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Issue highlights

Mandatory discloser Rules
addressing CRS avoidance and
opaque structures

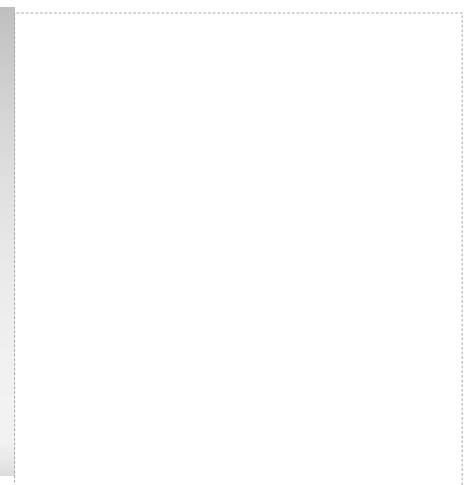
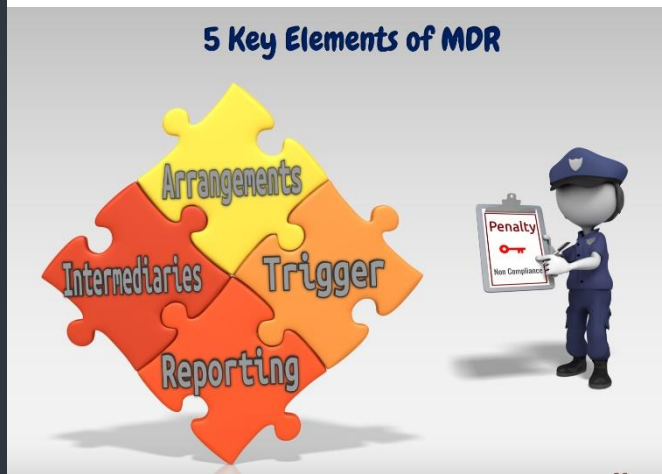


this issue

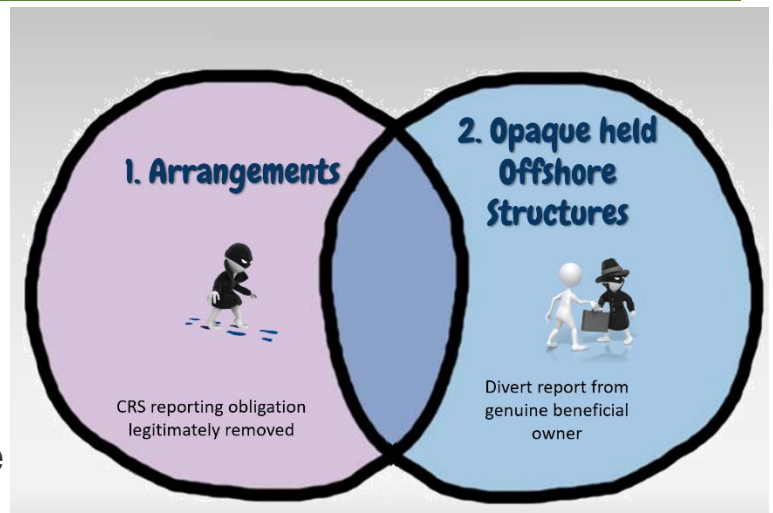
CRS Mandatory
Disclosure Rules

Mandatory Disclosure Rules Designed to catch promoters and service providers helping taxpayers avoid CRS

- Intermediary disclose design & supply of CRS avoidance arrangements
- Information spontaneous exchange ⇨ Convention MAA if transmitting country suspects the information might be of interest to another country
- EU MDR exchange quarterly
- Gather intelligence on CRS avoidance Arrangements so that:
- Authorities do targeted audits
- Global Forum address inadequate implementation
- Deter marketing & implementation
- Inspired by BEPS Action 12 / UK POTAS / EU MDR (and other way)



MDR Arrangements Reasonable to conclude that it is designed, marketed or has effect of circumventing the CRS



Scheme, plan, understanding, legally enforceable or not, all steps and transactions to bring arrangement into effect

Use of an account, product or investment substantially similar features to a Financial Account

Does not require a transfer or conversion

Product focused ☑ crypto, OTC derivatives

Effectively expands financial account definition

Transfer Financial Account or its money or its financial assets to a non-reporting FI

Irrespective if relationship maintained

Financial Account includes equity interest

Bank, money transfer agent not intermediary if client instructs bank to transfer to NPJ FI unless bright-line test – purpose / timing of transfer ??

If FATCA IGA will exchange same, transfer to USA is not an Arrangement

Conversions / transfer Financial Account or its money or financial assets to a non-reportable Account

Domestic jurisdiction focused

non-cash value insurance, pre-existing insurance, escrow, card awaiting return of over payment

Generally, does not include low-risk exempt FIs such as pension

d) Convert FI into non-reporting FI

Management non-participating jurisdiction

Corporate director individual

Trust company - avoid identifying discretionary beneficiary

e) Undermining & exploiting due diligence weakness to correctly identify:

Account Holder / Controlling Person

Generally removes obligation to report vs offshore

no AML pre-existing settlors

Nominee

Beneficiary as charity then replace with others

) Undermining & exploiting due diligence weakness to correctly identify:

All jurisdictions of tax residence

FI accepts bad-ugly Rbi / Cbl residence certificate or tax certificate as sole residence

Intermediary markets Rbl/Cbl knowing CRS effect

Allowing or purporting to allow:

Entity to be an Active NFE

trading company without asset test / overvalue intangible assets

inadequate stock listing conditions

new company every 2 years

misinterpretation of holding or financing subsidiaries

synthetic re-organisation

trust as holding A-NFE

Allowing or purporting to allow:

Invest through entity without CRS reporting

back-to-back investment through A-NFE

loop to A-NFE

Non compliance non monetary penalty
Prohibit an Intermediary from providing regulated or professional service

Allowing or purporting to allow:

iii. Avoid person treated as Controlling Person

Manipulating 25% threshold

P-NFE Trust company (avoid beneficiaries)

P-NFE Investment Entity trust avoid discretionary beneficiary

Convert equity interest to debt interest in a P-NFE

Classify payments made for benefit of Account Holder or Controlling Person as non-reportable

Trust pays bills on behalf of beneficiary

Credit to prepaid cards

MDR not effective unless intermediaries and taxpayers incentivized to comply

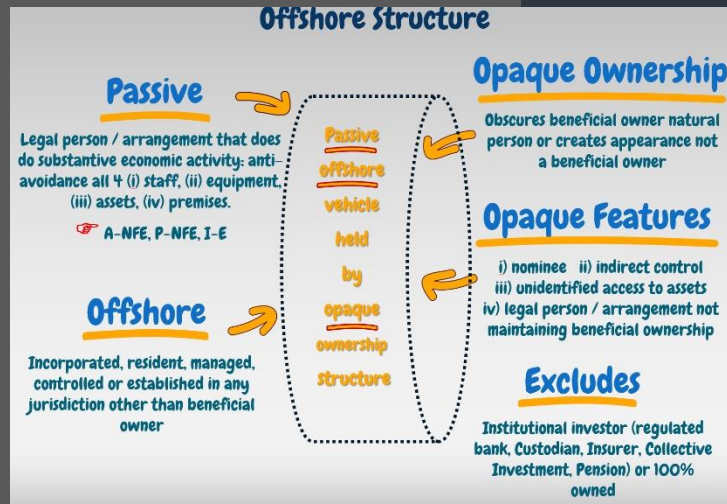
Intermediaries
Prohibit an Intermediary from providing regulated or professional service
Fixed rate or % of fees paid to intermediary for services provided in respect Arrangement to remove economic incentive not to disclose (UK POTAS £ 1 m)
Daily penalty to emphasize timely disclosure (UK POTAS £ 600)

Identity of beneficial owner obscured

Differs to C(i) Arrangements, as

Structure obligation to report is generally not removed

Includes Structures holding assets other than Financial Accounts e.g. property, operational companies, gold, etc.



Intermediaries

Any person resident, incorporated, place of management in [country] which makes Arrangement or Structure available for implementation or provides 'relevant services'



<p><i>Design</i></p> <p><i>Introduce features into</i></p> <p><i>Arrangement which has effect of circumventing CRS, or</i></p> <p><i>results in Opaque Ownership</i></p> <p><i>Structure</i></p> <p><i>Market</i></p> <p><i>Encourage others enter</i></p> <p><i>Arrangement / Structure based</i></p>	<p><i>CRS treatment</i></p> <p><i>Written or oral Collateral Evidence</i></p> <p><i>exists promoter refers to CRS non-reporting</i></p> <p><i>Evidence admissible based on witness credibility</i></p> <p><i>Cannot call another witness to contradict credibility of 1st witness</i></p> <p><i>Service Provider has</i></p>	<p><i>knowledge of the</i></p> <p><i>Arrangement,</i></p> <p><i>combined</i></p> <ul style="list-style-type: none"> <i>• expertise and understanding required to provide the Relevant Services can reasonably be expected to know</i>
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Disclose within 30 days :

Promoter makes arrangement or structure available for implementation to other intermediaries or taxpayers (marketing)

material design elements communicated to client or taxpayer

even if main elements not yet in place for implementation

Service Provider services other intermediaries or taxpayers (likely a 2nd report)

Entered into after 29 October 2014 but before rules effective:

worth more than \$1 million

within 180 days if Arrangement was implemented

irrespective of whether promoter provided related services after effective date of rule

Why?

- lawyers
 - accountants,
 - financial advisors
 - trustees
 - administrators
 - management (e.g. corporate directors)
- compliance services of offshore structure
- ‘Snitch’ captures upstream designers or 3rd party promoters



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a sprinkling of topics in
future issues...

OECD initiative to address abuse of
residence by investment to avoid
CRS

