

CARF's Impact on the Crypto Marketplace: An Equal and Opposite Reaction?

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In this article centred on the OECD's Crypto-Asset Reporting Framework (CARF), a leading US tax practitioner based in Zurich shares his expectations on the fall-out from the incoming crypto asset reporting regimes. Grounding his views in precedents from recent tax reporting for conventional asset classes, he forecasts resistance from the industry and investors, leading to novel enforcement challenges faced by tax authorities when confronted by an agile and motivated target. In closing, he sets out a series of enhanced enforcement proposals that tax authorities might adopt to further CARF compliance.

Keywords: OECD CARF, EU DAC8, crypto asset taxation/digital asset taxation, crypto asset reporting/digital asset reporting, crypto asset disclosure/digital asset disclosure, RCASP, VASP, DAO, decentralized autonomous organization, DeFi protocol.

I ARTICLE

According to Newton's Third Law of Motion, for every action, there is an equal and opposite reaction.¹ But as to what comes next, what the counter-reaction to that equal and opposite reaction could be, the great scientist is silent. In the aftermath of the coming collision between crypto and the taxman, we may be about to find out. First, we will learn the response of the crypto industry to the incoming digital assets cross-border reporting regimes based on the OECD's Crypto-Asset Reporting Framework (CARF).² What will be the reaction? Typically, this question is an academic one; the bulk of regulated parties follow the written rules so narrowly as possible and seek advantages in the interplay of any loosely – worded joints. Moreover, we have witnessed this same phenomenon previously with the CARF predecessor regime for conventional financial assets: The OECD's Common Reporting Standard (CRS).³ Thus, the kneejerk hypothesis is to assume that crypto investors and their service providers will follow the well-trod path of regulatory submission. That, however, may not be the case with CARF thanks to the intrinsic qualities of digital

assets and the mechanics of investing in them. The demands of CARF due diligence and reporting may prod service providers towards non-compliant jurisdictions or non-compliant operating models and investors towards these non-compliant service providers. Then, we will discover whether the reaction of the industry to CARF will lead tax authorities to their own counter-reactions and, if so, what those might possibly be in light of the cross-border nature of CARF and inherent portability of digital assets.

In an effort to forecast the effects of CARF on the crypto industry, the reaction thereto and the counter-reaction thereafter, this article sets forth the following topics:

- A summary of CARF, how it functions, how it differs from CRS and why it has to;
- The effect that the disclosure rules could have in remaking, or at least relocating, the key roles and relationships in the crypto financial ecosystem; and
- How the tax authorities in CARF jurisdictions might themselves react if their own taxpayers tilt towards non-CARF exchanges in large numbers.

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¹ Isaac Newton, *Philosophiæ Naturalis Principia Mathematica (Mathematical Principles of Natural Philosophy)* (1687).

² As used in this article, 'CARF' refers to OECD, *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* (10 Oct. 2022).

³ As used in this article, 'CRS' refers to OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters* (21 Jul. 2014; second ed., published 27 Mar. 2017).

2 WHAT IS CARF, HOW DOES IT FUNCTION, HOW DOES IT DIFFER FROM CRS AND WHY DOES IT HAVE TO?

Tax reporting is a popular way to regulate crypto.⁴ CARF is the OECD's version of its own CRS reporting regime, but for digital assets.⁵ Introduced in 2022 (and adopted as DAC8 by the EU in 2023⁶), seventy-five jurisdictions have committed to the implementation of a CARF-based crypto asset reporting regime.⁷ Their tax authorities must implement a framework similar to CRS. To wit, they will annually exchange information reported to them by a defined group of financial service providers, who will have applied a defined set of due diligence procedures to document their customers, so they will be able to disclose the identities and financial information of those customers resident in another CARF Jurisdiction. So far, so like CRS. The mechanics of CARF, however, can only mirror those of CRS to the extent that the mechanics of the crypto industry mirror those of the conventional financial industry.

While the concepts underpinning the CARF regime derive from CRS, modifications were necessary to reflect the different industries being governed.⁸ Key terms of the two regimes vary, shifting the focus from conventional financial assets to digital assets. More fundamentally, CRS assumes that all of its Financial Assets⁹ will be held at or through some type of financial institution. That is not the case for digital assets, which may be squirreled away under a digital mattress of infinite volume. To that end, the CRS trigger for due diligence and possible reporting – a Financial Account¹⁰ – could not plausibly serve the same function for CARF. Accordingly, the OECD targeted the processes that enable crypto owners to realize the non-digital value of their digital assets by exchanging them for fiat currencies, other crypto currencies or goods & services. Such Relevant Transactions replace Financial Accounts as the backbone of the CARF regime and, correspondingly, Reporting Crypto-Asset

Service Providers (RCASPs) replace CRS's Financial Institutions as its vertebrae.¹¹

While the strategy to hang out by the watering hole until the crypto owners show up for a drink is sound in theory, does it underrate the trust-level necessary for trading assets? Basically, when one entrusts securities and other assets to a bank, trustee or life insurer for safe-keeping, the relationship should be regarded as indefinite. One would therefore require a corresponding degree of lasting confidence in the financial counterparty itself, as well as in the integrity of the courts, political system and currency of the financial centre where the counterparty operates. For a broker, however, that relationship need not be so monogamous and life-long. Rather, one may opt to wager a small portion of overall wealth through a newly-established broker in exchange for reduced transaction charges because the cost of failure is not prohibitive. Such fickle opportunism may undermine the CARF regime.

3 HOW MIGHT CRYPTO INVESTORS AND EXCHANGES REACT TO CARF?

Despite the technological advancements that theoretically liberate blockchain users from middlemen, many crypto investors remain dependent on intermediaries to process their transactions.¹² The tax authorities expect the crypto intermediaries to comply with the CARF regulations for the same reason parties comply with other regulatory regimes: Because the alternative brings penalties and fines and possibly limitations on business practices. But, obviously, any investors keen on keeping their crypto stashes secret will be operating under a different set of priorities. Luckily for them, they no longer must contend with the trust barriers to shifting conventional wealth from one safe-keeping institution to another. So, will CARF upset the present equilibrium, where brokers are assessed based mostly on efficacy and costs, and push it towards higher risks in exchange for non-disclosure?

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⁴ 'In sum, the fact that every major prospective framework for regulating blockchain assets and digital financial markets relies on tax reporting requirements is a testament to their past effectiveness and future potential'. (Young Ran (Christine) Kim, *Tax Reporting as Regulation of Digital Financial Markets*, 80 Wash. & Lee L. Rev. 1181 at 1199 (2023)).

⁵ The CARF Standard and Commentary are available here <https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm> (accessed 1 Sep. 2025).

⁶ As used in this article, 'DAC8' or the 'DAC8 Protocol' refers to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023, on markets in cryptoassets, and amending EU Directive on Administrative Co-operation 8.

⁷ The list of committed jurisdictions as of 17 Jun. 2025 may be found here <https://www.oecd.org/content/dam/oecd/en/networks/global-forum-tax-transparency/commitments-carf.pdf> (accessed 1 Sep. 2025).

⁸ For a fuller discussion of the similarities/dissimilarities between CARF and CRS, please refer to the series of articles called *Old Tricks for New Dogs*. For example, Paul Foster Millen & Peter A. Cotorceanu, *Old Tricks for New Dogs: The OECD's Cryptoasset Reporting Framework*, 112 Tax Notes Int'l 345 (16 Oct. 2023).

⁹ Financial Assets for purposes of CRS include, inter alia, a shareholding, partnership interest, certain insurance contracts, and a beneficial interest in a trust (OECD CRS Standard, s. VIII, A7).

¹⁰ CRS broadly defines Financial Accounts beyond bank accounts to encompass, *inter alia*, shareholdings, partnership interests, beneficial interests in trusts and beneficial interests in certain insurance policies (OECD CRS Standard, s. VIII, C1).

¹¹ OECD CARF Standard, ss IV.B, IV.C.

¹² See e.g., Omri Marian, *Not 'Super Tax Havens' After All*, s. III.A (unpublished draft as of 10 Jan. 2025).

The opening inquiry is whether the imposition of such tax reporting regimes catalyses responses from taxpayers and to what extent it determines their behaviour. The empirical studies seeking to measure taxpayer reactions to the recent enactments of the United States' Foreign Account Tax Compliance Act (FATCA)¹³ and CRS offer diverse calculations and interpretations, but uniformly conclude that the overall amounts of wealth deposited in off-shore financial centre banks decreased materially following the onset of FATCA/CRS.¹⁴ While it may be true that if these regimes are successful, a reduction in off-shore asset holdings should result; it does not mean that a reduction in off-shore asset holdings necessarily evidences successful regimes. Because while the assets may no longer be held in the off-shore banks that will report the beneficial owners, that does not mean that the assets were repatriated to the taxpayers' home jurisdictions or otherwise repositioned for disclosure to local authorities.

As the studies acknowledge, there are several alternative routes out of FATCA/CRS reporting, such as:

- The establishment of non-reporting investment vehicles or of relationships with Reporting FIs that do not qualify as Financial Accounts for reporting¹⁵;
- The 'domestication' of the Account Holder through the use of Residence by Investment/Citizenship by Investment ('RBI/CBI') schemes;¹⁶
- The in-flows to US banks contemporaneous with CRS activation¹⁷; and
- Increased investment in non-financial assets, like real estate and art.¹⁸

The final point is of most interest here. It shows that in addition to CRS avoidance through shifting financial assets between financial centres and different financial institutions, money flowed out of assets defined as Financial Assets for CRS (and thus potentially subject to reporting) and into

other non-reportable asset classes marked by a proven capacity to retain their value over time. Beyond the boosts enjoyed by the real estate and art markets, other forms of collectibles, like precious metals, jewellery, watches and classic cars all enjoyed a bumper decade while traditional milieu for off-shore wealth maintenance evolved or decayed. Another beneficiary of the shift out of assets classified as Financial Assets for FATCA/CRS were digital assets. The value of digital assets rose stratospherically in the past decade in tandem with those of other non-traditional asset classes. Accordingly, an operative assumption of the OECD in instituting CARF was to blockade the 'crypto tax haven' escape route out of CRS compliance.¹⁹ Thus, with CARF shutting off the release valve for one major method of FATCA/CRS reporting avoidance, the threshold questions will be whether the routes for averting CARF reporting require ditching digital assets altogether and, if so, whether there is enough slack volume in the other non-financial asset classes to absorb the wealth built up in crypt over the past decade. If not – or because the alternative non-financial asset classes carry their own increased risks of disclosure – reluctant taxpayers will need to find ways to subvert CARF, rather than circumventing it by reducing their exposure to reportable assets, as they did for FATCA/CRS.

4 WHAT IF YOU CAN'T GO HOME, BUT CAN'T STAY HERE EITHER?

As a first and safest option, any crypto investor can eschew intermediaries. Blockchain ledgers are peer-to-peer exchanges and thus crypto investors may disintermediate the middleman from the process if they so choose. But, to do so, such investors would need to learn how. Based on the scant number that conduct their own transactions despite the additional cost (and counter-party risk) of using a third-party broker,²⁰ we can assume that few

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¹³ As used in this article, 'FATCA' refers to the Foreign Account Tax Compliance Act, which was enacted as part of the Hiring Incentives to Restore Employment Act of 2010 (P.L. 111-147) on 18 Mar. 2010.

¹⁴ S. Beer, M. D. Coelho & S. Leduc, *Hidden Treasure: The Impact of Automatic Exchange of Information on Cross-Border Tax Evasion*, Int'l Monetary Fund (2019); Hjalte Boas, Matthew Collin, Sarah Godar, Carolina Moura & Andreas Økland, *Assessing the Coverage of the Automatic Exchange of Information under the CRS* (2025) (EU Tax Observatory); E. Casi, C. Spengel & B. M. Stage, *Cross-Border Tax Evasion After the Common Reporting Standard: Game Over?*, J. Pub. Econ. 190:104240 (2020), doi: 10.1016/j.jpubeco.2020.104240.

¹⁵ For example, Noam Noked & Zachary Marcone, *Closing the 'Shell Bank' Loophole*, 64 Va. J. Int'l L. 119 (2023) (Some FIs under CRS report on their customers and some report their owners; by owning the former and operating them like the latter, Reportable Persons could go unreported); OECD, *Model Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Opaque Offshore Structures* (OECD Publishing, Paris 2018) (Measures to set up non-reporting constellations are cited amongst the chief characteristics of CRS avoidance arrangements).

¹⁶ OECD/FATF, *Misuse of Citizenship and Residency by Investment Programmes* (OECD Publishing, Paris 2023) (No domestic reporting under CRS, so if thanks to local CBI/RBI programs an Account Holder is treated as solely tax resident in the same jurisdiction as the Reporting FI holding the assets then those assets would not be reported to another, more closely-connected jurisdiction of residence).

¹⁷ Casi et al., *supra* n. 14. (The United States is not a Participating Jurisdiction for CRS and so US FIs do not submit CRS reports on any Financial Assets; the counterpoint that the United States engages in a CRS-type information exchange via the reciprocal Model 1 FATCA Intergovernmental Agreements (IGAs) is undermined by the more lenient reporting standards imposed upon US FIs under these IGAs).

¹⁸ L. De Simone, R. Lester & K. Markle, *Transparency and Tax Evasion: Evidence from the Foreign Account Tax Compliance Act (FATCA)*, J. Acct. Res. (2019) (CRS requires reporting on Financial Assets; any assets not covered in the definition thereof are out-of-scope).

¹⁹ See e.g., OECD *Delivering Tax Transparency to Crypto-Assets: A Step-by-Step Guide to Understanding and Implementing the Crypto-Asset Reporting Framework* (Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris 2024); N. Noked, *Ending the Crypto Tax Haven*, *Harvard Business Law Review*, 15 Harv. Bus. L. Rev. 171, at 173–74 (2025).

²⁰ *Ibid.*, citing Laura Grassi, Davide Lanfranchi, Alessandro Faes & Filippo Maria Renga, *Do We Still Need Financial Intermediation? The Case of Decentralized Finance – DeFi*, 19 Q. Res. Acct. & Mgmt. 323, 341 (2022), doi: 10.1108/QRAM-03-2021-0051.

investors regard a direct interaction with the blockchain as a worthwhile pursuit. So, those seeking CARF avoidance will presumably incline towards alternative options, where available.

The second option to reduce the likelihood of disclosure on undeclared crypto holdings under CARF is to patronize a broker that does not comply with CARF, but is otherwise trustworthy enough to engage with on everyday transactions. How to be sure though that the exchange defying the taxman is forthright with its customer? Counter-intuitively, the established crypto exchanges might embrace the CARF regime because regulatory compliance is expensive and burdensome. Thus, CARF compliance favours those parties best-situated to digest the costs, while stifling new, innovative rivals with regulatory moats. However, the novelty of CARF compliance may impair the perception of which parties are earnestly compliant and which parties are faking it. The demands of due diligence imposed by CARF are not new or especially onerous in nature, but their infliction on crypto asset service providers is. As such, even the best-intentioned and well-equipped RCASP compliance teams will struggle to master the techniques and intricacies of documenting beneficial owners, especially those fronted by financial intermediaries.²¹ The novelty and complexity of the CARF regime will swirl up muddy waters wherein intentional non-compliance cannot be distinguished from systematic negligence, which itself cannot be distinguished from good faith miscues. Such murkiness will enable those RCASPs who opt not to abide by CARF to sidestep the accompanying perception of untrustworthiness because even the best-run firms with the highest compliance ideals could be committing countless errors.

One presumptive differentiator should be price. Even crypto investors who are not hunting for CARF non-compliance will tend to gravitate towards non-compliant RCASPs if they appear to offer the same services at a lower cost. At that point, the compliant RCASPs may start doubting they can maintain their reputations while in a race to the bottom with griftier competitors. One solution is to go off-shore. Setting up operations in a non-CARF jurisdiction enables crypto brokers to compete against non-compliant RCASPs without the cost of trying to comply with CARF themselves. Once offshore, the cost-risk barriers are lower for

investors who may blanch at custodying large asset holdings overseas, but are less averse to risking discreet sums. For the service provider, moreover, the cost of virtue in the home jurisdiction can cast a halo over operations in non-CARF jurisdictions, which ought to further persuade wary investors of the net positive of going off-shore. And of course, those folks really keen on keeping their crypto stashes a secret face powerful incentives to disengage from parties located in CARF jurisdictions. In light of crypto's intrinsic portability and thus the geographical flexibility available to crypto investors and service providers, how hard a shove does the industry need to move off-shore *en masse*? Alternatively, RCASPs, as befits their digital natures, may regard a virtual solution as preferable to anything physical.

The grail for CARF avoidance via technology is to make a digital asset trading platform available (and functional, reliable, efficient and profitable) without any party being able to make it comply with CARF. According to the OECD's CARF Commentary:

*An individual or Entity will be considered to make available a trading platform to the extent it exercises control or sufficient influence over the platform, allowing it to comply with the {CARF} due diligence and reporting obligations.*²²

Accordingly, if no party can satisfy the 'control and sufficient influence' test over a digital asset trading platform, that trading platform is not 'made available' and thus does not qualify as an RCASP. How plausible would it be to set up and run a trading platform that no individual or entity controls?²³ More than plausible; there's a name for it: Decentralized Autonomous Organizations (DAOs).

Like the Decentralized Finance (DeFi) industry as a whole, DAOs operate via smart contracts.²⁴ However, rather than provide a service to customers based on satisfying the terms of a smart contract so as to execute a predetermined series of actions, for DAOs the rules of an entity's own governance and organizational decision-making are encoded in the smart contracts. The aim is to replace traditional mechanisms of corporate governance by ensuring that company's by-laws are 'formalised, automated and enforced using software'.²⁵ To that end, the combination of distributed-ledger technology, tokens and the collective action of token-holders can form the infrastructure to manage a business.²⁶ The need for majority-

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²¹ Millen & Cotorceanu, *Old Tricks for New Dogs, Part III: Identifying Crypto Beneficial Owners*, 115 Tax Notes Int'l 2153 (30 Sep. 2024).

²² OECD CARF Commentary to s. IV, para. 27.

²³ As Professor Noked notes in his article, *supra* n. 18, unincorporated collectives could be treated as simple partnerships (at 194) and the UK draft CARF law adopts similar reasoning by assigning liability to partners of RCASP partnerships (Art. 19), so it is not simply a matter of avoiding a recognizable corporate form for the collective.

²⁴ A smart contract is 'a computerized transaction protocol that executes terms of a contract. The general objectives of smart contract design are to satisfy common contractual conditions (such as payment terms, liens, confidentiality, and even enforcement), minimize exceptions both malicious and accidental, and minimize the need for trusted intermediaries'. Nick Szabo, *Smart Contracts* (1994) (available at <https://www.fon.hum.uva.nl/rob/Courses/InformationInSpeech/CDROM/Literature/LOTwinterschool2006/szabo.best.vwh.net/smart.contracts.html> (accessed 1 Sep. 2025)).

²⁵ See Christoph Jentzsch, *Decentralized Autonomous Organization to Automate Governance Final Draft – under Review*, at 1 (the 2015/16 'DAO White Paper' setting forth the themes and technology underlying the DAO concept) (available at https://archive.org/stream/DecentralizedAutonomousOrganizations/WhitePaper_djvu.txt (accessed 1 Sep. 2025)).

²⁶ Notably, an entity governed by a DAO need not provide DeFi or any blockchain-related services at all. For example, Slock.it, the progenitor of the DAO concept, acted like a conventional collective investment vehicle except that the investors could determine investment decisions through their tokens.

made decisions from an unincorporated, non-institutional group denies each governance token-holder adequate authority to make a DAO-run crypto trading platform 'available' in the parlance of CARF. And why stop there? If your overarching aim is to operate a crypto asset trading platform outside of the CARF regime, you could presumably pre-program the platform to NOT comply with CARF due diligence and reporting obligations, independent of the wishes of the controlling parties (whether DAO-run or not). If so immutably hardwired, then the platform could never qualify as an RCASP, irrespective of the crypto exchange services provided.²⁷ At that point, the initiative shifts to the local authorities, who will have enacted a comprehensive tax reporting law only to watch the affected parties develop new technologies to dance around it.²⁸

5 HOW MIGHT TAX AUTHORITIES COUNTER-REACT TO THE CRYPTO INDUSTRY'S REACTION TO CARF?

With ample room for gamesmanship by the digital asset service providers and the taxpayers who patronize them, CARF Jurisdictions need to be able to maintain some powerful enforcement mechanisms in their arsenals. The OECD provides scant guidance though. The 'Effective implementation' section of the CARF Standard amounts to a solitary sentence that allocates enforcement responsibility to the implementing jurisdictions.²⁹ Such an approach is consistent with its thesis of vesting each jurisdiction with the authority to implement CARF in accord with its own existing tax culture and infrastructure and not dissimilar to the one for its precursor regime, CRS.³⁰ So, what did the Participating Jurisdictions do for CRS?

Thus far, for CRS we have witnessed a grab-bag of tax enforcement policies. Several of these policies will likely be replicated for the CARF regime, such as registration plus nil reports,³¹ mandatory written policies & procedures, annual compliance certifications and audits.³²

Many jurisdictions rely on one or more of these for CRS and we may anticipate their reemergence under CARF. All of these enforcement methods benefit from the regulated party having some address where the local authorities can send notices, issue fines and, if needed, show up flashing a badge. When those regulated parties cannot be found at a physical location because they operate outside the jurisdiction or no one ostensibly controls them, many of these enforcement methods become toothless. Moreover, like a hammer seeing every problem as a nail, the instinct of regulators when faced with non-compliance tends to be stricter regulation. Proponents of this view can point to the perceived success of CRS in devising solutions to enforcement gaps, refining those solutions and then insisting that laxer CRS Participating Jurisdictions adopt them. In this case, however, higher fine amounts or more frequent examinations seem just as likely to squeeze RCASPs from the grey into the black, rather than into the white.

There are, however, alternative methods that might prove effective at persuading RCASPs to remain rooted in a CARF jurisdiction and compliant. The enhanced enforcement proposals set forth below concentrate on the measures reasonably available to local tax authorities without the need for further legislation.³³ Moreover, the proposals arise within the CARF structure, so should be attainable through guidance notes and other CARF directives.

5.1 Enhanced Enforcement Technique I: Expanded RCASP Definition

One blunt technique for enhancing the absolute number of compliant CARF reports submitted is to increase the number of parties with reporting duties. While this 'number's game' has little impact on any single party's commitment to CARF compliance and likely will lower the overall percentage of parties reporting correctly, the average number of CARF reports submitted with respect to a particular in-scope digital asset transaction should

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²⁷ The basic elements of a decentralized exchange transaction – i.e., communication of the trade, execution of the trade, and settlement of the trade – might be performed by multiple enterprises, but if each layer of the DeFi technology stack were governed by a DAO protocols or immutably programmed beyond the reach of the RCASP definition, the theory for CARF avoidance would remain intact.

²⁸ Ironically, such an outcome would be reminiscent of the explosion of crypto currencies following the advent of CRS.

²⁹ OECD CARF Standard, s. V (Similarly, DAC8 obliges all EU Member States to enact and enforce rules and administrative procedures to ensure effective implementation of, and compliance with, DAC8's reporting and due diligence procedures (The DAC8 Protocol, s. V)).

³⁰ See OECD CRS Standard, s. IX (which likewise allocates enforcement determinations to the Participating Jurisdictions, but at least offers some suggestions).

³¹ Switzerland included this requirement in the Swiss Federal Law on Exchange of Information in Tax Matters (the 'Swiss CARF Law') (Art. 15).

³² Switzerland included this requirement in the Swiss CARF Law (Art. 28).

³³ Potential legislative revisions to further enhance CARF enforcement offer a variety of options, including but not limited to:

- (1) Enhanced penalties against taxpayers underreporting the gains from crypto trades facilitated by non-CARF crypto exchanges;
- (2) A requirement for taxpayers to disclose their own Relevant Transactions made through any off-shore crypto-asset service providers (similar to the obligation for US Persons to disclose off-shore accounts via the so-called FBAR form (<https://www.irs.gov/businesses/small-businesses-self-employed/report-of-foreign-bank-and-financial-accounts-fbar>));
- (3) A ban on non-CARF crypto asset service providers from selling relevant services to the jurisdiction's taxpayers; and
- (4) An intermediary disclosure regime to compel non-taxpayer parties to Relevant Transactions to disclose them too (similar to the OECD MDRs (OECD, *Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Opaque Offshore Structures* (9 Mar. 2018))).

increase. The template for such an RCASP expansion is DAC8, which currently includes two additional parties not directly involved in the transaction itself, but near to the beneficial owners of the digital assets being transacted. Those are parties that provide either (1) advice on crypto-assets³⁴ or (2) portfolio management on crypto-assets.³⁵ By similarly targeting domestic investment advisors and managers, CARF Jurisdictions could assure that parties with incentives to conform with local requirements incur reporting obligations, even if the actual venue for the reportable transaction is elsewhere.³⁶

5.2 Enhanced Enforcement Technique 2: Expanded Jurisdictional Nexuses

The nugget of the second enforcement technique can already be found within the OECD CARF Standard. CARF expands the jurisdictional nexuses beyond CRS's nexuses³⁷ to include any party with a 'regular place of business' in a particular CARF jurisdiction.³⁸ Accordingly, a crypto asset service provider resident in and managed out of a non-CARF Jurisdiction still risks being tractor-beamed into a CARF Jurisdiction where it serves customers. While a 'regular place of business' traditionally refers to a physical locale, in the context of digital assets a more virtual construction of the term would not be absurd. Moreover, the modifier 'regular' for 'place of business' could be interpreted laxly to refer to any jurisdiction whose taxpayers used the entity's services more than one time. At that point, we've got a de facto 'doing business in' jurisdictional nexus that will pull in crypto asset firms serving a country's taxpayers from a non-CARF jurisdiction.³⁹

In its CARF legislation, Switzerland already exploits the nexus framework to expand the cohort of crypto asset service providers that must register with the Federal Tax Authority (FTA) to include those that may in fact be reporting elsewhere.⁴⁰ Unlike the standard 'Swiss RCASPs' which must perform all the compliance duties mentioned above, 'Relevant RCASPs' register but do not report.⁴¹ Instead, Relevant RCASPs must submit an annual certification naming the CARF Jurisdiction where they do report and the basis for the nexus with that other CARF Jurisdiction.⁴² The end result of these dual RCASPs is that a service provider that is technically outside of Switzerland's reach – due to a closer connection with another CARF Jurisdiction – nonetheless will incur compliance obligations under Swiss CARF.⁴³

5.3 Enhanced Enforcement Technique 3: Group-Level Compliance

The second enforcement enhancement proposal derives from FATCA, the predecessor to CRS for US Person reporting. As an extra-territorial version of CRS, FATCA needed tools to deter financial groups from hiving off some non-compliant subsidiaries to service non-compliant US Persons under the umbrella of a compliant overall group. The solution was a 'one bad apple' rule, requiring all members of an Expanded Affiliated Group (EAG) to be FATCA compliant or none was.⁴⁴ A similar rule could apply in CARF to prevent local RCASPs from setting up non-compliant off-shore operations. A CARF EAG-like rule would oblige registering RCASPs to certify that all members of the affiliated

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³⁴ Providing advice on crypto-assets means 'offering, giving or agreeing to give personalised recommendations to a client, either at the client's request or on the initiative of the crypto-asset service provider providing the advice, in respect of one or more transactions relating to crypto-assets, or the use of crypto-asset services' (the scope of the term is incorporated by reference into DAC8 from MICA Art. 3(24)).

³⁵ Providing portfolio management of crypto-assets means 'managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more crypto-assets' (the scope of the term is incorporated by reference into DAC8 from MICA Art. 3(25)).

³⁶ The UK CARF Guidance demonstrates a similar understanding of how best to compel compliance by not permitting RCASPs with any UK jurisdictional nexus to report on any reportable UK residents from any other jurisdiction (uniquely, thus far, UK CARF includes domestic reporting as well). Thus, if an RCASP resident in France has a 'regular place of business' in the UK, it must report any reportable UK residents to His Majesty's Revenue Commission ('HMRC'), but may report residents of any other jurisdictions to the French tax authorities, provided that the relevant conditions are met (HMRC, International Exchange of Information Manual, IEIM 8000350).

³⁷ For a fuller look at CARF's jurisdictional nexus points, please refer to Cotorceanu & Millen, *Old Tricks for New Dogs, Part II: The OECD's Cryptoasset Reporting Framework*, 114 Tax Notes Int'l 203, 207–208 (8 Apr. 2024).

³⁸ And not just the principal place of business, but all regular places of business (OECD CARF Commentary to s. I, para. 2).

³⁹ In a new FAQ issued in Dec. 2025, the OECD stated that the existence of a group of customers within a certain CARF Jurisdiction did not satisfy the 'regular place of business' nexus for purposes of CARF (OECD CARF FAQs, FAQ I.1).

⁴⁰ Compare definitions of Swiss RCASPs with Relevant RCASPs in the Swiss CARF Law (Art. 2(b)(4)).

⁴¹ Compare Swiss RCASPs with Relevant RCASPs in terms of registration and of reporting in the Swiss CARF Law (Arts 13 and 15, respectively).

⁴² Swiss CARF Law, Art. 15.

⁴³ According to the formal explanatory letter accompanying the legislation, the reason for this provision is to 'ensure[] that the FTA is aware of the reporting obligations of all relevant reporting providers of crypto services and can verify [their CARF compliance]'. *Message on the Approval of the Addendum to the AEOI Agreement Financial Accounts and the AEOI Agreement on Crypto Assets and amending the Federal Act on international automatic exchange of information in Tax Matters*, to Art. 15 (translated from the original German by Google machine translate). The same letter subsequently states that the regulation of non-Swiss parties also extends to the FTA reviewing their qualification as an RCASP. *Ibid.* Art. 25, para. 1.

⁴⁴ US Treas. Regs. §1.1471-4(a)(4).

group providing RCASP-type services are reporting in a CARF jurisdiction. The penalty could be monetary or it could be the threat of compulsory de-registration for the RCASPs in that jurisdiction.⁴⁵

5.4 Enhanced Enforcement Technique 4: DeFi Developer Crackdown

DeFi protocols, exemplified by DAOs, present a problem as-yet unaddressed under other reporting regimes. In recognition of the new challenge, the OECD issued an FAQ, deferring the implementation of the 'control and sufficient influence' test to DeFi entities until CARF Jurisdictions develop the means to combat the challenges set forth in the prior section.⁴⁶ How might they use the extra time? To contend with the risks posed by DeFi platforms, the local CARF guidance notes could shift the compliance burden to the algorithm programmers. Essentially, in the absence of any party who meets the 'control and sufficient influence' test, the local guidance notes could deem any identifiable party responsible for programming (or purchasing and setting up) the algorithm as that party. The result would be that the platform would qualify as an RCASP and thus need to find a path to compliance, thereby shifting the compliance onus from the tax authority to the 'programmers', who could then be held liable for any defects.

6 CONCLUSION

The success of CARF or of any other regime seeking to regulate digital assets is far from assured. By relying on previous disclosure regimes for conventional financial assets, the OECD delivered a ready-made framework that promises success based on past accomplishments. Questions remain though whether the portability and virtual nature of the assets will foil the efforts of tax authorities to obtain data on their beneficial ownership. The answers to the questions will be determined by the reactions of the crypto industry – both of investors and service providers – and then the reactions of the tax authorities to any large-scale non-compliance with CARF.

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Notes

⁴⁵ Professor Noked also discusses FATCA-derived solutions to CARF non-compliance via the identification numbers assigned to FATCA registrants and used by them for documentation purposes (see Noked, *supra* n. 18, at 206–07).

⁴⁶ OECD CARF FAQs, FAQ IV.1.

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