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How a Custodial Institution can ensure a settlor of any trust is not a reportable person, whilst the beneficiaries will be reportable

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A
non-participating custodial institution can be the settlor
of a normal
trust (here trust will do for our explanation). In such
case, there will
be no reporting on the settlor
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- Assume a custodial institution trust settles a normal trust, as the normal trustee large company does not want to lose the business.
- If the normal trust is a reporting FI, the normal trust will report the following (no de minimis on the debt and equity interest account holders):

Trust is a Financial Institution		
Account Holder	Account Balance or Value	Gross payments
Settlor	Total value of all trust property	Value of payments made to the settlor in reporting period (if any)
Beneficiary mandatory	Total value of all trust property	Value of distributions made to the beneficiary in reporting period
Beneficiary discretionary (in a year in which a distribution is received)	Nil	Value of distributions made to the beneficiary in reporting period
Any other person exercising ultimate effective control	Total value of all trust property	Value of distributions made to such person in reporting period (if any)
Debt interest holder	Principal amount of the debt	Value of payments made in reporting period
Any of the above, if account was closed	— The fact of closure — (No values reported)	

If the normal trust is a NFE, then the reporting FI maintaining the financial assets of the normal trust will report the following: (no de minimis on the debt and equity interest account holders):

Trust is a Non Financial Entity (NFE)		
Account Holder	Account Balance or Value	Gross payments
Settlor	Total account balance or value	Gross payments made or credited
Trustee	Total account balance or value	Gross payments made or credited
Unnamed class of beneficiaries (DK's NOR Recommendations - see Section 3.2 and Recommendation 6.1 at footnote 30)	Total account balance or value (unless distributions made or exercises vested rights)	Gross payments made or credited
Beneficiary mandatory	Total account balance or value	Gross payments made or credited
Beneficiary discretionary (Regardless if distribution made. Different to I.E. trusts!)	Nil	Gross payments made or credited
Protector (if any)	Total account balance or value	Gross payments made or credited
Any of the above, if account was closed	— The fact of closure — (No values reported)	

As the settlor is a Custodial Institution, what is reported on the settlor?

A. Normal Trust is a Passive NFE

- If the trust is a Passive NFE, the controlling persons of the normal trust would be reported: even if any of the controlling persons were a FI, or any of the parent entities in the chain of ownership of a controlling person was a FI.
- Read this and weep...

CRS related Frequently Asked Questions

(February 2019)

The OECD assesses and regularly updates this list of frequently asked questions (FAQs) on the application of the Common Reporting Standard (CRS). These FAQs were created from Member and government delegates. The answers to each question provide further guidance on the CRS and help to ensure consistency in implementation. More information on the CRS is available on the Automatic Exchange Portal.

SECTIONS II-VII: RELEVANCE REQUIREMENTS

V. Identifying a Controlling Person of Passive NFEs with Reportable Jurisdictions as the sole of legal ownership

For purposes of determining the Controlling Persons of a Passive NFE, does the CRS allow a Reporting Financial Institution to use Between-report such Controlling Persons as the sole that Were a Reporting Financial Institution to use Between-report such Controlling Persons as the sole that Were?

Yes. The CRS views of consumption Entities to the controlling class is restricted for Pass purposes.

B. Normal Trust is a PMIE

- By the way, no need to have a irrevocable trust, like Singapore who perverts rel reporting on settlors of such trusts.

- However, if the normal trust is a Professionally Managed Investment Entity (PMIE), e.g. has a corporate trustee, then then the normal trust will cid or not report on any FI that is the settlor, protector, or beneficiary (or anyone ahe having material influence).
- If the settlor is a Custodial Institution, then there is no reporting by the normal trust on the settlor

If the Custodial Institution is non participating, then the CI has no CRS reporting obligation and there will never be any reporting on the settlor

Better than the ridiculous Singapore rule

Nice move

Hold your horses

- A Custodial Institution is (1) an entity (ii) that holds **financial assets** for another's account, and (iii) a significant part of its gross earnings are custody fees
- How can the nominee settlor, the entity claiming to be a Custodial Institution be an FI if it has settled all its Financial Assets (bankable assets) to the normal trust?

Assume the Custodial Institution is a trust

HMRC confirms a trust can be a Custodial Institution

- The CI trust should hold another Financial Asset on behalf of the client.

What financial asset is ideal for the Custodial Institution trust to hold

Only a genius can figure this shit out

- The Custodial Institution should hold the shares of an entity, the units of a fund or arrangement, all of which have dominant account (perhaps this is the entity that the trust will make distributions to)

It doesnt matter if the entity has no financial assets, as the shares or partnership is a financial asset.

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Welcome to the world of Financial Assets vs Bankable assets
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So what custody fee will the Custodial Institution levy if the entity it holds has no bankable assets

read this.. (it will be no 5)

Remember, the Custodial Institution trust is holding, lets say, the shares of an underlying company, that owns no bankable assets

The shares of the underlying company is the financial assets that the Custodial Institution is holding.

For CRS, there are 6 types of custody-related fees for holding assets on behalf of others, one of which is just crazy:

Income attributable to "**holding Financial Assets and related financial services**" means:

1. *Custody, account maintenance, and transfer fees;*
2. *Commissions and fees earned from executing and pricing securities transactions with respect to Financial Assets held in custody;*
3. *Income earned from extending credit to customers with respect to Financial Assets held in custody (or acquired through such extension of credit);*
4. **Fees for providing safe deposit boxes with respect to Financial Assets held in custody;**
5. **Fees for providing financial advice with respect to Financial Assets held** (or **potentially to be held** in custody by the entity
6. *For clearance and settlement services;*

So the Custodial Institution will provide financial advice to the underlying company on what financial assets should be held.

So who is liable for the custody fees for financial assets potentially to be held by the underlying company

- The settlor has settled his assets to the CI trust which has in turn settled the assets to the normal trust.
- Therefore the normal trust is holding the financial assets of the original settlor
- So the normal trust is liable for the custody fees

Collection of custody fees by third parties

Bare in mind, according to teh OECD FAQ CRS that custody fees can be collected by third parties

- There is no attribution to connected entities, despite a handful of jurisdictions stating in their CRS legislation, payment to third parties must be to connected.

The OECD FAQ CRS states clearly payments to third parties need not be made to connected parties

OECD CRS Commentary on Custodial Institutions holding Equity Interest in a FI trust

Despite the OECD Implementation Handbook stating an FI trust is obligated to treat an entity Equity Interest Account Holder as a Passive NFE and look through to Controlling Persons, the CRS Commentary states the following:

CRS Commentary page 198 paragraph 71

Paragraph C – Financial Account Subparagraph C(1) – In general

Subparagraph C(4) – Equity Interest

71 **Where Equity Interests are held through a Custodial Institution, the Custodial Institution is responsible for reporting, not the Investment Entity.**

- The following **example illustrates** how such reporting must be done: Reportable Person A holds shares in investment fund I. A holds the shares in custody with custodian Y.
- Investment fund I, is an Investment Entity and, from its perspective, its shares are Financial Accounts (i.e. Equity Interests in an Investment Entity).
- I must treat custodian Y as its Account Holder. As Y is a Financial Institution (i.e. a Custodial Institution) and Financial Institutions are not Reportable Persons, such shares are not subject to reporting by Investment Entity I.
- For custodian Y, the shares held in A are Financial Assets held in a Custodial Account. As a Custodial Institution, Y is responsible for reporting the shares it is holding on behalf of A.

Conclusion

or

++++++++++++++++++++++++++++END++++++++++++++++++++++++++++++

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