

# Common incorrect CRS practices

OECD expertise unprecedented coverage on addressing exploitation of ambiguities, ignoring tightening of the Standard's flaws, misinterpreting loopholes: **Practical cases highlighting wide-spread myths, misunderstood implementation. Requisite knowledge for compliance and tax planners**

**Mark Morris, CRS specialist, Mark Morris Consulting, Zurich**

## REVIEW THE OECD HANDBOOK PIVOTAL RULES

### When is an entity a reporting FI?

- Reporting FI vs. non-reporting FI confusion
- When must a non-reporting FI in fact report
- OECD action on tax havens incorrectly permitting high-risk domestic law non-reporting FIs are not CRS solutions – why FIs unaware
- When is an Investment Entity not a reporting FI
- Triple categorise some FIs as non-reporting, non-reportable, Active NFE

### When does the FI maintain a financial account?

- Non-financial accounts vs. excluded accounts vs. non-financial assets
- OECD action on incorrect tax haven domestic law Excluded Accounts

### Categorising Account Holders

- What is different if account Holder of a financial account is a non-reportable person, individual, Active NFE or a Passive NFE
- Categorization / residency validated annually or if FI aware of change
- Non-reportable persons also categorized as non-reporting FI as well as an Active NFE yet can be reporting or reportable.
- Investment entity reportable jurisdiction person loophole under siege
- Miscategorize by FIs and trustees of Active NFE type [A], [B] and [D]

### Identifying correct jurisdictions

- Tax residences of individuals as account holder or controlling persons
  - Updated OECD model tax convention to be integrated for dual residence tie breaker rules to identify criteria Practical examples of centre of vital interest, habitual abode.
  - Why the FAQ update to look-through controlling persons of FIs owning passive NFEs when CRS states clearly FIs are non-reportable persons
  - Impossible look-through custodial institution, non-participating FI
- Tax residency of entities Difference between location of FI and residencies of NFEs Practical examples: e.g. Dutch foundation managed in Argentina – no residence: is this unworkable

**Reporting timely and appropriate information** – when not done

## MISUNDERSTANDINGS OF THE PIVOTAL RULES

### Tax havens supporting high-risk non-reporting FIs

- Pension plans: Domestic legislation facilitating savings schemes that should not qualify as non-reporting FI - Practical example 1: Gibraltar trustee pension plan maintained by Luxembourg banks. example 2: Hong Kong ORSO. example 3: Singapore segregated plans
- Life insurance: insurance related shams - Practical example 1: Swiss insurer converts policies to irrevocable life. example 2: Barbuda insurer issues non-life policies, such as disability and surety bonds.
- Central security depot, fund distributor, fund nominee, fund intermediary, foreign exchange dealers
- Complexities of investment entity issues – many loopholes
- Non-participating FIs maintain accounts in CRS jurisdiction

- Nominee vs custodian – the flaw and loopholes
- FI managing accounts in unrelated FI in non-participating jurisdiction
- OECD reaction to circumventing through USA, EU threat to blacklist USA for not implement AEOI, EU parliament vote to suspend FATCA
- New US anti-laundersing Act => request on demand replacing FATCA

### Misunderstanding Financial Accounts

- What does OECD mean by “financial-like” assets in the MDR
- Non-interest-bearing cash deposits, crypto, OTC private agreement
- OECD reaction to tax haven domestic law Excluded Accounts
- Jurisdiction ignoring the MDR and FAQ which tackle these loopholes

### Misunderstanding Categorizing Account Holders

- Dual resident untaxed entities tie-breaker on POEM vs incorporation
- Dual resident individuals OECD model tax convention
- Exploiting Active NFE - non-reporting controlling persons, IFRS restricting intangible assets in balance sheet, ICOs
- Synthetic Place of Effective Management
- Investment entity loophole tackled by IFRS – adopted by 2 countries
- Impact on controlling person by reporting Active NFE to POEM
- Incorrect categorizing entities with non-financial income to be type [A] Active NFEs examples: Traders, consultants, IFRS on intellectual property in balance sheet, asset test – purpose of cash
- Payments fees underlying company to trustee - trust Passive NFE?
- Exploiting holding company, new, charitable Active NFEs, other types of reorganizing examples: Parent company income less than 80%, subsidiaries that are not Active NFEs but engage in business or trades, holding co converts passive NFE to Active NFE structure
- Despite common belief, there is no carve-out of investment entities to become Active NFE type [D]..[G] - yet many trustees wrongly categorise
- Why trusts should not qualify as Holding Active NFE type [D]
- Misguide that cash is not a financial asset to help categorize as an Active NFE, do not report on protectors of investment entity trusts
- Confusion on passive income examples: microfinance interest
- Major misunderstanding - Listing entities does not mean Active NFE
- Ignoring FAQ updates closing loopholes “as it is not legislation”.
- Annual validation of status only if aware. Suspicious, logic on change

### Misunderstanding on reporting to correct jurisdictions

- When to use Principle Office vs POEM
- Tax residence of Permanent Establishment not so simple
- Difference in tax residence of untaxed FI vs. untaxed NFE - Practical examples: Dutch tax transparent Fund managed in USA, foundation custodial institution managed in Serbia
- How to determine the multiple tax residencies of untaxed entities - When wrong to report to place of incorporation, understanding commentary on tax residency of untaxed entities - Practical example: Brazilian owns and manages BVI passive NFE - No tax residence under CRS so where report - Practical example: Chinese owns and manages Hong Kong company - treat dual tax residencies - Practical example: Brazilian owns and manages Singapore company

### Misunderstanding on reporting to correct jurisdictions (continued)

#### • Entity Account Holders - Active and Passive NFE

##### Individual controlling persons and Account Holders

- What is meant by all residencies of Account Holder
- OECD to oblige use of DTA model tax convention on soon to be blacklisted residence-by-investment countries - Ignore utility bill and determine tax residency explained using OECD Model tax convention criteria of "Permanent homes", "Centre of Vital interest", and "Habitual Residence"
- Who and what is reported for liquidated entities vs trusts – why different

#### • Avoid incorrect reporting

- Unintended consequence of electing to align beneficiaries of passive NFE with investment entity trusts to avoid reporting on beneficiaries not yet distributed
- Illogical reporting of nil value for settlors of investment entity vs. passive NFE irrevocable trusts – contra BEPS goal timely, relevant information, unfair to report look-through FIs owning NFE but not look-through FIs owning investment entity
- Report value on closed trusts but not liquidated entities, look through nominees but not for non- participating custodians, 25% threshold not applied to trusts, no threshold for investment entity assets managed, no timing on asset test for Active NFE [A], MDR attacks Active NFE but exempts reporting controlling persons

## PRACTICAL INFORMATION

### Venue

Zurich Sheraton Hotel  
Pflingstweidstrasse 100, 8005 Zürich

### How to register

by phone: +41 (0) 22 849 01 11  
by fax: +41 (0) 22 849 01 10  
by e-mail: info@academyfinance.ch  
by post: Academy & Finance SA  
PO Box 6069, CH-1211 Geneva 6  
www.academyfinance.ch

### Fees

580 CHF + VAT (7.7%)  
Additional registrations from the same company: - 50%

### Registration and payment

Payment is made by bank transfer or by credit card. Credit card payments will be debited immediately upon receipt of card details. In any case, we will send you an invoice by email.

### Substitution & cancellation policy

Substitutions from the same company are accepted at any time. Cancellation requests must be received in writing, by fax or by post up to the following dates end of business :

- 30 September 2018 refund of 80%
- 15 October refund of 30%
- after 15 October no refund will be made for cancellation.

## REGISTRATION FORM

I register for the seminar «Common incorrect CRS practices» in Zurich on thursday 1st November 2018.

### FIRST PARTICIPANT

Full name.....  
Position.....  
E-mail.....

### SECOND PARTICIPANT (-50%)

Full name.....  
Position.....  
E-mail.....  
Company.....  
Address.....  
Postcode..... City.....  
Tel ..... Fax.....

Name and email address of person in charge of the payment:

.....

Bank transfer  Mastercard  VISA  AMEX

Credit card No : \_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_ Expiry date : \_\_\_\_/\_\_\_\_

Cardholder.....

Address of AMEX cardholder .....

Date ..... Signature.....