

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**

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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-laundering 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

Sunborn Gibraltar
35 Ocean Village Promenade

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
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- 26 September 2018 refund of 80%
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REGISTRATION FORM

I register for the seminar «Common incorrect CRS practices» in Gibraltar on Friday 26 October 2018.

FIRST PARTICIPANT

Full name.....
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SECOND PARTICIPANT (-50%)

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