

Avoiding CRS avoidance: what is the CRS impact of critical new developments?

- > **New economic substance requirements** (Laws of Dec. 2018: BVI, Cayman, Jersey,...)
- > **Liability of head offices: wealth management groups and global trustees**
- > **OECD CRS FAQ updates: Active trading NFEs, Zero cash value insurance policies, ...**

Mark Morris,

CRS specialist interacting with OECD,
Mark Morris Consulting,
Zurich

OFFSHORE / UNTAXED ENTITIES: CRS IMPACT OF THE NEW ECONOMIC SUBSTANCE REQUIREMENTS (CAYMAN, BVI...)

Where are untaxed entities located for CRS purposes

- Detailed explanation of different rules to determine location of untaxed FIs vs NFEs
- Where does an untaxed investment entity maintain its equity interest?
- Confusing Financial Accounts of an Investment Entity with its financial assets

Unnoticed impact of CRS due to offshore Economic Substance requirements

- Will CRS change if Passive NFE must be managed in place of incorporation?
- Will CRS change if Investment Entity must be managed in place of incorporation?
- CRS impact on holding companies managed by owner, which is not a covered activity

PIERCING THE CORPORATE VEIL: LIABILITY FOR MOVING ASSETS TO THE USA

When can the head office can be held liable for illicit actions of subsidiaries?

- Law courts on when head office can be held liable for illicit actions of subsidiaries
- Pierce corporate veil of group who moved clients to USA

What impact on wealth management groups who manage USA insitu assets?

- Wealth managers, through related SEC reg. entities, continue to manage assets hidden in USA
- Going after head office of asset managers
- Deem wealth manager head office as Custodial Institutions despite not maintaining assets

What impact on global trustees who shifted their clients to the USA?

- Most global trust companies established subsidiary in USA
- Going after head office of trust groups who shifted clients to their USA trustees
- Deem wealth trust group head office as Custodial Institutions despite not maintaining assets

OECD CRS FAQ UPDATES : WHICH ARE COMMONLY IGNORED OR MISUNDERSTOOD

Broadening scope of trustees, PTCs and SPV Custodial Institutions are now FIs

- Impact from change in income test for FI when third party earning fees such as directors

Zero cash value insurance policies

- Many insurers in Luxembourg do not understand zero cash value policy has a cash value
- Insurers claim ambiguity allows report of null surrender value or frozen cash value
- Insurers do not understand surrender value excluding surrender charges = cash value
- Null value for settlors of irrevocable investment entity trusts
- Other cash value products prevalent in Caribbean promoted as not having a cash value. Protected cells and captive insurance

Problems with Active trading NFEs

- Asset test fail if money held for production of passive income doesn't require passive income is produced – does not matter purpose cash is held for – timing of asset test?
- Converting Passive NFE to Active NFE parent & subsidiary to avoid CRS
- No justification for CRS to exclude untaxed business Active NFEs

EXPLOITED AMBIGUITIES: THE GREY AREAS OF CRS

Listed entities (regularly traded and not)

- Implementation Handbook misquotes FATF that it is acceptable to be unable to identify controlling persons of listed entities. OECD omitted FATF recommendation where "it is not necessary to identify beneficial owners only if listed on a stock exchange subject to disclosure requirements. Identification may be obtained from a public register, from customer, or other sources
- Why exempt regularly traded entities?
- OECD perverts the FATF definition of "related to a listed entity" – permits sibling company loophole
- CRS on regularly traded entity having equity interest in investment entities

Trust holding trading subsidiaries treated as Holding Active NFE

- Misunderstood "Investment Entity" does not include entity that meets criteria of 4 Active NFEs
- Global trustees, especially in BVI, exploit this pointless clause to avoid CRS for thousands of trusts

Unusual orphan structures misunderstood to have no beneficial owners

- Company Limited by Guarantee with no shareholders. Turks and Caicos hybrid CLG

Schedule

- 8.30 Registration
- 9.00 Beginning of the seminar
- 11.00 Coffee break
- 12.30-14.00 Lunch
- 15.15 Coffee break
- 17.15 End of the seminar

EXPLOITED AMBIGUITIES

Holding Active NFE ambiguity chaos

- 80% threshold activities relate to income or values
- Which countries define a subsidiary as low as 10% shareholding
- Does engaged in business or trade refer to business Active NFEs or any business
- Does Active NFE exclude trusts, which are different to holding companies

Overview of misapplications of CRS

- Quiz on catching up with OECD FAQ updates
- Flowchart showing origin of loopholes and misunderstandings

Ineffective tackling of CRS avoidance

- Mandatory disclosure rules not adopted outside EU. No retroactive penalties not allowed
- Why banks not acting on OECD list of high-risk residence by investment jurisdictions
- Illicit sold pre-existing insurance
- Are there structures which will never be in CRS scope due to policy decisions
 - Investment entity held by domestic beneficiaries or non-participating custodian institution

FAQs

PRACTICAL INFORMATION

Venue

5 star hotel in CBD

How to register

by e-mail: rchan@academyfinance.com.hk

T: +852 3757 5535 (HK Office)

Academy & Finance (HK) Ltd

Unit 1104A, Kai Tak Comm. Bldg.,

317-319 Des Voeux Road Central Hong Kong

www.academyfinance.ch

Fees

HKD 5950

Additional registrations from the same

company: - 50%

Registration and payment

Upon reception of your registration Academy & Finance (HK) Ltd will send you an invoice.

Payment can be made by credit card or bank transfer. Your registration will be binding on the organisers only after payment has been fully received by Academy & Finance (HK) Ltd.

- Credit card payments will be debited immediately upon the receipt of card details. Credit card payments will be subject to a surcharge of 3% to cover commission charges.

- Bank transfers should be made to Academy & Finance (HK) Ltd; the bank details will be indicated on the invoice.

Substitution & cancellation policy

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

- 3 September refund of 50%

- No refund will be applicable in case of cancellation after 3 September 2019.

REGISTRATION FORM

I register for the seminar «Avoiding CRS avoidance: what is the CRS impact of critical new developments?» in Hong Kong on tuesday 17 September 2019.

FIRST PARTICIPANT

Full name.....

Position.....

E-mail.....

Company.....

Address.....

Postcode..... City.....

Tel Fax.....

SECOND PARTICIPANT (-50%)

Full name.....

Position.....

E-mail.....

Bank transfer Mastercard VISA AMEX

Credit card No : _____/_____/_____/_____ Expiry date : ____/____

Cardholder.....

Address of AMEX cardholder

Date Signature.....

The organisers reserve the right to amend the programme if, despite their best efforts, circumstances oblige them to do so.

Copyright © 2019 ACADEMY & FINANCE, All rights reserved.