

# Common incorrect CRS practices

Exploiting ambiguities, ignoring OECD tightening of the Standard, misunderstanding loopholes, implementing myths: numerous practical cases to highlight the misunderstandings.

Mark Morris, CRS specialist, Mark Morris Consulting, Zurich

## THE 4 PIVOTAL RULES OF CRS

### Is an entity a reporting FI

- Reporting or non-reporting FI
- When must a non-reporting FI in fact report
- Major problems with domestic law non-reporting FIs

### Does the FI maintain a financial account

- Difference between "non-financial accounts" and "excluded accounts"
- Problems with domestic law defined Excluded Accounts

### Categorising Account Holders

- Account Holder as non-reportable person, individual, Active NFE, Passive NFE
- Must categorization be validated each year or only if FI becomes aware of changes
- Confusion: Central bank, government entity and international organisation listed as a non-reporting FI, a non-reportable person and an Active NFE, yet can be reporting and/or reportable

### Reporting to correct jurisdictions

- **Tax residences of individuals**
  - Account holder and controlling person of passive NFEs
  - Why the FAQ update to look-through controlling persons of FIs owning passive NFEs when CRS states clearly FIs are nonreportable persons
  - Is it possible to look-through custodial institutions, non-participating FIs, etc.
- **Tax residency of entities**
  - Difference between location of FI and residencies of NFEs
  - **Practical example:** Dutch foundation managed in Argentina: is this unworkable for CRS?

## MISUNDERSTANDINGS OF THE 4 RULES

### Misunderstanding non-reporting FIs

- **Pension plans:** Domestic legislation incorrectly facilitating segregated retirement schemes that should not qualify as non-reporting FI
  - **Practical example 1:** Gibraltar trustee pension plan maintained by Luxembourg bank
  - **Practical example 2:** Hong Kong ORSO
- **Life insurance:** Misunderstanding insurance related shams
  - **Practical example 1:** Swiss insurer subsidiary converts policies to irrevocable life
  - **Practical example 2:** Barbuda insurer issues non-life policies, such as disability, or non-insurance surety bonds
- Non-participating FIs maintain accounts in CRS jurisdiction
- CRS FIs managing accounts in non-participating jurisdiction
- Which few countries receive information from USA despite 100+ Model 1 FATCA
- EU threat to blacklist USA for not implement AEOI

- Counter terrorism and anti-laundering act point to John Doe request on demand replacing FATCA very soon.
- OECD reaction to circumventing through non-reporting FIs

### Misunderstanding Financial Accounts

- Difference between financial accounts and financial assets
- What does OECD mean by "financial-like" assets in the MDR
  - **Practical examples:** Non-interest bearing cash deposits, crypto, OTC private agreement between two parties
- OECD reaction to domestic law problems on Excluded Accounts
- Ignoring the MDR and FAQ

### Misunderstanding Categorizing Account Holders

- Exploiting non-reporting of controlling persons of Active NFE
- Embedding investments in Active NFE
- Untaxed Active NFE not report any income on controlling persons
- Consequence for controlling persons if reporting Active NFE to place of management
- **Ubiquitous practice of categorizing entities with non-financial income to be type [A] Active NFEs**
  - **Practical examples :** Traders, consultants, commissions,
- **Exploiting holding company, new, charitable Active NFEs, other types of reorganizing**
  - **Practical examples:** Parent company less than 80% holding subsidiaries that are not Active NFEs but do business, new company every two years, splitting companies
    - Despite common belief, there is no carve out of investment entities to become type [D].[G] Active NFEs
    - Cash is not a financial asset" to help categorize as an Active NFE
    - "Do not report on protectors of investment entity trusts" as they do not exercise control
    - Confusion on passive income, e.g. is microfinance business an Active NFE if it earns interest,
    - Listing entities on exchange does not mean Active NFE
    - Ignoring FAQ updates "as it is not legislation".

### Misunderstanding on reporting to correct jurisdictions

- Entity Account Holders viz. Active and Passive NFE
- **Difference in tax residence of untaxed FI vs. untaxed NFE.**
  - **Practical examples:** Dutch tax transparent Fund managed in USA, Dutch foundation custodial institution managed in Serbia.
- **How to determine the multiple tax residencies of untaxed entities**
  - When wrong to report to incorporation, rather than understanding CRS commentary on tax residency of untaxed entities
    - **Practical example 1:** Brazilian owns and manages BVI passive NFE - No tax residence under CRS so where report
    - **Practical example 2:** Chinese owns and manages Hong Kong company - why dual tax residence
    - **Practical example 3:** Brazilian owns and manages Singapore company - why not report to Brazil

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

#### • Individual controlling persons and Account Holders

- What is meant by all residencies of Account Holder
- Sole tax residence based on utility bill, even if unlikely to be true - Must FI use DTA model tax conventions 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", "Center of Vital interest", and "Habitual Residence"

#### • 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
- Investment entities owned by single person / restricted to small number family members do not report on equity interest
- Illogical reporting of values for settlors of investment entity vs passive NFE irrevocable trusts – contra BEPS goal timely, relevant information
- Who is subject to Mandatory Disclosure Rules and what must be disclosed

## PRACTICAL INFORMATION

### Venue

Cliftons Hong Kong  
Level 5, Hutchison House, 10 Harcourt Road,  
Central, Hong Kong

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by e-mail: rchan@academyfinance.com.hk  
T: +852 3757 5535 (HK Office)  
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Position.....

E-mail.....

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Position.....

E-mail.....

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

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