

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

## Which arrangements must be reported? Which intermediaries must report?

On 10 March 2018 OECD published the **Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures**. **The MDR target, 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.**

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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

#### 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

Hôtel Métropole  
4 Avenue de la Madone, Monaco

### How to register

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by e-mail: info@academyfinance.ch  
by post: Academy & Finance SA  
PO Box 6069, CH-1211 Geneva 6  
www.academyfinance.ch

### Fees

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

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- 15 May 2018 refund of 80%
- 1 June refund of 30%
- after 1 June no refund will be made for cancellation.

## REGISTRATION FORM

I register for the seminar «OECD Mandatory Disclosure Rules on CRS Avoidance Arrangements» in Monaco on friday 15 June 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.....

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