The US Qualified Intermediary (QI) regime was introduced in 2001 and provided benefits to non-US Financial Institutions (FIs) by enabling them to provide their non-US customers access to the US market without the requirement to disclose their customers’ details to the US tax authorities.

When US investigators unravelled the extent to which Swiss banking secrecy, and more specifically Swiss FIs, facilitated the circumvention of US tax rules through offshore tax avoidance schemes, it became clear that the initial QI regime was suffering from inherent structural loopholes. The view of the US tax authorities as well as tax authorities across the globe was that taxpayers were not fulfilling their tax obligations and tax authorities were missing out on revenue to which they are entitled.

The tax authorities’ view was that to tackle tax evasion, a more robust regime needed to be put in place, one which allowed for the sharing of personal and financial data across borders. This realisation and development paved the way for the international tax transparency regimes, such as the US’s Foreign Account Tax Compliance Act (FATCA), the OECD’s Common Reporting Standard (CRS), and the EU’s Directive on cross-border tax arrangements (DAC6).
International FIs have taken note of the extensive penalties and the long arm of the US tax authority. A significant number of FIs make a good faith effort to comply with their US tax obligations. Outside of the US, many FIs have a collaborative relationship with their local tax authorities. On the contrary, there is a high level of fear within FIs when preparing for and interacting with the US tax authorities and a perceived lack of trust on the part of the US tax authorities.

Tax authorities face budget constraints and, increasingly, must do more with less resources. The easiest way for tax authorities to increase their reach in this environment is to leverage industry, specifically FIs. While the inception of those transparency regimes has immensely contributed to fighting tax evasion worldwide, the ever-accelerating complexity of those regimes has placed a significant burden on FIs and third-party service providers, with the list of those impacted continuing to grow (e.g., OECD CARF). Historically, governments would use tax treaties to request and obtain the information desired. The new tax transparency landscape facilitates a more proactive sharing of information.

FIs worldwide have incurred significant costs trying to stay abreast of the most recent and oftentimes complex compliance obligations. FIs are not only required to comply with the international tax transparency regimes, but also must comply with regulatory and legal obligations (e.g., GDPR), which may be in conflict. FIs cannot disregard one set of obligations for the benefit of the other and must carefully balance the full scope of their obligations. At the same time, tax authorities have experienced significant backlogs due to these developments. Intermediaries often struggle in their interactions with the US tax authorities. Beyond the fear and trust aspects, there is a lack of transparency and an often-complex network to navigate in finding someone at the other end of the telephone that is available and able to support.

During the legislative development process, FIs pushed back and were successful in getting some short-term relief. However, governments around the world were successful in enacting numerous tax transparency regimes. Neither FATCA nor CRS went away. Instead, these regimes continue to evolve with the US and the OECD seeking to expand the information that they want to receive as well as the parties from which they want to receive it.