

# OECD Mandatory Disclosure Rules (MDR) on CRS avoidance arrangements

## OECD preventing abuse of Residence by Investment Schemes

**OECD INITIATIVES:** OECD has released (i) Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures, (ii) Abuse of residence-by-investment schemes. **The proposal targets, under threat of penalty for non-compliance, promoters and service providers** with material involvement with the design, marketing or implementation of CRS avoidance arrangements or offshore structures. Contentiously, all legitimate exemptions and exclusions are effectively revoked, such as non-reportable FIs, non-reportable accounts, non-financial accounts, opaque structures holding property. **Rules are retroactive as from July 2014.** The second proposal is non-genuine tax residences.

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CRS specialist

interacting with OECD,

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#### Seminar objective:

- A comprehensive assessment and analysis of the rules.
- Envisaged limitations and ineffectiveness.
- Will MDR be hobbled by ineffective bright-line tests, contested collateral evidence, privileged confidentiality, self-incrimination protection, unlikely extraterritorial projection, prohibited retroactive criminalisation, and indeterminate prescriptive and adjudicative jurisdiction?
- How should FIs tackle abuse of residence by investment schemes.

#### Schedule:

- 8.30-9.00 Registration
- 9.00 Beginning of seminar
- 10.30 Coffee break
- 12.30 End of seminar

#### Prevent abuse of residence by investment schemes

- Characteristics of jurisdictions offer schemes?
- How FIs must look-through non-genuine residency?

#### Purpose and goal of Mandatory Disclosure Rules

- Spontaneous exchange differs from automatic?
- How is the net expanded to non-CRS assets?
- Are all previous exemptions and exclusions revoked?
- Compare to current General anti avoidance rules?
- Will reporting trigger target audits by authorities?

#### Hallmarks of arrangements

- Is generic hallmark of avoidance too wide?
- What are bright-line tests on avoidance schemes?
- Moneys functionally equivalent to financial accounts?
- Any transfer to non-reporting FI avoidance?
- Any transfer to non-reporting account avoidance?
- Weak due diligence to identity of Controlling Persons or Account holders an arrangement?
- Converting entities to Active NFE an arrangement?
- Trusts as holding, asset overvaluation, creation of a new company, reorganisation are arrangements?
- Investing through other entities an arrangement?
- Setup without Controlling Persons an arrangement?
- Payments through loans, debit card an arrangement?

#### Hallmarks of offshore structures

- Applies to Active NFE, Investment entities?
- Passive Offshore structure different to Passive NFE
- Which structures are exempted even if opaquely held?
- Which Institutional Investors are not exempted?
- Include holding non-CRS assets such as real estate?
- When is using a nominee not an offshore structure

- What constitutes indirect control?
- What constitutes unidentified access to assets
- FI does not maintain UBO info on pre-existing settlors?

#### Who is an Intermediary?

- Difference between promoter and service provider?
- If no taxpayer enters into proposed arrangement?
- How are dual resident intermediaries covered?
- Lawyers with and without confidentiality privilege?
- What is collateral evidence that intermediary exists?
- What if intermediary is unpaid?
- If employee, is intermediary individual or corporation?
- Intermediary refers someone to another intermediary?
- When is a legal opinion considered avoidance?
- When is a passive trustee an intermediary?
- Foreign promoter/service provider an intermediary?
- When is providing a legal opinion an intermediary?

#### Triggers for reporting?

- Within 2 weeks of when? Extended to 6 months?
- What is trigger if unaware any taxpayer enters arrangement?
- Report if aware taxpayer exited the arrangement?
- Difference on exclusions to report for promoter vs. service provider
- When is there a value threshold for reporting for promoter, for service provider?
- Report if taxpayer has moved to non-CRS jurisdiction?
- Report every year on same arrangement?
- Which reporting is duplicated by other intermediaries, and which is not?

### Reporting and penalty for non-compliance

- When is a potential customer a reportable taxpayer?
- What info reported for jurisdictions where arrangement is available but not implemented?
- Intermediary does not have sufficient details on potential customer?
- What is difference in information reported retroactively?
- What is difference between reportable client and reportable taxpayer?
- If no intermediary involved, how is there still reporting obligation?
- What happens when no intermediary is obligated to report on arrangement?
- Legal to apply penalty on retroactively advising taxpayer avoid CRS if it was not illegal before?
- Penalty on not reporting if only a potential client?
- Penalty if no report required due to infringement on person's self-incrimination?

### Which avoidance is strongly, weakly, or not covered?

- Excludes moving to USA if same info from FATCA - so when is it an arrangement?
- Move to a USA / Taiwan insurer, trustee, LLC, LP, etc?

- Non-participating custodian institution or fund is the owner?
- Convert equity into debt, options, nominees, etc?
- Residence and Citizenship by investment schemes?
- Embed investments in Active NFE, fake Active NFE?
- When is real estate included? Different to crypto?
- Arrangement includes trusts reporting zero value for settlors of irrevocable trusts?
- Are all loopholes closed?
- Why are retroactive triggers different?
- What is purpose of capturing lawyers if no reporting required?
- What is infringement on person's privilege against self-incrimination?
- Retroactive obligations and penalties on promoters?
- Can OECD encourage partner jurisdictions to override prohibited ex post facto laws?
- Compare MDR with UK Promoter on Tax Avoidance Schemes legislation, EU MDR, OECD BEPS MDR
- Who cannot escape MDR under any circumstances?

## PRACTICAL INFORMATION

### Venue

Grand Hotel Excelsior  
Great Siege Road, Valletta

### 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  
PO Box 6069, CH-1211 Geneva 6  
www.academyfinance.ch

### Fees

450 euros  
Additional registrations from the same company: - 50%

### Registration and payment

Payment is made by credit card. Credit card payments will be debited immediately upon receipt of card details. If it is impossible or impractical for you to pay by credit card we will accept a payment by wire transfer. In this case please mention it on the registration form or send an email to info@academyfinance.ch. In any case, we will send you an invoice by email.

### Substitution & cancellation policy

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

- 11 April 2018 refund of 80%
- 25 April refund of 30%
- after 25 April no refund will be made for cancellation.

## REGISTRATION FORM

I register for the seminar «OECD Mandatory Disclosure Rules on CRS Avoidance Arrangements and OECD preventing abuse of Residence by Investment Schemes» in Valletta on thursday 10 May 2018.

### FIRST PARTICIPANT

Full name.....

Position.....

E-mail.....

### SECOND PARTICIPANT (-50%)

Full name.....

Position.....

E-mail.....

Company.....

Address.....

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

Tel ..... Fax.....

Mastercard  VISA  AMEX

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

Cardholder.....

Address of AMEX cardholder .....

Date ..... Signature.....