

# Advanced training: CRS / FATCA misinterpretations and imminent CARF / CRS 2.0

> Implementation Handbook, FAQ & Guidelines are unhelpful for certain ambiguities

> If you know CRS, you might think you know CARF, but essential concepts will differ, as will the consequences



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## 9.00 Tracing the source of AEOI misunderstandings

- Implementation handbook is the source of most ambiguities
- Which entity categorizations affected by «cash is not a financial asset»
- Active NFE loopholes

## Trusts, underlying companies, foundations

### 9.30 Treatment of trusts and underlying companies

- Complexities of trusts and underlying companies
- Why trustee and custodian fees be paid to unrelated third parties: why some jurisdictions are wrong.
- Describing the SPV Custodian mentioned in the FAQ
- What if co-ownership settlors and trustees are the same people? Beneficiaries as well?
- Where a foundation differs from trusts for AEOI

## Significant CRS and FATCA amendments

### 10.00 CRS and FATCA amendments since initial implementation

- The loopholes OECD CRS-related FAQs attempted to tackle. Why it often fails, e.g. high risk Rbl/Cbl.
- Why SIF wrongly obliges FI trusts to look-through non-reportable equity interests
- Which FATCA issues are being updated: E.g. Rev-Proc 2024-42 reciprocal reporting

## Tax residence

### 10.30 Tax residence is a major flaw of CRS and CARF

- Why Rbl and Cbl continue to evade CRS and CARF despite OECD update
- Resolving reporting of dual resident companies
- Should the OECD Model Tax Convention Tie Breaker Rules determine residence of untaxed entities
- Municipality issued utility bill sufficient proof of residence
- The misunderstanding of residence of untaxed NFEs versus untaxed Investment Entities
- Does 183+ days determine sole tax residency

11.00 Coffee break

## Crypto Asset Reporting Framework (CARF)

### 11.20 OECD's CARF and other digital asset/crypto currency reporting regimes

- CARF is not CRS 2.0
- What is CARF?
- What are the similarities with CRS?

- Ultimate aims
- Structure/methodology
- Due diligence techniques
- Reportable Information
- Client notifications
- What are the dissimilarities with CRS?
- Reporting parties
- Transactions, not accounts
- Look-through treatments
- Jurisdictional nexuses
- CARF in Switzerland
- Related regimes (DAC8, US crypto broker regs)
- Status of jurisdictions pledging to join CARF
- Timelines and obstacles

12.30 Lunch

### 14.00 Where jurisdiction CRS guidelines and seasoned practitioners often misinterpret/misunderstand

- Custodial Institution attributed income-connection test is wrong.
- Where authorities mistake on beneficial owners of listed companies
- The consequence of any jurisdiction utilizing MCAA's article 29 to exclude territories?
- Does a corporate director pass one of the tests of a managed Investment Entity?
- Is a director a Controlling Person of a FI. And NFE?
- Can an Active NFE be recategorized a Passive NFE even if doesn't change its activities
- What tricks used to categorize a Personal ETF as a regularly trades?
- Active NFE holding loophole

## Reporting obligations

### 14.30 Misunderstood reporting obligations

- Where an entity will be a CRS FI but not a FATCA FFI
- Any solution regarding the «Shell Bank Loophole» identified by the US Senate Finance Committee.
- Amount reportable for settlors of irrevocable trusts who are not a beneficiary (Cyprus, LI, Singapore...)
- How much reported for Zero Cash Value PPLI. Other so-called non-cash value insurance, e.g. captives...
- Option to report on Controlling Persons resident in same jurisdiction as FI
- OECD misunderstands how non-reporting pension evade CRS
- Unanswered consequences of ID Controlling Persons of Passive NFEs regardless status of parent chain.
- Inconsistencies in reporting between trusts
- When must a non-reporting FI report

## Non-participating jurisdictions

### 14.50 Treatment of account holders in non-participating jurisdictions

- What if a NP FFI does not register for a GIIN
- What is the difference in non-participating jurisdiction such as Serbia and Svalbard
- Are all European territories in CRS? TRNC, Åland, Büsingen, Campione, French depts vs municipalities, Netherland municipalities, UK overseas territories, Ceuta, Melilla, Norway biland, Kosovo, Transnistria...
- CRS treats non-participating Investment Entities as Passive NFEs. Why silent about other types of FIs

## CRS flaws and unintentional non reportable

### 15.20 Loopholes: Reality versus hoaxes

- The Polar Bear custodian is a legitimate non-reportable structure - Article 29 MCAA, non-UK trust
- Why BEPS Mandatory Disclosure Rules is a failure
- Holding Investment entity is a loophole / avoids economic substance?
- Listing private companies on a small exchange is a CRS loophole that the OECD could tackle
- Gibraltar Broad Participation Retirement Plans are a loophole vs why Hong Kong ORSOs was closed.
- Form a NFE company every 2 years as a non-reportable Active NFE scam still survives.

- The most common misunderstanding: Investment entity directed by owner does not avoid CRS
- Barbados sham insurance to avoid CRS, but it doesn't work despite their threats to sue if you contest
- «Pasquantino» Why advisors helping to hide clients in the US can be convicted for wire/mail fraud.
- Falsely claim Companies Limited by Guarantee have no Controlling Persons or are Active NFE charities.
- Hold investable assets in a captive insurance policy, despite IRS warning captive is a tax scam
- Can intangible assets, patents, IP convert Passive NFEs Active NFEs despite IFRS short-term write off
- Does the anti-avoidance clause of shifting assets to a non-participating jurisdiction work.
- British Overseas Territories: St. Helena, Akrotiri & Dhekelia

### 16.20 Seminar quiz game

- Sample: Is this a custodian, Is this a reportable CARF transaction, Where is this untaxed company tax resident, difference between nominee and custodial, When is controlling person of a CI the equity interest, Reportable debt interest example, Impact of aligning beneficiaries. of passive NFE to FI....

17.00 End of the seminar

**Mark Morris** interacted with the OECD on weaknesses and ambiguities of the Common Reporting Standard. Advises several European competent authorities and EU Finance Federations on the misapplications in the guidelines concerning EU Directives. Authored e-learning scripts for Baker & McKenzie regarding Common Reporting Standard and EU Savings Tax Directive. Has advised EU Commission and EU Parliament on aspects of Automatic Exchange of Information. Assisting EU Parliament on coercing the US to implement the unfulfilled promised reciprocal reporting of FATCA.

**Paul Foster Millen** Paul Foster Millen (NYU School of Law, J.D. '05, LL.M in Tax '18) is the founder and principal of Millen Tax & Legal GmbH in Zurich, Switzerland. He serves as the lead advisor for Swiss banks, trust companies and single family offices on an array of tax and regulatory topics. Overall, he specialises in the US federal tax consequences of cross-border income flows and asset holdings for non-US Persons. His matters of specific expertise include CRS/FATCA and CARF/DAC8. He is a prolific writer and presenter, co-authoring the influential five-part series of CARF articles in Tax Notes International known as "Old Tricks for New Dogs". He is the co-proprietor of the CRS & FATCA General Store and CARFtools websites.

**GENEVA, TUESDAY 27 MAY 2025, 9.00-17.00, HOTEL PRESIDENT / ONLINE**

## INFORMATION & REGISTRATION

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AF 1400

I register to the seminar "CRS/FATCA misinterpretations and imminent CARF/CRS 2.0" on 27 May 2025.

I will attend in the conference room  I will attend online on Zoom.

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