

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- 2) Tax evasion – the scale of the problem
- 3) Global AIE – the vision
- 4) Global AIE – the obstacles
- 5) Research findings AIE
- 6) Conclusion on potential paths

# 1) Intro Tax Justice Network



- [Tackle Tax Havens Video](http://www.tackletaxhavens.com)  
([www.tackletaxhavens.com](http://www.tackletaxhavens.com))
- Core issue: tax havens / secrecy jurisdictions
- Founded 2003 on World Social Forum/Porto Alegre, active today in over 60 countries
- Mission: Increase transparency in financial and tax issues, contribute to tax justice and international cooperation on tax and crime fighting, through research, analysis, advise
- Independent, non-partisan network of experts with roots in civil society: lawyers, accountants, economists, journalists, social movements, churches, development NGOs, trade unions
- Global board, international secretariat, continents, countries



## 2) Scale of problem



- Price of Offshore Revisited (TJN 2012): 21-32 tnUS\$ of private financial wealth (without corporates) undeclared offshore; 190-280 bn US\$ tax revenue loss
- Global Financial Integrity 2002-2006: annual illicit financial flows from developing countries of 1 tn US\$ (ca. 5% bribery; 35% criminal origin – drugs, weapons, human trafficking; **60% trade mispricing in im/export**)
- Helvea (2010) estimates that between 80% and 99% of 2tn CHF invested in Swiss accounts by non-residents are undeclared (=untaxed)
- Gaggero (2007) estimates that 85% of wealth held abroad by Argentineans goes untaxed
- € 1,3tn held by non-residents in German bank accounts (FATF 2010); declared?

## 2) Scale of problem

- US\$ 3tn estimated amount of wealth held in US financial accounts by non-residents

"Because of the privacy laws of the United States, nonresident aliens are estimated to have deposited over \$3 trillion in U.S. financial institutions... (the United States has) refrained from taxing the interest earned by them or requiring their reporting)." (Letter to Tim Geithner by Florida delegates to the House of Representatives, 2011)

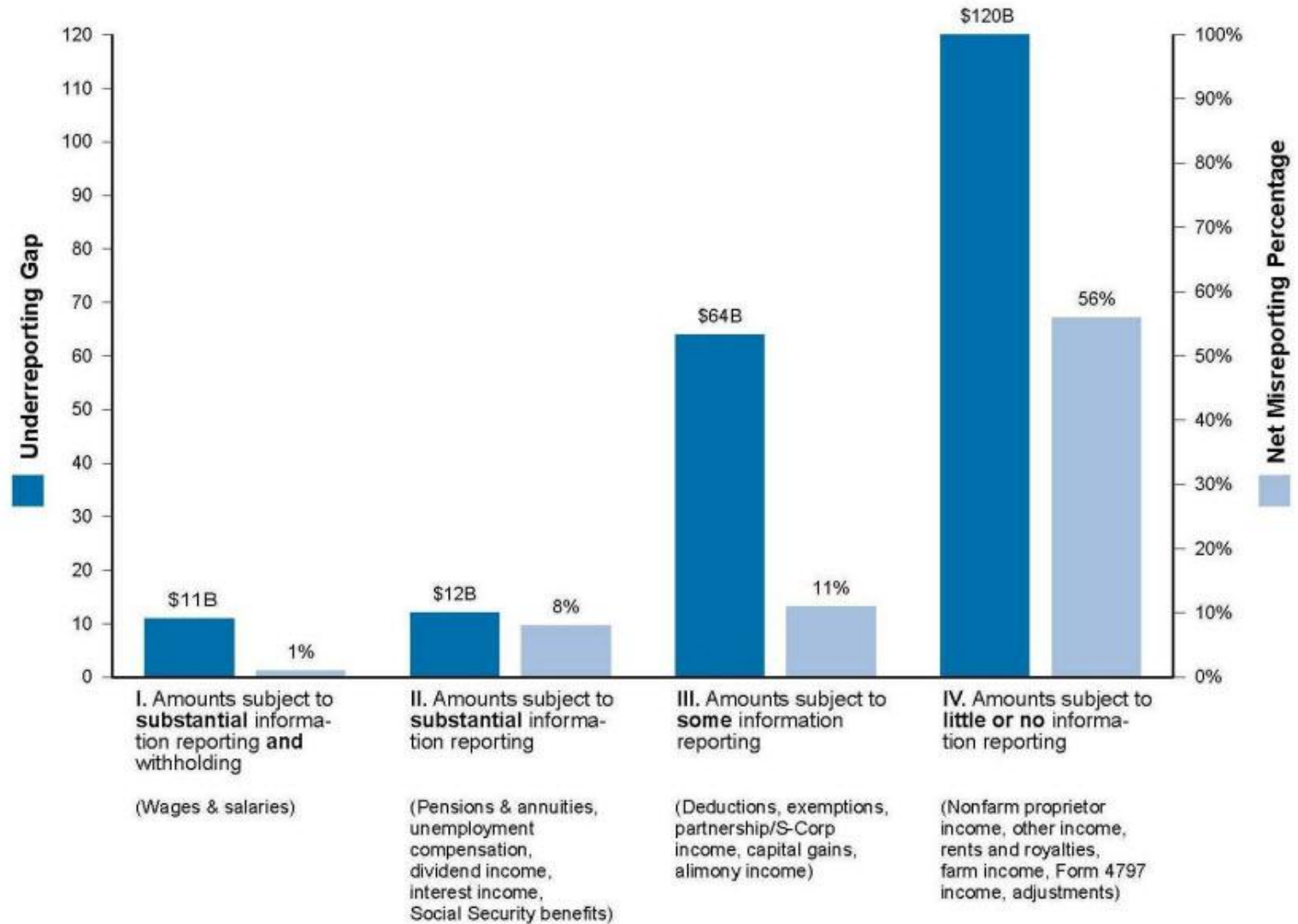
- The Cost of Tax Abuse (TJN 2011): Global tax evasion (domestic and international) costs annually 3,1 trillion US\$ annually, or 5,1% of GDP
  - Based on estimated size of shadow economies by World Bank working paper 2010
  - Tax losses implied by TJN-research USA US\$ 337bn, Germany US\$ 215bn, Austria US\$ 15bn
  - Surely exaggerated?
- IRS study 2012 finds US tax gap in 2006 stood at US\$ 385bn, mostly due to underreporting of taxable income = tax evasion

# 2) Scale of problem



**Chart 1: Effect of Information Reporting on Taxpayer Compliance**

Tax Year 2006 Individual Income Tax Underreporting Gap and Net Misreporting Percentage, by "Visibility" Category



NOTE: Net Misreporting Percentage is defined as the net misreported amount of income as a ratio of the true amount.

Internal Revenue Service, December 2011

## The impact of Secrecy/Automatic Tax Information Exchange on Economic Relations between North and South

**Financial Secrecy contributes to asymmetry and malign tax competition**

**North**

- financial bubbles /crises
- financial secrecy attracts southern funds
- exaggerated purchasing power of currencies: ecologic degradation, mechanisation, unemployment
- vicious circle

**South**

- scarcity of domestic capital
- capital flight and foreign debt
- volatile national currencies: economic development hindered, poverty trap
- vicious circle

**Automatic Tax Information Exchange**

**North**

- No more tax incentives to attract southern funds
- Reduction of deposits, excess liquidity, bubbles, and excess consumption
- Cost of labour sinks relative to capital
- sinking unemployment
- post-industrial ecological sustainability

**South**

- No foreign tax incentives for capital flight, low foreign debt
- more stable currencies
- more domestically held savings, lower cost of capital, more investments
- sinking poverty
- Virtuous circle of economic development

### **A) Political**

- Breakthrough on developing country interest with India
- OECD and CFA stalemate since 2000 on AIE and BAR
- Significant progress with OECD-report „Tackling Offshore Tax Evasion“ by SG Gurría (June 2012):  
"Automatic exchange of information proves to be a useful way to implement enhanced international tax co-operation as shown in the attached report."
- Swiss, Austrian and Luxembourg role at OECD CFA?



### **B) Technical**

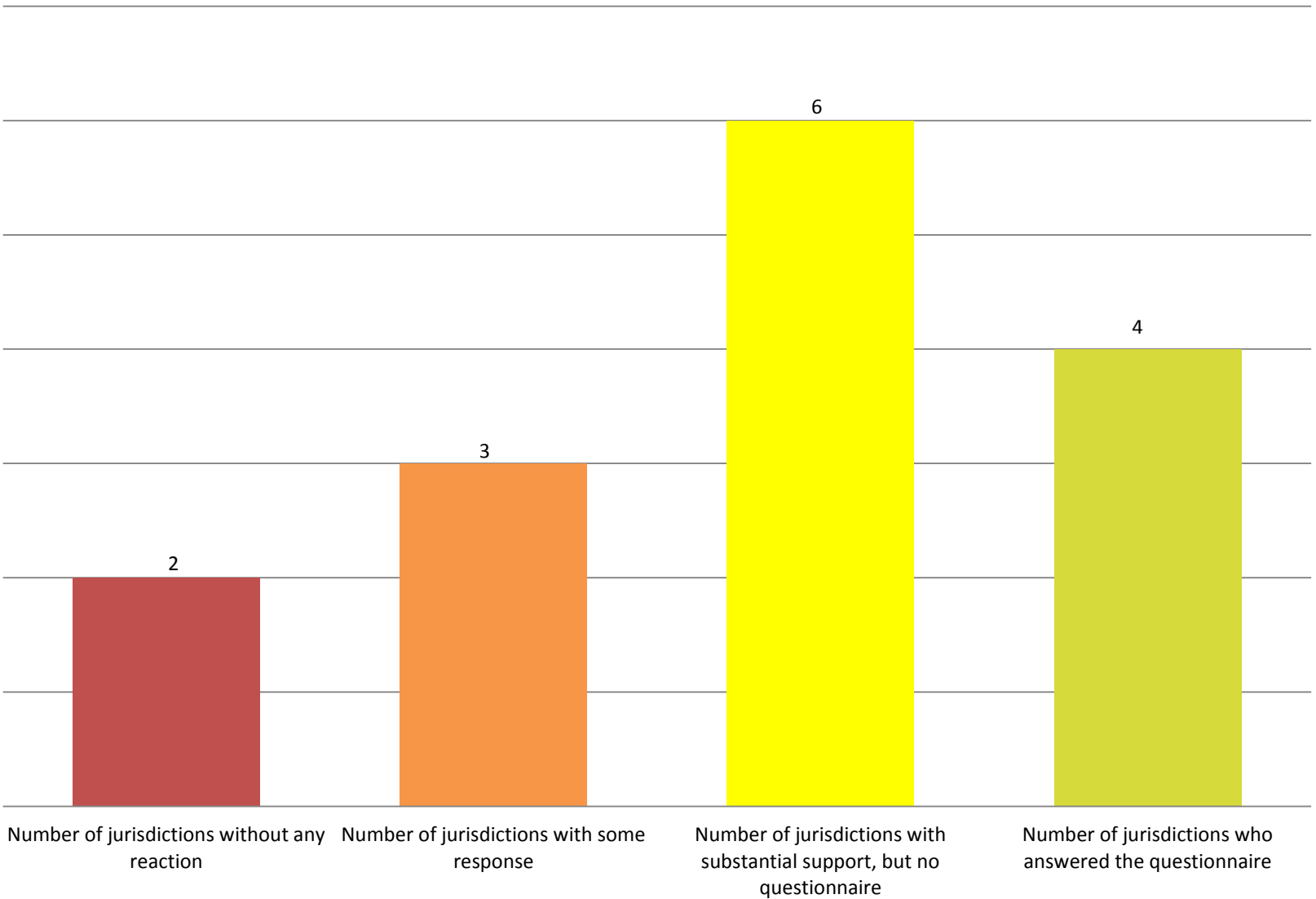
- Mismatches of legal systems result in errors, inefficiencies and loopholes, differing concepts of:
  - beneficial owner (legal entity vs. natural person)
  - income (interest; gross vs. net proceeds)
  - legal entities (e.g. trusts in US and UK law)
  - supervision (administrative and criminal sanctions)
- Lack of systematic and detailed studies of experiences and systems

## **Leading Research Question:**

What experiences do countries make with tax related  
AIE on capital income (interest, dividends, royalties)?

# 5) Research findings AIE

## Survey Reaction of 15 Ministries of Finance / Tax Administrations

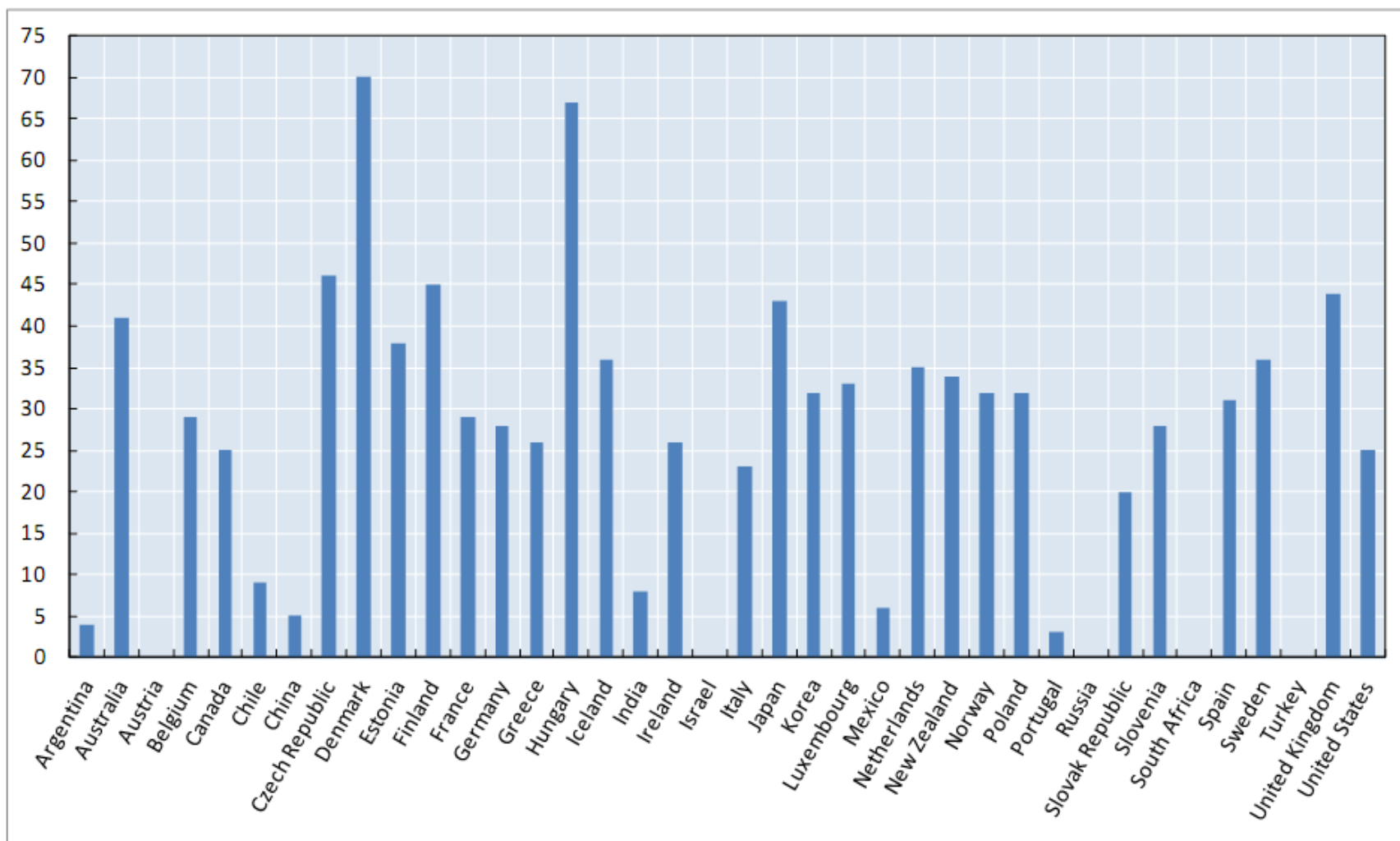


# 5) Research findings AIE

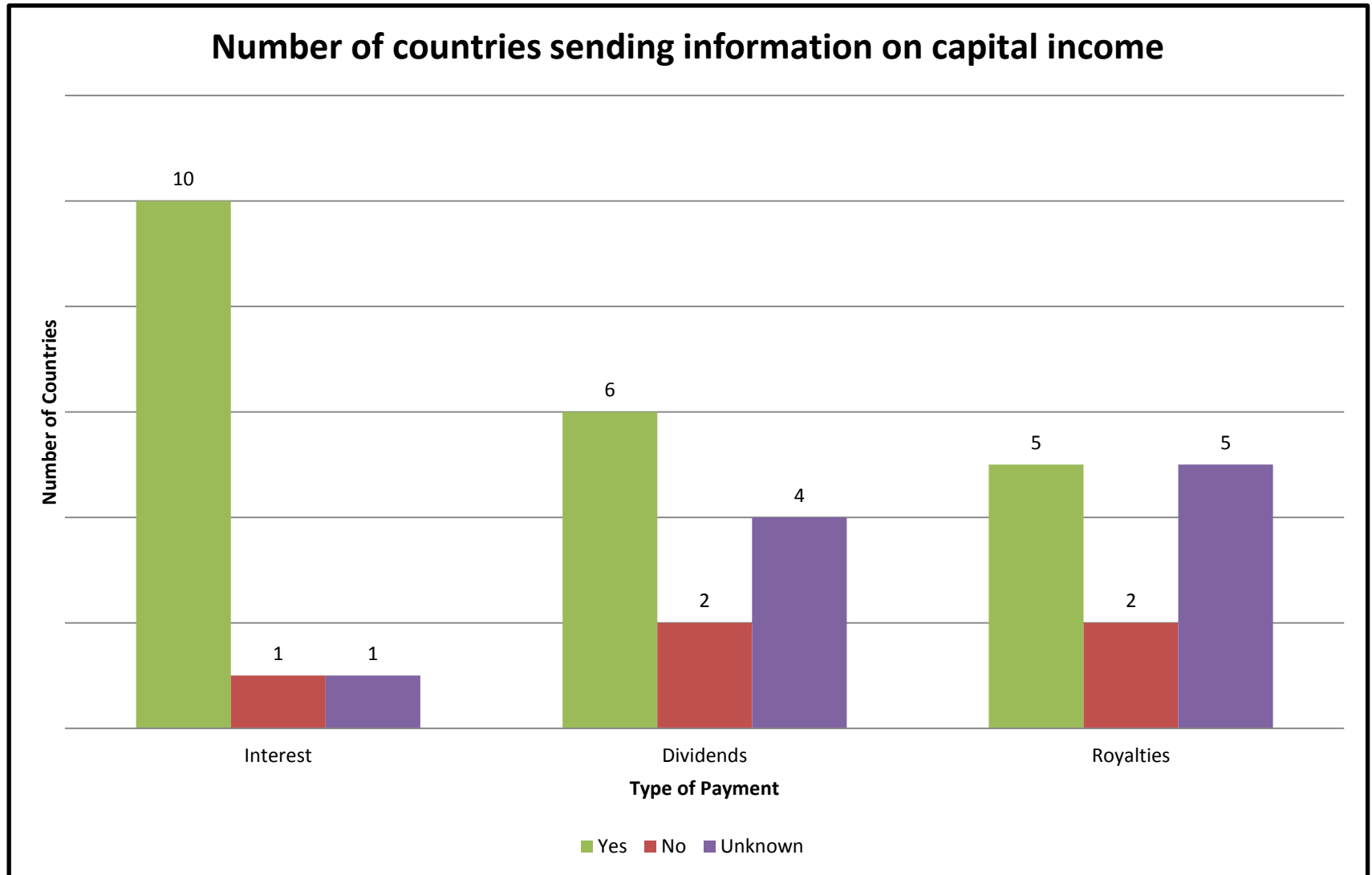
Reviewed Countries (12)	Countries Without Cooperation and Accessible Information (3)
Argentina Australia Austria Belgium Denmark Finland France Germany Netherlands Norway Spain USA	India Sweden South Africa

# 5) Research findings AIE

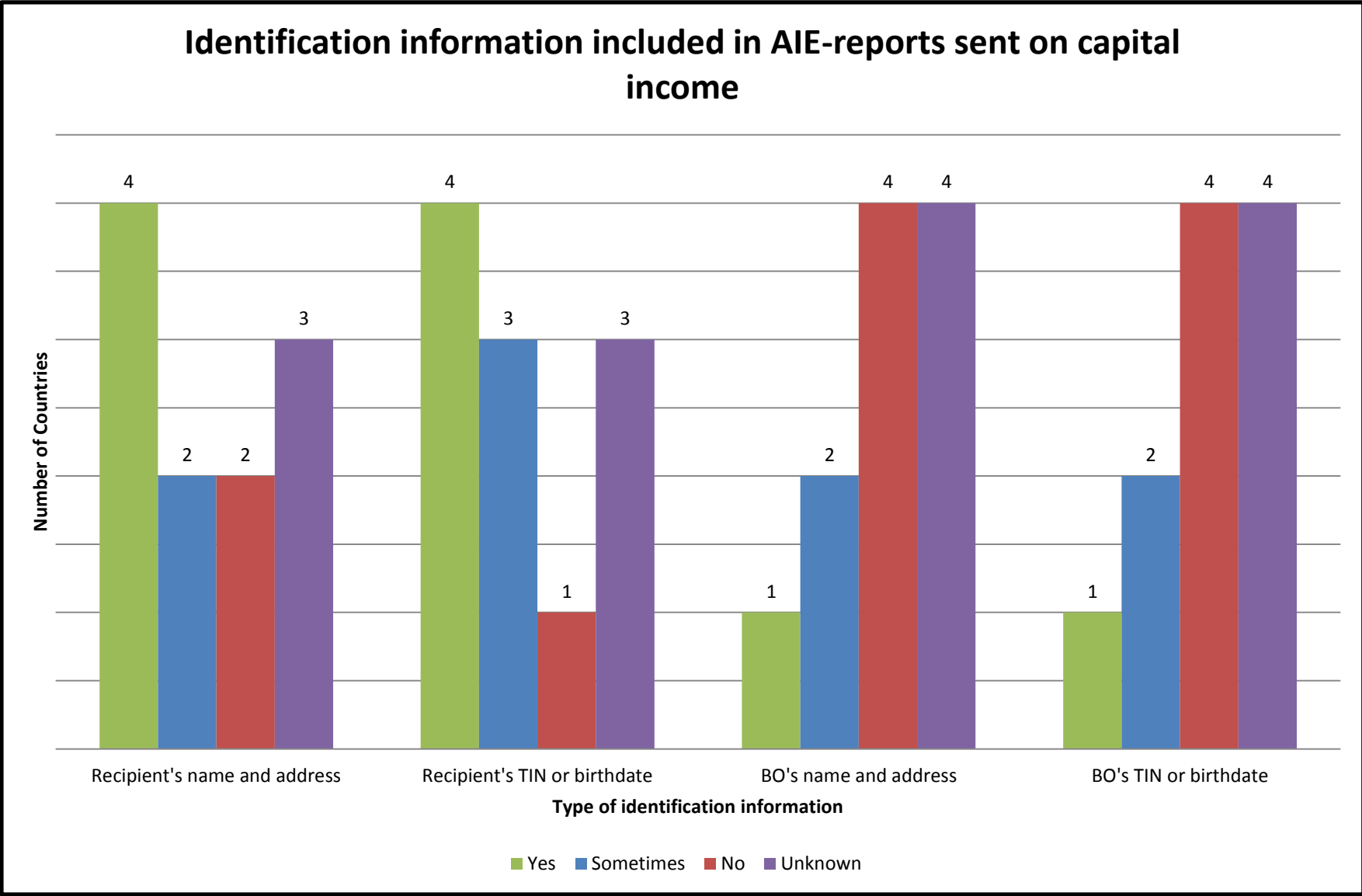
Figure 1. Automatic exchange relationships - Information sent automatically to number of countries by



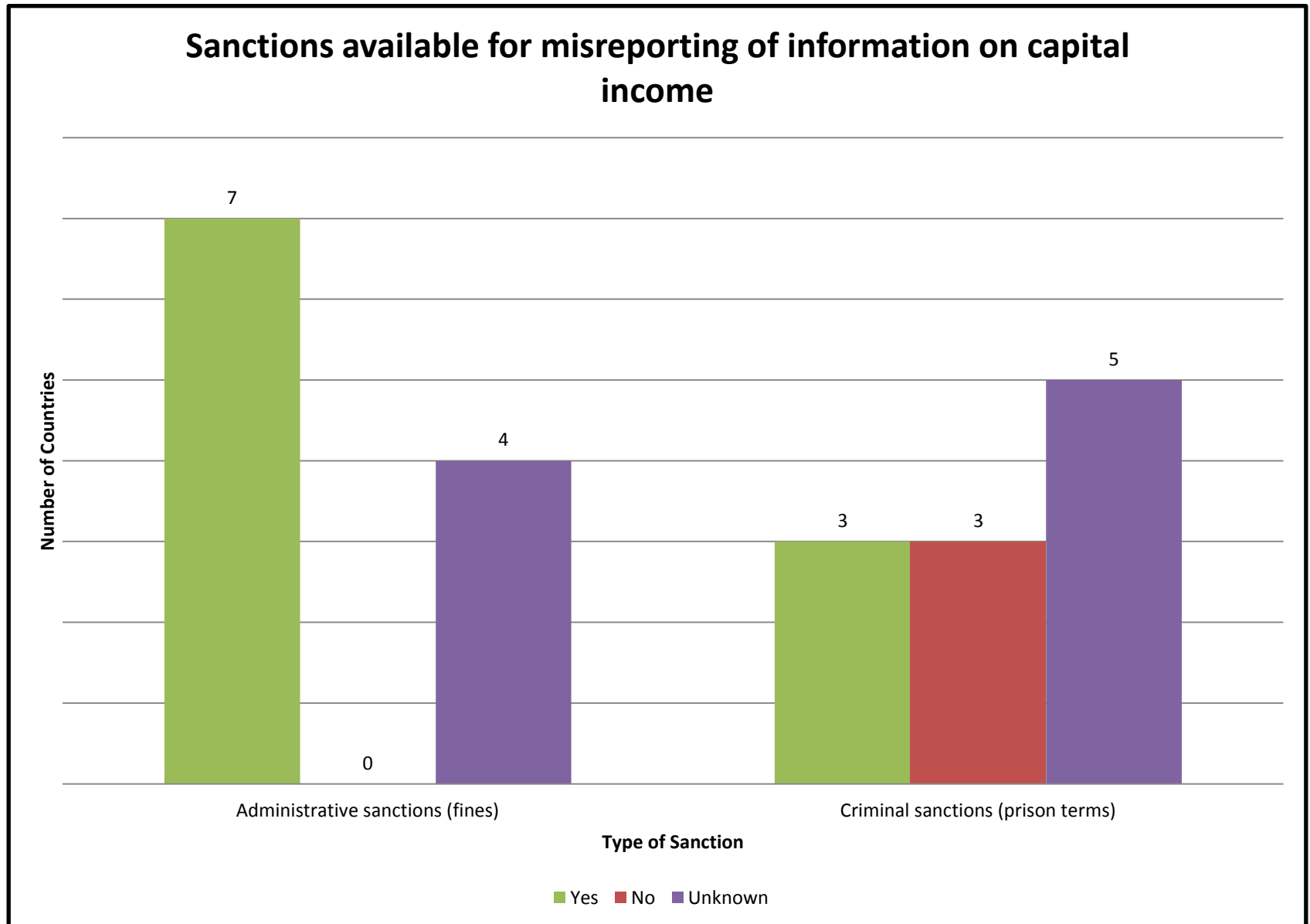
## 5) Research findings AIE



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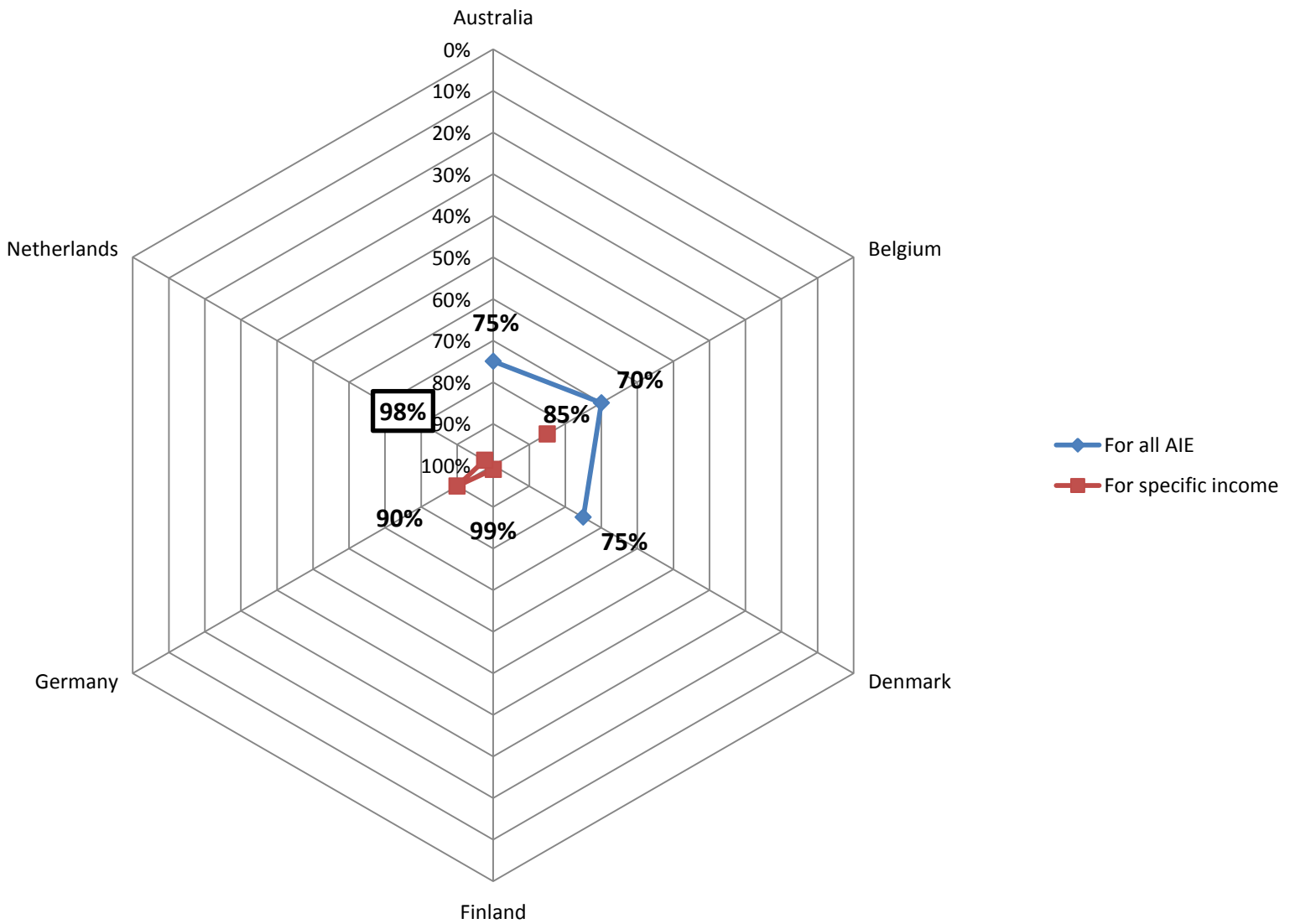
## 5) Research findings AIE





# 5) Research findings AIE

## Automatic Matching Ratios (AMR) of incoming AIE-records with taxpayer identities



- Automatic Matching Ratios (AMR) are key
  - AMRs rise across the board if clear and common protocol is available (EUSTD)
  - Key determinant for rising AMRs: TIN or birthdate (+birthplace)
  - Name and address are not enough for AMRs
  - Beneficial owner often not discerned
  - Denmark is AIE champion
- 
- Neglected issue: supervision/sanction regime

- AIE on interest/bank account information depends on bank account registries/reporting
- Since 2000, overall improvements or stasis, except USA
- Four countries have bank account database
- Out of 9 countries with info on non-res / res difference: 5 always a less stringent criterion for non-residents than for residents
- Three dimensions relevant for comparison
  - Scope of reporting (reporting)
  - Identification of account holder (identification)
  - Sanction/supervisory regime (verification)

(inspired by Grinberg 2012)

- Beneficial ownership weakest link in AIE and BAR
- „Ownerless assets“ need to be dealt with
  - for regaining tax sovereignty over wealthiest, inequality
  - as prerequisite for meaningful jubilee / debt cancelation

### Choices:

- Direct government vs. direct bank approach (EUSTD vs. FATCA)
- BO identification at bank account level and/or at legal entity/arrangement level
- Scope of reporting entities: financial intermediaries only or broader range of paying agents (trustees, CSPs)?
- Answers to questions about design of registries flow from those considerations

### a) Bilateral AIE on dividends, interest, royalties, capital gains

- DTA allow for AIE
- Pro: Quickest way forward
- Contra:
  - multiplicity of definitions/categories create legal chaos
  - lower matching ratios than multilateral solution
  - risk of triangular avoidance (through third party legal structures and entities)

### b) OECD/CoE-Convention (as amended 2010)

- 18 countries have ratified the amended Convention as of 26 November 2012
- **Pro's**
  - covers relevant tax types (capital income taxes)
  - Potential for momentum towards spontaneous and AIE
  - Easier to ask for information „upon request“ than in TIEA
  - Multilateral, could limit the plethora of bilateral treaties
  - Data protection requirements
- **Contra's**
  - No requirement to be able to obtain all relevant information (less than TIEA)
  - Vague requirement for AIE, no details, no timelines – risk of triangular avoidance (through third party legal structures and entities)
  - No statistics published, no civil society monitoring, no transparency → no effect?
  - Built-in „hail the OECD“-momentum, weakens UN's role <sup>22</sup>

### c) EU-Savings Tax Directive and Amendments

- EUSTD in force since July 2005 in European Union
- First and only multilateral AIE-system on interest payments, 42 jurisdictions (27 EU-countries and 15 additional jurisdictions with „equivalent or similar“ measures, among them ,notorious‘ tax havens such as Cayman Islands, BVI, etc.)
- Few EU exceptions: transitional period Austria and Luxembourg, withholding tax 35%
- More non-EU exceptions: 9 withholding tax, but AIE with Anguilla, Aruba, BVI, Cayman Islands, Guernsey, Isle of Man, Montserrat
- Amendments closes main loopholes of old EUSTD and of bilateral tax deals proposed by Switzerland (discretionary trusts, insurance wrappers, offshore companies)

### d) US-FATCA (Foreign Accounts Tax Compliance Act)

- Entry into force in stages from 2013 onwards
- Introduces worldwide automatic information exchange on US-accounts for all banks operating in the US
- Banks have to pay penalty taxes for US investments if they refuse (which equals giving up US business)
- Risk for US to create transparency for their citizens, but continue being tax haven
- Potential for participation of other nations in benefits of FATCA uncertain (taking Hillary Clinton's word – US could provide Pakistan with support?)



### e) Swiss Anonymous Withholding Tax Deals

BEWARE – this is a trick!

- Proposed by Swiss Bankers in December 2009 in order to save Swiss banking secrecy (Austria, UK, Germany)
- Switzerland aggressively pushes for these deals, Germany's upperhouse rejected the deal because of loopholes, injustice, etc.
- World novelty: built in amnesty, pardoning of tax evasion without admission of guilt, „repentence“, identification; with one lump sum payment, 21-41% (most evaders would pay 21-25%)
- In reality almost nobody would be caught, almost no revenue raised, because obvious loopholes in the agreements
- Key problem: fresh undeclared money cannot be identified, invites fresh undeclared funds in future

Thank you!

More Information:

- <http://taxjustice.blogspot.com/>
- <http://taxjustice.net>
- <http://treasureislands.org/>
- <http://www.tackletaxhavens.com/>

