

7 April 2017

Dear Pascal, Achim,

As you know, I write to you on critical issue on CRS concerning loopholes or ambiguity. I now inform you of on an illogical update by the March 2017 updated FAQ on CRS. It contains a clarification that destroys the structured methodology and worse, it conflicts with the Standard in many ways.

Identification of Controlling Persons of Passive NFEs with Financial Institutions in the chain of legal ownership

For purposes of determining the Controlling Persons of a Passive NFE, does the CRS allow a Reporting Financial Institution to not determine/report such Controlling Person on the basis that there is a Reporting Financial Institution in the ownership chain between the Passive NFE and the Controlling Person?

*No. The CRS status of intermediate Entities in the ownership chain is **irrelevant** for these purposes.*

The mandatory ignoring of the CRS status of the owner of a Passive NFE will result in illogical, inconsistent and conflict reporting:

- **Reporting on Non-Reportable Persons:** When reporting on the Account Holder the Standard excludes five types of Non-Reportable Persons, namely Government entities, Central banks, International organisations, Regularly traded corporations and Financial Institutions. Yet the FAQ update illogically mandates if any of these Non-Reportable Persons own a Passive NFE, the Controlling Persons of these Non-Reportable Persons must be reported. Envisage where a Central bank or International organisation owns a Passive NFE. Must the reporting FI now inconsistently report on the senior managing officials?
- **Reporting on Non-Reporting FIs:** What if the owner of the Passive NFE is a Non-Reporting FI, such as a Broad Participation Retirement Fund or other Low Risks FIs. The FAQ update illogically mandates the ultimate Controlling Persons of these Non-Reporting FIs must be reported (again Senior managing official?). Obviously, if a Non-Reporting FI need not report on its beneficiaries, why must the FI maintaining the Account report on the beneficiaries of a subsidiary owned by a Non-Reporting FI? This is inconsistent with the Standard.
- **Reporting on owners of Active NFEs:** What if a Active NFE owns a subsidiary Passive NFE? Why must the reporting FI report on the Controlling Persons of the Active NFE just because they own a Passive NFE subsidiary? They are still Active NFE despite owning a Passive NFE subsidiary.

- **Reporting on Non-Participating Jurisdiction Depository and Non-Participating Jurisdiction Custodial Institutions:** What if the owning FI is a Non-Participating Jurisdiction Custodial Institution or a Non-Participating Jurisdiction Depository Institution or Non-Participating Jurisdiction Insurer? The Standard only *looks-through* Non-Participating Jurisdiction Investment Entities. The FAQ update illogically and inconsistently mandates the FI maintaining the Passive NFE account must now *look-through* the Non-Participating Jurisdiction FI owning the Passive NFE, even if it is not an Investment Entity. (Again, senior managing official?)
- **Duplicate reporting:** If the owning entity is an Investment Entity, then the beneficiaries would be those holding Equity Interest, which are considered Account Holders. Account Holders are reported by Investment Entities. The FAQ update will result in duplicate reporting by both the FI maintaining the Passive NFE Account as well as by the owner Investment Entity. Worse, there will may two types of report on the same entity, one by an Investment Entity trust and one for a Passive Investment trust, which may have different reportable beneficiaries. This is inconsistent with the Standard.

The FAQ update obliging reporting FIs to ignore the CRS categorisation or status of entities owning Passive NFEs destroys the consistent methodology of the CRS. The *look-through* of owners in the legal chain of Passive NFEs must logically exclude Non-Reportable Persons (including Active NFEs) and Non-Reporting FIs, but include Non-Participating Jurisdiction Investment Entities. As demonstrated here, ignorance of the CRS status results in reporting that conflicts with the Standard in many ways, e.g. reporting on Non-Reportable entities merely because they own a Passive NFE subsidiary.

Thanks,

Mark Morris