

# Legal Implications of FATCA in Indonesia: An Analysis of the Viability of the IGA Model 1C Approach

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## Abstract

*This article critically examines the implementation of FATCA in Indonesia and its implications for national legal sovereignty, the principle of bank secrecy, and personal data protection. Although FATCA operates as a unilateral U.S. regime with extraterritorial effects, its enforcement through IGAs has pressured states to reconcile global tax transparency obligations with domestic legal frameworks. Using normative legal research, this study analyzes statutory instruments, international agreements, and institutional practices to evaluate the viability of IGA Model 1C within the Indonesian legal framework. The study finds that Indonesia has not merely complied with FATCA but has adopted a mediated approach through the IGA Model 1C framework, conceptualized as the Hybrid Sovereignty Compliance Model. The findings demonstrate that the IGA Model 1C approach constitutes a legally and institutionally viable mechanism. It enables compliance with FATCA while preserving regulatory control through domestic legal authority and institutional coordination. Sovereignty is maintained through three key indicators: the use of domestic legal authority as the basis for data disclosure, the presence of institutional gatekeeping mechanisms, and the alignment of FATCA obligations with multilateral frameworks, particularly the OECD-led AEOI mechanism, which is operationalized through the CRS. This study contributes to the literature by offering a doctrinal and policy-oriented framework for understanding how developing states can strategically navigate asymmetrical global tax regimes while maintaining constitutional and regulatory integrity.*

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## Introduction

The United States has long faced significant challenges related to tax avoidance and evasion by its citizens, particularly through offshore bank accounts beyond its jurisdiction.<sup>1</sup> In response, the U.S. government enacted the Foreign Account Tax Compliance Act (FATCA), which requires foreign financial institutions (FFIs) to report financial account information suspected to be owned by U.S. persons to the Internal Revenue Service (IRS).<sup>2</sup>

However, the implementation of FATCA raises substantial legal challenges, particularly in jurisdictions with strict banking secrecy laws, including Indonesia. Under Article 41 of Law No. 10 of 1998 on Banking, customer confidentiality is generally protected, and disclosure is restricted without proper legal basis.<sup>3</sup> To address this conflict, FATCA introduces the Intergovernmental Agreement (IGA) agreement, which allows states to align FATCA obligation with their domestic legal frameworks. In Indonesia, this agreement is operationalized through a customer consent framework and statutory exceptions to banking secrecy stipulated in Article 44 of the Banking Law.<sup>4</sup>

Despite being a unilateral U.S. regulation, FATCA has global impacts. It compels FFIs worldwide to identify, classify, and report accounts held by U.S. persons, with non-compliance resulting in a 30% withholding tax on U.S.-sourced income. Consequently, states face significant pressure to adapt their legal systems to accommodate FATCA requirements.<sup>5</sup>

Indonesia responded to FATCA by entering into a bilateral cooperation framework through the IGA agreement. This policy decision was influenced by several considerations: (1) the strategic importance of maintaining a comprehensive partnership with the U.S.; (2) the necessity of protecting domestic financial institutions from the detrimental effects of the withholding tax, which could threaten their operational sustainability; and (3) the opportunity to trace Indonesian citizens engaging in offshore tax avoidance schemes.<sup>6</sup>

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<sup>1</sup> Nadia Omar et al., "Addressing Offshore Tax Evasion Challenges in the Rising of Digitalization Economy," *Environment-Behaviour Proceedings Journal* 6, no. 18 (2021): 18, <https://doi.org/10.21834/ebpj.v6i18.3019>.

<sup>2</sup> Lisa De Simone et al., "Transparency and Tax Evasion: Evidence from the Foreign Account Tax Compliance Act (FATCA)," *Journal of Accounting Research* 58, no. 1 (2020): 105-53, <https://doi.org/10.1111/1475-679X.12293>.

<sup>3</sup> Erma Defiana Putriyanti et al., "An Examination of Human Rights Related to the Protection of Debtor Customer Data and Information Through Bank Secrecy Rules," *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)* 7, no. 1 (2025): 1, <https://doi.org/10.47006/ijierm.v7i1.389>.

<sup>4</sup> Dwi Ratna Indri Hapsari and Kukuh Dwi Kurniawan, "Consumer Protection in the Banking Credit Agreement in Accordance with the Principle of Proportionality under Indonesian Laws," *Fiat Justisia: Jurnal Ilmu Hukum* 14, no. 4 (2020): 4, <https://doi.org/10.25041/fiatjustisia.v14no4.1884>.

<sup>5</sup> Mustapha Abdulrasaq and Abdullahi Adio Babatunde, "Tax Enforcement Strategy: The Antidote to Non-Tax Compliance in North-West Nigeria," *Journal of Business Management and Accounting* 14, no. 1 (2024): 1, <https://doi.org/10.32890/jbma2024.14.1.3>.

<sup>6</sup> Dewa Ayu Eka Krisna Putri and I. Gede Agus Kurniawan, "Effectiveness of Open Access to Customer Financial Information for Tax Interests in Denpasar," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (2023): 2, <https://doi.org/10.37680/almanhaj.v5i2.2847>.

In addition to domestic considerations, Indonesia considered external dynamics, particularly the support for FATCA expressed by member states of the G-20 and the Organisation for Economic Cooperation and Development (OECD). These international actors have adopted FATCA as a reference point in developing a global framework for tax information exchange aimed at combating tax evasion. This international commitment has compelled Indonesia to adopt a cooperative stance to avoid isolation from the global financial and investment systems. Moreover, reciprocal information exchange offers Indonesia a valuable mechanism to enhance domestic tax compliance.<sup>7</sup>

Despite the global momentum toward tax transparency and cross-border financial accountability, there remains an absence of critical and juridical scholarship in Indonesia that thoroughly evaluates the implementation of the FATCA within the domestic legal framework. Specifically, very few studies have analyzed its implications on Indonesia's legal sovereignty and the principle of bank secrecy under Law No. 10/1998.<sup>8</sup> While Akhyar discusses the legal friction between FATCA's reporting obligations and bank secrecy norms,<sup>9</sup> and Tuteurima outlines normative inconsistencies involving client data disclosure, which remain descriptive,<sup>10</sup> these studies remain largely descriptive and fall short of offering a doctrinal critique of how FATCA challenges Indonesia's regulatory autonomy or affects the institutional integrity. Furthermore, although Yasa et al. examine compliance burdens under the broader AEOI regime, their findings do not isolate the specific legal tensions or implementation risks associated with FATCA's extraterritorial enforcement in Indonesia.<sup>11</sup>

This article addresses this gap by moving beyond descriptive analysis and proposing a new doctrinal framework, namely the Hybrid Sovereignty Compliance Model, which conceptualizes Indonesia's FATCA implementation as a form of mediated compliance. Rather than treating FATCA solely as an external obligation, this model explains how institutional coordination between financial regulators and tax authorities enables Indonesia to reconcile extraterritorial tax enforcement with national legal sovereignty. Building on this framework, this study not only evaluates the legal implications of FATCA in Indonesia but also provides a theoretical lens to assess the viability of the IGA Model 1C approach as a structured response to the tension between global tax obligations and national legal sovereignty.

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<sup>7</sup> Leo Ahrens and Fabio Bothner, "The Big Bang: Tax Evasion After Automatic Exchange of Information Under FATCA and CRS," *New Political Economy* 25, no. 6 (2020): 849–64, <https://doi.org/10.1080/13563467.2019.1639651>.

<sup>8</sup> Suryadi Suryadi et al., "Inconsistency in Freedom of Contract for Banking Dispute Resolution in Indonesia," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 2, <https://doi.org/10.22219/ljih.v32i2.33121>.

<sup>9</sup> Irfan Akhyar, "Pengaturan Foreign Account Tax Compliance Act (FATCA) Terhadap Prinsip Kerahasiaan Bank Di Indonesia," *Jurnal Mitra Pembangunan Hukum* 1, no. 1 (2016): 1.

<sup>10</sup> Olivia Tuteurima, "Kajian Hukum Terhadap Penerapan Foreign Account Tax Compliance Act (FATCA) Pada Sektor Perbankan Di Indonesia," *INKRACHT* 2, no. 1 (2018): 123–33.

<sup>11</sup> Putu Gede Arya Sumerta Yasa et al., "Automatic Exchange of Information (AEOI) for Indonesian Tax Purposes: Economic Analysis of Law Approach," *Lex Scientia Law Review* 6, no. 1 (2022): 157–86, <https://doi.org/10.15294/lesrev.v6i1.55143>.

## Problem Statement

Implementing FATCA in Indonesia through the IGA Model 1 framework presents a complex legal dilemma involving the intersection of global tax enforcement and national legal sovereignty. While intended to enhance international tax transparency, FATCA's extraterritorial reporting obligations may conflict with Indonesia's banking secrecy laws and emerging personal data protection regulations. Moreover, insufficient scholarly analysis has resulted in limited doctrinal clarity on whether the current implementation offers adequate legal safeguards and regulatory efficiency for financial institutions operating in Indonesia. These challenges raise fundamental questions regarding the legal implications of FATCA implementation in Indonesia, particularly in reconciling compliance with FATCA obligations while maintaining regulatory autonomy and institutional coherence. In particular, the absence of a clearly articulated framework governing the relationship between financial regulators and tax authorities.

Accordingly, this study evaluates the viability of the IGA Model 1C approach as a mediated compliance mechanism and develops a conceptual framework, referred to as the Hybrid Sovereignty Compliance Model, to explain how institutional coordination can balance global tax obligations with national legal sovereignty. Therefore, this study offers a doctrinal and policy-oriented analysis of FATCA implementation in Indonesia, providing a structured response to the legal tensions arising from extraterritorial tax enforcement and national legal principles.

## Methods

This study employs a normative juridical method by examining secondary legal materials to analyze the implementation of the FATCA in Indonesia. It integrates several legal approaches, namely the statutory, conceptual, and comparative approaches. The statutory approach analyzes relevant legal instruments, including national legislation such as Law No. 10 of 1998 on Banking, Law No. 9 of 2017 on Access to Financial Information for Tax Purposes, and Law No. 27 of 2022 on Personal Data Protection, as well as international agreement, particularly Indonesia-US FATCA IGA. It also considers regulatory frameworks governing financial information disclosure. The conceptual approach applies legal doctrines, especially the theory of state sovereignty, to assess FATCA as an extraterritorial regime and its implications for Indonesia's regulatory autonomy, while also supporting the development of the Hybrid Sovereignty Compliance Model as a doctrinal framework. Furthermore, the comparative approach draws on international practices and OECD standards to contextualize Indonesia's position within the global tax transparency regime. Through doctrinal legal analysis, this study evaluates the legal implications and the viability of the IGA Model 1C approach in balancing global tax compliance with national legal principles.

## Exchange of Tax Information by FATCA

The evolution of the U.S.' offshore tax enforcement regime illustrates a structural shift from cooperative compliance toward coercive extraterritorial regulation. The earlier Qualified Intermediary (QI) regime, while designed to enhance transparency among FFIs, relied heavily on voluntary compliance and lacked effective enforcement mechanisms,

particularly the absence of withholding sanctions.<sup>12</sup> As a result, it failed to deter systemic non-compliance, with estimates suggesting that the U.S. lost approximately USD 100 million annually due to unreported offshore income.<sup>13</sup> This limitation underscores a fundamental weakness in soft-law-based tax cooperation, where enforcement depends on institutional goodwill rather than legal binding coercion.

In response, the U.S. enacted the FATCA in 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act, marking a significant departure from prior approaches.<sup>14</sup> FATCA emerged in the aftermath of the 2008 global financial crisis and was further catalysed by the UBS AG scandal, in which the U.S. Department of Justice compelled the Swiss bank to disclose approximately 52,000 U.S. account holders linked to nearly USD 14.8 billion in undeclared offshore assets. While the case exposed the limits of traditional bank secrecy regimes, it also demonstrated how domestic confidentiality laws could be overridden through external legal and economic pressure. In this sense, FATCA did not merely respond to tax evasion, it redefined the legal boundaries of financial secrecy in a globalized regulatory environment.<sup>15</sup>

This transformation was operationalized through FATCA's core mechanism, codified in Sections 1471–1474 of the Internal Revenue Code (IRC). Section 1471(a) imposes a 30% withholding tax on U.S.-sourced income, encompassing dividends, interest, salaries, and proceeds from the sale of U.S. securities to non-compliant FFIs.<sup>16</sup> This enforcement tool transforms FATCA from a regulatory framework into a system of economic coercion, effectively compelling foreign institutions to enter into a Foreign Financial Institution Agreement (FFIA) with the IRS.<sup>17</sup>

Beyond FFIs, FATCA extends its compliance framework to Non-Financial Foreign Entities (NFFEs), requiring disclosure of substantial U.S. ownership, while U.S. taxpayers must report foreign financial assets through Form 8938, with penalties reaching up to USD 50,000 and 40% of underreported income. Collectively, these provisions expand tax enforcement across institutional and individual actors, thereby extending U.S. regulatory reach beyond traditional territorial limits.<sup>18</sup>

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<sup>12</sup> Lukas Hakelberg and Thomas Rixen, "Is Neoliberalism Still Spreading? The Impact of International Cooperation on Capital Taxation," *Review of International Political Economy* 28, no. 5 (2021): 1142–68, <https://doi.org/10.1080/09692290.2020.1752769>.

<sup>13</sup> Guangjie Lv et al., "Blockchain-Based Traceability for Agricultural Products: A Systematic Literature Review," *Agriculture* 13, no. 9 (2023): 9, <https://doi.org/10.3390/agriculture13091757>.

<sup>14</sup> Morenika Saula, "How a Central Bank Digital Currency Could Help Curb Tax Evasion and Other Financial Crimes," *UC Law Business Journal* 21, no. 2 (2024): 149–86, <https://doi.org/10.1787/f95790b1-en>.

<sup>15</sup> Florian Überbacher and Andreas Georg Scherer, "Indirect Compellence and Institutional Change: U.S. Extraterritorial Law Enforcement and the Erosion of Swiss Banking Secrecy," *Administrative Science Quarterly* 65, no. 3 (2020): 565–605, <https://doi.org/10.1177/0001839219855033>.

<sup>16</sup> Carmela D'Avino, "Counteracting Offshore Tax Evasion: Evidence from the Foreign Account Tax Compliance Act," *International Review of Law and Economics* 73 (March 2023): 106126, <https://doi.org/10.1016/j.irle.2023.106126>.

<sup>17</sup> Khairi Ibrahim Murad, "The Extent to Which Financial Institutions Comply With The US FATCA Law," *Indonesian Journal of Law and Economics Review* 18, no. 2 (2023): 2, <https://doi.org/10.21070/ijler.v19i0.914>.

<sup>18</sup> Roland A. Pfister, "Rethinking the International Tax Transparency Framework," *Trusts & Trustees* (Oxford, United Kingdom) 28, no. 6 (2022): 471–81, <https://doi.org/10.1093/tandt/ttac057>.

From a legal perspective, these mechanisms transform FATCA into a system of economic coercion and regulatory externalization. By shifting enforcement responsibilities to private actors and foreign entities, FATCA raises critical concerns regarding jurisdictional overreach, the privatization of regulatory obligations, and the compatibility of such measures with domestic legal frameworks, particularly those grounded in bank secrecy and data protection principles.<sup>19</sup>

To operationalize this extraterritorial framework, FATCA relies on two primary implementation pathways: direct reporting by financial institutions (Business-to-Government or B2G model) and intergovernmental cooperation through IGAs. Under the B2G model, FFIs report directly to the IRS pursuant to FFIsAs, without mediation by domestic authorities.<sup>20</sup> While this approach offers operational flexibility, it exposes financial institutions to significant legal risks, including conflicts with domestic secrecy laws, high compliance costs, and the absence of state-level legal protection in the event of disputes.<sup>21</sup> As such, the B2G model represents the most direct form of extraterritorial enforcement, where foreign entities are effectively subordinated to U.S. regulatory demands.

In response to these legal tensions, IGAs were developed as a mechanism to reconcile FATCA obligations with domestic legal frameworks. Under this model, FATCA mandates financial institutions to report information on U.S. account holders through procedures established within bilateral agreements between the U.S. and partner jurisdictions. These agreements define due diligence standards, data collection processes, and mechanisms for cross-border information exchange, thereby embedding FATCA compliance within domestic regulatory systems.<sup>22</sup>

Two principal IGA models are recognized: Model 1, which facilitates automatic government-to-government exchange of information, and Model 2, which permits direct reporting by FFIs to the IRS, typically on a request basis. Model 1 is further divided into reciprocal (Model 1A) and non-reciprocal (Model 1B) variants. While Model 1A formally incorporates reciprocity, its application remains limited to jurisdictions with existing tax treaties or Tax Information Exchange Agreements (TIEAs), and even then, the scope of reciprocal exchange is often asymmetrical. Conversely, Model 1B imposes reporting

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<sup>19</sup> Julia Schmidt, "The Legality of Unilateral Extra-Territorial Sanctions under International Law," *Journal of Conflict and Security Law* 27, no. 1 (2022): 53–81, <https://doi.org/10.1093/jcsl/krac005>.

<sup>20</sup> Dao Kim Anh, "The Evolution of ASEAN International Investment Agreements: Insights from the Past and Future Directions," *VNU Journal of Science: Legal Studies* 41, no. 1 (2025): 1, <https://doi.org/10.25073/2588-1167/vnuls.4743>.

<sup>21</sup> Khakan Najaf et al., "Understanding the Implications of FinTech Peer-to-Peer (P2P) Lending during the COVID-19 Pandemic," *Journal of Sustainable Finance & Investment*, January 2, 2022, world, <https://www.tandfonline.com/doi/full/10.1080/20430795.2021.1917225>.

<sup>22</sup> Tivana Arbiani Candini et al., "The Possible Regulation Model To Optimize The Automatic Exchange Of Information (Aeoi) In Indonesia Through Directorate General Of Taxation, Ministry Of Finance And Financial Services Authority," *International Journal of Business, Economics, and Social Development* 3, no. 1 (2022): 1, <https://doi.org/10.46336/ijbesd.v3i1.189>.

obligations without requiring equivalent data sharing by the U.S., thereby reinforcing the unilateral character of FATCA's global framework.<sup>23</sup>

Although IGAs are often presented as cooperative legal instruments, their widespread adoption reflects a deeper process of regulatory diffusion driven by U.S. economic power. By conditioning access to U.S.-sourced income and financial markets on FATCA compliance, the U.S. effectively incentivizes states to modify their domestic legal regimes, including relaxing bank secrecy rules and expanding data disclosure obligations. In this sense, IGAs do not merely facilitate compliance, they institutionalize extraterritorial tax enforcement within national legal systems. Therefore, FATCA's exchange of information regime should not be understood solely as a technical reporting mechanism, but as a legal instrument that restructures the relationship between sovereignty, financial regulation, and global tax governance. The progression from the failure of the QI regime to the emergence of FATCA, the use of economic coercion, the reliance on B2G enforcement, and ultimately the institutionalization of compliance through IGAs collectively demonstrate how international tax law is increasingly shaped by asymmetrical power dynamics.<sup>24</sup>

### How Does FATCA Affect the Application of Secrecy?

FATCA significantly reshapes the traditional application of financial secrecy by imposing extensive reporting obligations on FFIs, backed by a 30% withholding tax on U.S.-sourced payments to non-compliant entities. This enforcement mechanism extends to various categories of income, including Fixed, Determinable, Annual, or Periodical (FDAP) income,<sup>25</sup> as well as pass-through payments to recalcitrant account holders and non-participating FFIs.<sup>26</sup>

Coupled with reporting thresholds targeting high-value accounts, USD 50,000 for individuals and USD 250,000 for entities, FATCA effectively overrides the traditional principle of bank secrecy by mandating the disclosure of financial information for tax enforcement. Consequently, it transforms confidentiality from a protected legal norm into a conditional privilege subject to regulatory transparency.<sup>27</sup>

From a legal standpoint, this shift introduces a structural tension between FATCA's extraterritorial reporting obligations and domestic legal frameworks that safeguard financial secrecy and personal data. This tension is particularly evident in jurisdictions that traditionally uphold strict confidentiality standards, where compliance with FATCA necessitates either legal reform or interpretative adaptation. The IGA Model 1 framework

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<sup>23</sup> Aaron Rapport and Brian Rathbun, "Parties to an Alliance: Ideology and the Domestic Politics of International Institutionalization," *Journal of Peace Research* 58, no. 2 (2021): 279–93, <https://doi.org/10.1177/0022343319900916>.

<sup>24</sup> James Alm, "Tax Evasion, Technology, and Inequality," *Economics of Governance* (Heidelberg, Netherlands) 22, no. 4 (2021): 321–43, <https://doi.org/10.1007/s10101-021-00247-w>.

<sup>25</sup> Dries Lesage et al., "The BRICs and International Tax Governance: The Case of Automatic Exchange of Information," *New Political Economy* 25, no. 5 (2020): 715–33, world.

<sup>26</sup> Patrick Brockett et al., "Medicaid Managed Care: Efficiency, Medical Loss Ratio, and Quality of Care," *North American Actuarial Journal* 25, no. 1 (2021): 1–16, <https://doi.org/10.1080/10920277.2019.1678044>.

<sup>27</sup> Agustín Bénétrix et al., "Automatic for the (Tax) People: Information Sharing and Cross-Border Investment in Tax Havens\*," *Economic Policy* 39, no. 120 (2024): 853–95, <https://doi.org/10.1093/epolic/eiae041>.

attempts to mediate this conflict by channelling reporting obligations through domestic competent authorities, thereby reducing the risk of direct violations of national bank secrecy laws. However, this mediation does not eliminate the underlying tension, rather, it reconfigures it within domestic legal systems by aligning internal regulatory mechanisms with external compliance demands.<sup>28</sup>

A comparative perspective is essential to understanding the broader implications of FATCA within the global tax transparency regime. In this regard, the European Union (EU) provides a significant point of reference, particularly due to its strong legal framework on data protection and privacy. Within the EU, where personal data protection is rigorously safeguarded under the General Data Protection Regulation (GDPR), FATCA has generated substantial legal tension. The transfer of financial data to a third country without equivalent safeguards raises serious concerns regarding compliance with fundamental data protection principles, including proportionality, purpose limitation, and legal certainty.<sup>29</sup>

This tension is compounded by FATCA's asymmetrical structure, under which EU financial institutions are subject to extensive reporting obligations, while the U.S. does not provide fully reciprocal information. From a legal standpoint, this asymmetry challenges core principles of international cooperation, including proportionality, fairness, and legal certainty, and has also led to practical consequences such as restricted financial access for certain individuals, including so-called "accidental Americans".<sup>30</sup>

In response, EU institutions, particularly the European Parliament, have called for a reassessment of FATCA implementation, including the possibility of suspending or renegotiating IGAs unless greater reciprocity and alignment with EU legal standards are ensured.<sup>31</sup> These developments have also prompted reactions from the U.S., including legislative proposals aimed at enhancing reciprocal reporting obligations, although structural imbalances remain.<sup>32</sup> The EU has also explored potential countermeasures, such as the adoption of blocking regulations or equivalent withholding mechanisms, reflecting broader efforts to reassert regulatory sovereignty and restore balance in international tax cooperation.<sup>33</sup>

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<sup>28</sup> Martin Hearson and Todd N. Tucker, "'An Unacceptable Surrender of Fiscal Sovereignty': The Neoliberal Turn to International Tax Arbitration," Article, *Perspectives on Politics* (Cambridge, United Kingdom) 21, no. 1 (2023): 225–40, <https://doi.org/10.1017/S1537592721000967>.

<sup>29</sup> Leo Ahrens and Fabio Bothner, "The Big Bang: Tax Evasion After Automatic Exchange of Information Under FATCA and CRS," *New Political Economy* 25, no. 6 (2020): 849–64, world, <https://doi.org/10.1080/13563467.2019.1639651>.

<sup>30</sup> Filippo Nosedà, "FATCA, CRS and Public BO Registers: A Report on the Direction of Travel—the next 12 Months1," *Trusts & Trustees* 28, no. 6 (2022): 482–87, <https://doi.org/10.1093/tandt/ttac067>.

<sup>31</sup> Philipp Thaler and Vija Pakalkaite, "Governance through Real-Time Compliance: The Supranationalisation of European External Energy Policy," *Journal of European Public Policy* 28, no. 2 (2021): 208–28, world, <https://doi.org/10.1080/13501763.2020.1712462>.

<sup>32</sup> Erica L. Neuman, "A Historical Overview of the Computerization of the Internal Revenue Service," *Accounting Historians Journal* 50, no. 2 (2023): 93–110, <https://doi.org/10.2308/AAHJ-2022-014>.

<sup>33</sup> David Hadwick, "Slipping Through the Cracks, the Carve-Outs for AI Tax Enforcement Systems in the EU AI Act," *European Papers - A Journal on Law and Integration* 2024 9, no. 3 (2024): 936–55, <https://doi.org/10.15166/2499-8249/793>.

At the same time, the EU's approach must be understood within the broader framework of multilateral tax transparency, particularly the OECD's Automatic Exchange of Information (AEOI) system. AEOI refers to the mechanism through which jurisdictions automatically exchange financial account information on a reciprocal basis. Within this framework, the OECD's Common Reporting Standard (CRS) provides the substantive and technical standards governing the collection, reporting, and exchange of such information among participating states. Unlike FATCA, which operates as a unilateral regime driven by U.S. domestic law, the CRS/AEOI framework is based on multilateral and reciprocal cooperation, offering a more balanced model of cross-border information exchange.<sup>34</sup> Accordingly, the EU experience illustrates that FATCA does not merely weaken bank secrecy, but fundamentally reshapes the legal architecture of financial information governance by transforming confidentiality into a conditional obligation while exposing persistent tensions between transparency, sovereignty, and fundamental rights.

In contrast to the EU, Indonesia's response to FATCA reflects a mediated compliance model rooted in its constitutional and statutory framework. A similar emphasis on data protection can be observed in the EU through the GDPR, which imposes stringent safeguards on the processing and cross-border transfer of personal data. In Indonesia, the enactment of Law No. 27 of 2022 on Personal Data Protection reflects a comparable commitment to data protection principles, including lawfulness, purpose limitation, and data security. This broader commitment to privacy and data protection is further manifested in the financial sector through the principle of bank secrecy, which constitutes a specific legal expression of informational privacy in banking relationships.<sup>35</sup> In Indonesia, the principle of bank secrecy is closely linked to the right to privacy as guaranteed under Article 28G of the 1945 Indonesian Constitution, which recognizes the protection of personal dignity, security, and private life. This constitutional foundation is operationalized through Law No. 10 of 1998 on Banking, which establishes strict limitations on the disclosure of customer financial information.<sup>36</sup>

Within this legal context, the implementation of FATCA, particularly through the adoption of an IGA framework, introduces a potential conflict between international tax transparency obligations and constitutionally protected privacy rights. The obligation to disclose financial information of account holders, especially for transmission to a foreign authority such as the U.S. IRS, raises questions regarding the compatibility of such practices with Indonesia's constitutional guarantees and the broader principles of the rule of law and legality, as enshrined in Article 1(3) of the Constitution. From the perspective of classical Westphalian sovereignty, which emphasizes non-interference

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<sup>34</sup> Tugba Bas et al., "Connectedness between Central Bank Digital Currency Index, Financial Stability and Digital Assets," *Journal of International Financial Markets, Institutions and Money* 92 (April 2024): 101981, <https://doi.org/10.1016/j.intfin.2024.101981>.

<sup>35</sup> Natalia Ermasova, Christian Haumann, and Laura Burke, "The Relationship between Culture and Tax Evasion across Countries: Cases of the USA and Germany," *International Journal of Public Administration* 44, no. 2 (January 25, 2021): 115–31, <https://doi.org/10.1080/01900692.2019.1672181>.

<sup>36</sup> Gavin Shatkin, "Financial Sector Actors, the State, and the Rescaling of Jakarta's Extended Urban Region," *Land Use Policy* 112 (January 1, 2022): 104159, <https://doi.org/10.1016/j.landusepol.2019.104159>.

and territorial authority, FATCA's extraterritorial reach may be seen as encroaching upon Indonesia's sovereign control over its legal system and its citizens' data.<sup>37</sup>

However, this tension must be understood within the evolving nature of constitutional rights in modern legal systems. The right to privacy under Article 28G is not absolute and may be subject to limitations as provided under Article 28J of the Constitution, which allows restrictions by law for the purpose of ensuring the recognition and respect of the rights of others, as well as to fulfill just demands based on considerations of morality, religious values, security, and public order. In this context, tax transparency and the prevention of offshore tax evasion may be framed as part of the broader "public interest" that justifies certain limitations on financial secrecy.<sup>38</sup>

Nevertheless, the implementation of FATCA within Indonesia remains structurally complex due to the division of institutional authority. While financial institutions are supervised by the Financial Services Authority (OJK), the authority to conduct international tax information exchange rests with the DJP. This separation necessitates a coordinated mechanism to ensure that compliance with FATCA does not result in direct violations of domestic legal principles, particularly those relating to confidentiality and data protection.<sup>39</sup>

From a broader perspective, Indonesia's engagement with FATCA also reflects the asymmetrical nature of global tax governance. The obligations imposed under FATCA disproportionately serve U.S. interests, particularly in combating offshore tax evasion by U.S. taxpayers, while offering limited reciprocity in return. However, non-compliance carries significant economic consequences, most notably the imposition of a 30% withholding tax on U.S.-sourced income received by non-participating financial institutions. In this sense, Indonesia's decision to align with FATCA may be understood not purely as legal compliance, but as a strategic response to external economic pressure in order to protect national financial interests and maintain competitiveness within the global financial system.<sup>40</sup>

Therefore, Indonesia's approach to FATCA demonstrates a shift from a rigid application of bank secrecy toward a more flexible, regulated model of financial disclosure. This transformation is not achieved through direct submission to external authority, but through the reinterpretation and adaptation of domestic legal principles within a constitutional framework that accommodates both individual rights and public interest considerations. In contrast to the EU's resistance-based model, Indonesia's approach reflects a form of mediated sovereignty, where international obligations are internalized

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<sup>37</sup> Andrew B. Jackson and Steven Luu, "Accounting For Digital Assets," *Australian Accounting Review* 33, no. 3 (2023): 302–12, <https://doi.org/10.1111/auar.12402>.

<sup>38</sup> Irsan Hardi et al., "Economic Freedom and Growth Dynamics in Indonesia: An Empirical Analysis of Indicators Driving Sustainable Development," *Cogent Economics & Finance* 12, no. 1 (December 31, 2024): 2433023, <https://doi.org/10.1080/23322039.2024.2433023>.

<sup>39</sup> Putu Gede Arya Sumerta Yasa et al., "Automatic Exchange of Information (AEOI) for Indonesian Tax Purposes: Economic Analysis of Law Approach," *Lex Scientia Law Review* 6, no. 1 (June 13, 2022): 157–86, <https://doi.org/10.15294/lesrev.v6i1.55143>.

<sup>40</sup> Fadly Yashari Soumena et al., "Institutional Framework and Regulatory Challenges in the Development of the Sharia Financial Sector in Indonesia: A Political Economy Perspective," *Jurnal Ar-Ribh* 6, no. 2 (October 31, 2023), <https://doi.org/10.26618/jei.v6i2.12812>.

through national law and institutional coordination.

### Legal Implications of FATCA in Indonesia and the IGA Model 1C Approach

The implementation of FATCA in Indonesia reflects a progressive accommodation of an extraterritorial regulatory regime into the national legal system, manifested through a dynamic interplay of legal adaptation, economic rationality, and social transformation.

Building upon the constitutional tensions identified in the previous section, from a legal perspective, FATCA's extraterritorial character raises fundamental concerns regarding Indonesia's fiscal sovereignty, particularly in light of Article 23A of the 1945 Indonesian Constitution, which mandates that taxation must be regulated by national law. The imposition of foreign reporting obligations on Indonesian financial institutions may therefore be seen as introducing a form of *de facto* external influence over domestic tax governance.<sup>41</sup>

This tension is further intensified by the existence of bank secrecy principle under Article 40 of Law No. 10 of 1998 on Banking, which requires financial institutions to maintain the confidentiality of customer data and more pronounced with the development of Indonesia's personal data protection regime under Law No. 27 of 2022, which imposes strict requirements on the processing and cross-border transfer of personal data. FATCA's obligation to disclose financial information to a foreign authority raises critical issues regarding compliance with core data protection principles, including lawful processing, purpose limitation, and proportionality. Under the latter framework, personal data may only be transferred abroad where the receiving jurisdiction ensures an adequate level of protection, provides sufficient safeguards, or where explicit consent is obtained. In this sense, FATCA creates a structural tension between global tax transparency and the protection of data sovereignty and individual privacy rights.<sup>42</sup>

From an economic standpoint, Indonesia's approach to FATCA is driven by pragmatic considerations. The potential imposition of a 30% withholding tax on U.S.-sourced income creates a strong disincentive for non-compliance, effectively placing Indonesian financial institutions at a competitive disadvantage in global financial markets. In this regard, FATCA operates as a form of economic coercion that constrains the policy choices available to sovereign states. Compliance, therefore, is not merely a legal obligation but a strategic necessity to maintain market access, protect domestic financial institutions, and secure long-term fiscal benefits through improved tax transparency and revenue collection.<sup>43</sup> At the same time, the implementation of FATCA has produced a degree of social transformation, particularly in relation to public perceptions of financial privacy and data governance. Initial concerns regarding the transfer of sensitive financial data to

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<sup>41</sup> Irsan Hardi et al., "Economic Freedom and Growth Dynamics in Indonesia: An Empirical Analysis of Indicators Driving Sustainable Development," *Cogent Economics & Finance* 12, no. 1 (2024): 2433023, <https://doi.org/10.1080/23322039.2024.2433023>.

<sup>42</sup> Fadly Yashari Soumena et al., "Institutional Framework and Regulatory Challenges in the Development of the Sharia Financial Sector in Indonesia: A Political Economy Perspective," *Jurnal Ar-Ribh* 6, no. 2 (2023): 2, <https://doi.org/10.26618/jei.v6i2.12812>.

<sup>43</sup> Paul R. Organ, "Citizenship and Taxes," *International Tax and Public Finance* (New York, Netherlands) 31, no. 2 (2024): 404-53, <https://doi.org/10.1007/s10797-022-09767-5>.

foreign authorities have raised questions about the adequacy of legal safeguards and the potential erosion of individual rights.<sup>44</sup>

In response to these multidimensional pressures, although FATCA originates as a unilateral policy of the U.S. and lacks binding legal force over sovereign states including Indonesia, as a sovereign nation, Indonesia holds the prerogative to determine its stance: either to (i) reject the policy and leave the outcome to market dynamics or (ii) participate strategically while prioritizing national interests. Considering the global implications and potential opportunities, Indonesia opted for the latter, engaging with FATCA while attempting to maximize its benefits. Rather than adopting an entirely rejectionist or fully compliant position, Indonesia has pursued a mediated approach, strategically participating in FATCA while balancing the demands of legal sovereignty with practical and economic considerations.<sup>45</sup>

This approach is conceptualized in this study as the Hybrid Sovereignty Compliance Model, which draws upon modern theories of sovereignty that position the state as an adaptive actor within an interconnected global legal order. In contrast to classical Westphalian sovereignty, which emphasizes absolute territorial authority, modern conceptions of regulatory sovereignty recognize that states may strategically internalize external norms while maintaining formal legal control. The model reflects Indonesia's practical accommodation of FATCA through the IGA Framework, particularly following the Ministry of Finance's 2014 decision to adopt IGA Model 1.<sup>46</sup> This framework was preferred not only for providing legal clarity and a formalized reporting structure, but also for offering potential reciprocal advantages, especially in light of the longstanding Indonesia–U.S. tax treaty effective since February 1, 1997. More fundamentally, IGA Model 1 enabled Indonesia to transform what was initially a unilateral imposition into a negotiated bilateral arrangement.<sup>47</sup>

At the implementation stage, Indonesia further developed it into three institutional configurations, namely Diagram 1A, 1B, and 1C, demonstrating that Indonesia did not simply accept the model provided by the U.S., but actively reinterpreted and adapted it within its domestic system. Diagram 1A reflects a regulator-centered reporting line,<sup>48</sup> while Diagram 1B emphasizes the role of the tax authority, however, both reveal certain

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<sup>44</sup> Marina Aristodemou, "Are Beneficial Ownership Laws Important? Exploring the Impact of Panama, FinCEN, and Pandora Papers on Beneficial Ownership Laws in the UK and the US," *Journal of Economic Criminology* 5 (September 2024): 100082, <https://doi.org/10.1016/j.jeconc.2024.100082>.

<sup>45</sup> Vorakanlaya Natprayant et al., "The Introduction of Anti-Tax Evasion Legislation in Thailand: An Institutional Theoretical Perspective," *Accounting Forum* 48, no. 1 (2024): 121–47, <https://doi.org/10.1080/01559982.2022.2092813>.

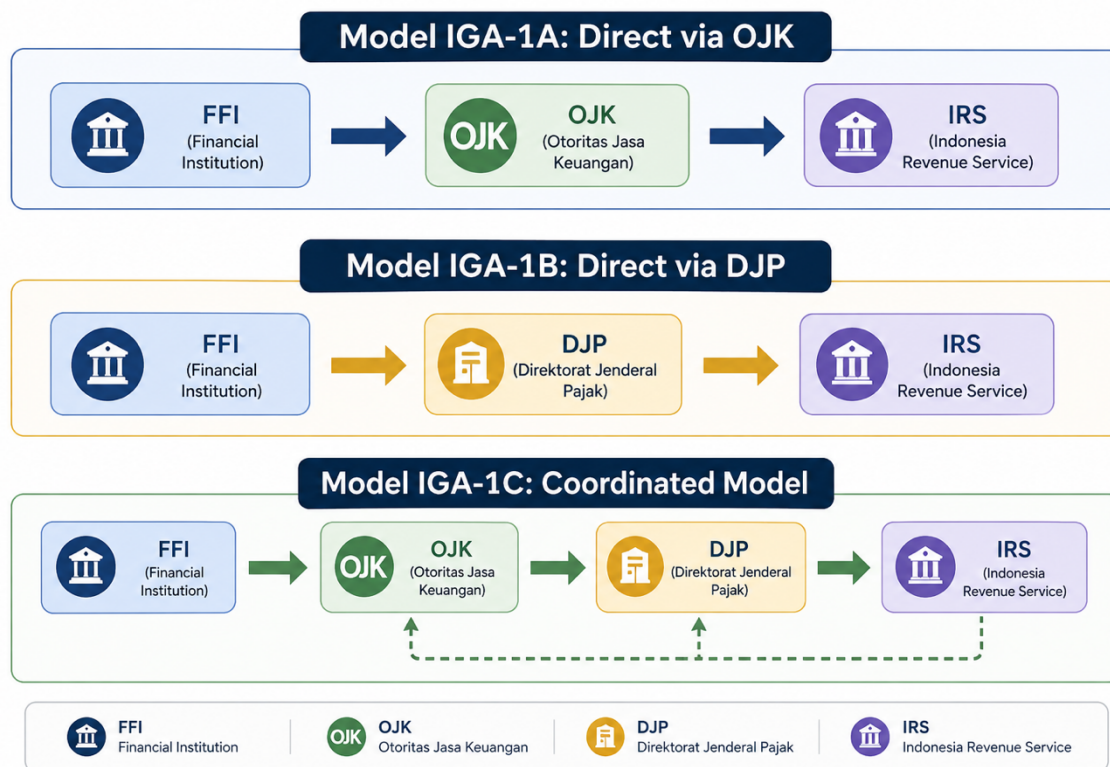
<sup>46</sup> Andréa Cottignies-Calamarte et al., "Antibody Fc-Chimerism and Effector Functions: When IgG Takes Advantage of IgA," *Frontiers in Immunology* 14 (February 2023), <https://doi.org/10.3389/fimmu.2023.1037033>.

<sup>47</sup> Ruddy Kabwe and Princess Thembelihle Ncube, "Facilitating Automatic Exchange of Information on Blockchain: A South African Perspective\*," *Obiter* 45, no. 1 (2024): 78–106, [https://doi.org/10.10520/ejc-obiter\\_v45\\_n1\\_a5](https://doi.org/10.10520/ejc-obiter_v45_n1_a5).

<sup>48</sup> Putu Gede Arya Sumerta Yasa et al., "Automatic Exchange of Information (AEOI) for Indonesian Tax Purposes: Economic Analysis of Law Approach," *Lex Scientia Law Review* 6, no. 1 (2022): 1, <https://doi.org/10.15294/lesrev.v6i1.55143>.

legal and institutional limitations.<sup>49</sup> In contrast, Diagram 1C introduces a coordinated mechanism linking financial institutions that integrating supervisory capacity with legal authority.<sup>50</sup>

**Figure 1. Institutional Configurations of FATCA Implementation in Indonesia**



Source: Adapted from Gunawan Pribadi and Pande Putu Oka Kusumawardani, *Penerapan FATCA di Indonesia*, Center for State Revenue Policy, Fiscal Policy Agency, December 2013. Updated with regulatory developments as of 2025.

Diagram 1C or usually known as IGA Model 1C approach represents the clearest practical manifestation of the Hybrid Sovereignty Compliance Model. Under this structure, FFIs are required to submit financial information to the OJK, which exercises supervisory authority over financial institutions pursuant to Law No. 21 of 2011 on OJK, particularly under its regulatory and supervisory mandate as stipulated in Articles 6 and 7. In parallel, the obligation of FFIs to provide data within a regulated framework can be linked to exceptions within the bank secrecy principle under Article 41 of the Banking Law, which permits disclosure for specific purposes, including taxation. These provisions collectively establish the legal basis for institutional reporting at the domestic level. Furthermore,

<sup>49</sup> Sinta Fatmaria Tantri et al., “Application of Fishbone Diagram in Using Root Cause Analysis (RCA) for Developing of Revenue and Expenditure System in Manufacturing Company,” *International Journal of Economy, Education and Entrepreneurship (IJE3)* 4, no. 1 (2024): 1, <https://doi.org/10.53067/ije3.v4i1.230>.

<sup>50</sup> Iwan Kusnawirawan et al., “Safeguarding Investor Rights: OJK’s Regulatory Framework Including Management and Challenges in Indonesia’s Capital Market,” *Jurnal Multidisiplin Indonesia* 4, no. 3 (2025): 3, <https://doi.org/10.58344/jmi.v4i3.2243>.

this reporting system is operationalized through OJK Regulation No. 25/POJK.03/2015, which introduces the *Sistem Penyampaian Informasi Nasabah Asing* (SiPINA) as a dedicated platform for identifying and reporting accounts associated with foreign tax subjects.<sup>51</sup>

Within this framework, OJK functions as a regulatory gatekeeper, ensuring that data collection and transmission comply with domestic legal standards, including principles of necessity and proportionality. The filtered data is then transmitted to the DJP, which possesses the legal authority to process and exchange tax information under Law No. 28 of 2007 on General Provisions and Tax Procedures and Law No. 9 of 2017 on Access to Financial Information for Tax Purposes. The latter law forms part of Indonesia's commitment to the OECD-led AEOI framework, which is operationalized through the CRS as the governing standard for the collection and exchange of financial account information. As such, it provides a multilateral and reciprocal legal basis for cross-border tax data exchange within the global tax transparency regime.<sup>52</sup> As such, although FATCA originates as a unilateral U.S. regime, its implementation in Indonesia is reframed within a broader global transparency framework, thereby enhancing its legal legitimacy.

This institutional arrangement demonstrates how the Hybrid Sovereignty Compliance Model operates in practice. Rather than allowing direct foreign access to domestic financial data, Indonesia channels FATCA compliance through its own regulatory system, thereby maintaining control over the scope, process, and legal justification of data transfers. At the same time, this model mitigates potential conflicts with bank secrecy and data protection laws by introducing layers of legal filtering and institutional oversight.

Nevertheless, it must be acknowledged that this approach does not entirely eliminate the asymmetrical nature of FATCA. Substantively, the system continues to serve U.S. regulatory interests and may produce a *de facto* extraterritorial effect. However, by embedding compliance within domestic legal frameworks and aligning it with multilateral standards such as AEOI, Indonesia is able to transform a potentially coercive external obligation into a managed and legally mediated process.<sup>53</sup> Its domestic implementation is shaped by national legal choices, institutional coordination, and normative constraints.

Therefore, the viability of the IGA Model 1C approach lies in its ability to reconcile an initial legal conflict with sovereignty and confidentiality principles, toward a harmonized system of statutory override and institutional mediation; from externally imposed economic pressure, toward strategic compliance driven by market realities; and from public resistance rooted in privacy concerns, toward a conditional acceptance supported

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<sup>51</sup> Andréa Cottignies-Calamarte, Daniela Tudor, and Morgane Bomsel, "Antibody Fc-Chimerism and Effector Functions: When IgG Takes Advantage of IgA," *Frontiers in Immunology* 14 (February 2, 2023), <https://doi.org/10.3389/fimmu.2023.1037033>.

<sup>52</sup> Firly Rosalini and Maria Tambunan, "The Implementation of Exchange of Information in The Banking Industry," *Jurnal Bisnis Dan Akuntansi* 2 (December 2020): 323–34, <https://doi.org/10.34208/jba.v2i2.688>.

<sup>53</sup> Nikmah Mentari and Rahayu Mulia Romadoni, "Regulatory Framework for Blue Sukuk: Enhancing Blue Economy by Reinforcing Shariah Investment," *Hang Tuah Law Journal*, April 22, 2025, 166–86, <https://doi.org/10.30649/htlj.v9i1.280>.

by legal safeguards. It reflects a form of Hybrid Sovereignty Compliance Model in which Indonesia retains regulatory control over financial data while simultaneously engaging with global tax transparency regimes. In doing so, the model provides a pragmatic solution to the tensions inherent in FATCA implementation and illustrates how sovereignty can be preserved through legal adaptation rather than outright resistance or unconditional compliance.

### Conclusion

The implementation of FATCA in Indonesia reflects a complex interaction between extraterritorial tax enforcement and domestic legal sovereignty, particularly in reconciling global compliance obligations with constitutional principles of privacy, banking secrecy, and data protection. Although FATCA is a unilateral U.S. regime, its enforcement mechanism, most notably the 30% withholding tax, creates significant economic pressure that constrains the policy choices of sovereign states. This study demonstrates that the legal implications of FATCA extend beyond technical compliance, encompassing tensions related to fiscal sovereignty, data sovereignty, and institutional fragmentation between financial regulators and tax authorities. In response, Indonesia has adopted a mediated compliance approach through the IGA framework, with the coordinated IGA Model 1C emerging as the most viable configuration by integrating the supervisory role of the OJK and the exchange authority of the DJP. Building on this practice, the study develops the Hybrid Sovereignty Compliance Model, which conceptualizes Indonesia's approach as an adaptive form of sovereignty that internalizes external regulatory demands through domestic legal mechanisms while retaining formal control over financial data and regulatory processes. In contrast to the EU's resistance-based model, characterized by GDPR-driven safeguards and countermeasures, Indonesia's approach reflects a form of mediated sovereignty, where international obligations are internalized through national law and institutional coordination.

From a comparative perspective, FATCA operates within a broader architecture of global tax governance characterized by competing regulatory models. While FATCA reflects a unilateral and asymmetrical form of extraterritorial regulation, the OECD-led AEOI framework, operationalized through the CRS, represents a multilateral and reciprocal system of information exchange. In this context, Indonesia occupies an intermediate position by embedding FATCA compliance within its domestic legal system while simultaneously aligning with the OECD framework, thereby bridging unilateral and multilateral regimes. Nevertheless, this approach does not fully eliminate FATCA's asymmetrical nature, which continues to raise concerns regarding reciprocity and data protection. Strengthening inter-agency coordination between OJK and DJP, alongside the development of clearer safeguards for lawful and proportionate data transfers, remains essential. Future research should further examine the sustainability of mediated compliance models in addressing asymmetrical regulatory power and their applicability across jurisdictions facing similar extraterritorial pressures. Ultimately, Indonesia's engagement with FATCA should be understood not as passive acquiescence, but as a strategic and legally mediated response that preserves regulatory autonomy while participating in the evolving architecture of global tax governance.

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