

CRS and trusts

> Recent changes in Swiss CRS guidance

> Avoiding the usual mistakes / misunderstandings before the CRS audit

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Charlie is an independent consultant with Helm Advisors, specialising in providing advice and assistance with regard to all aspects of the FATCA and CRS regimes and regulatory compliance. Charlie has worked for more than 40 years in financial services focussing primarily on the risk management and control functions, encompassing retail and private banking, wealth management and Family Offices. He also worked for the UK Financial Services Regulator for five years, leading a supervisory team. Prior to becoming an independent consultant, Charlie worked for fifteen years for the Stonehage Fleming Group, a large global multi-family office where he implemented the FATCA and CRS regimes and was responsible for ensuring compliance with these regimes across the global group, on an ongoing basis. Charlie is an expert in FATCA and CRS, as well as other tax transparency initiatives and advises both financial institutions and client families on the risks and impacts of these regimes.

Recent changes in Swiss guidance

• Account holders in an FI trust

- Which account-holders have now been included?
- Who else, other than a Protector is a "natural person exercising ultimate effective control" over a trust?
- How best to determine what is meant by "exercising ultimate effective control"
- What is the "look through" requirement and when does this apply?
- Is a corporate trustee exempt from the look through requirement?

• Third-party distributions

- What is this term really trying to capture?
- What might constitute a third-party distribution
- What are the additional due diligence requirements, if any?

• Non-market rate loans

- How does one determine "market rate"?
- Which market rate to use when the loan currency is other than CHF?
- Practical ways to capture a below market rate loan
- How does one report the recipient of such a loan
- In which category should the deemed benefit be reported?

Main difficulties, usual mistakes / misunderstandings

• What is meant by the "managed by" test

- Is there a difference between "managing" and "administering" an entity?
- Can an entity that is managed, manage another entity?

- Is there a de minimis level for the size/value of a discretionary portfolio?

• Understanding the gross income test

- What income generating activities qualify?
- Practical ways to ensure the gross income test is met?
- What must one do when that test can no longer be met?

- What happens in a given year when the only income generated is passive income?

• Qualification criteria for Active NFEs

- What are the different types of Active NFE and which are the most common?
- What happens when an entity holds a non-passive asset, but earns no income?
- Does a charity, or other not for profit organisation always qualify?
- Can a trust be an Active NFE "by reason of income and assets", or as a holding entity of a non-financial group?

• What is Passive income and Passive assets?

- Is the list of passive income definitive, or are there any others?
- How to decide what is, or is not, passive income
- How to treat capital gains arising on the sale of assets?
- Is it only real property and commodities that are not financial assets?
- How to treat assets that are not held for the production of passive income?

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