


A CRS anti-avoidance clause that relies on the user to dob himself in is a brainless idea...

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The anti-avoidance clause is buried surreptitiously in CRS Section VIII page 50 par C(1)(b)

- A Financial Account is according to C(1)(b) "in the case of a Financial Institution not described in subparagraph C(1)(a) (eg. *wealth manager*), any equity or debt interest in the Financial Institution, **if the class of interests was established with a purpose of avoiding reporting** in accordance with Section I"
- What this means is any equity interest established to avoid reporting is a financial account subject to look through to Controlling Person, regardless of its status as a FI or not,.
- An example would be to establish equity interest in professionally managed Investment entity where say the equity interest is a Custodial Intitution in a non-participating jurisdiction.



Since the CRS was published in 2014, I have never seen anyone write an article describing in detail this specific CRS anti-avoidance clause, embedded surreptitiously in the definition of financial accounts.

Description

1. A Financial Institution is a non-reportable person
2. The method for ensuring there is no reporting on FI account holders, is the Equity Interest held in Financial Institutions are not Financial Accounts, and therefore not subject to due diligence review and possible reporting
3. **However**, as an **exception**, there is an anti-avoidance rule where if an Equity Interest in a FI was **"established with the purpose of avoiding reporting under CRS**, then the Equity Interest is a Financial Account" (subject to due diligence review and possible reporting.)
4. This anti-avoidance clause does not apply to Equity Interest in Managing Investment Entities, described in **CRS Commentary Section VIII(C)(1a)**, that is wealth managers
5. All Financial Accounts are subject to due diligence and and reported if Account Holder is a reportable person
6. This means the Equity Interest in a FI is a Financial Account if Equity Interest was "established with purpose of avoiding CRS reporting"

[OECD CRS FAQ Page 18 C- Financial Accounts Q.9](#)



- According to **CRS page 50 Section VIII(C)(1)(b)**, an Equity or Debt Interest in a Financial Institution other than those described in CRS page 50 Section VIII(C)(1a) (wealth managers) is considered a Financial Account **only if the class of interests was established with a purpose of avoiding reporting under the CRS**.
- How does this rule apply to Debt or Equity Interests held in an Entity that is an Investment Entity, solely because it is an investment advisor or an investment manager?
- Section VIII(C)(1)(b) applies to Debt and Equity Interests held in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Investment Entity, if the class of such interests was established with a purpose of avoiding reporting under the CRS.

[CRS Commentary Page 178](#)

- According to subparagraph C(1)(b), an equity or debt interest in a Financial Institution other than those described in subparagraph C(1)(a)(wealth managers) is **considered a Financial Account only if the class of interests was established with a purpose of avoiding reporting** in accordance with Section I.
- Thus, equity or debt interests in a Custodial Institution, Depository Institution, Professionally Managed Investment Entity other than an investment advisor or an investment manager described in subparagraph C(1)(a), or Specified Insurance Company, that were established with a purpose of avoiding reporting will be Financial Accounts.

[CRS Section VIII defined terms - Section C Financial Accounts](#)

1. The term "Financial Account" means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:

a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term "Financial Account" does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity.

b) in the case of a Financial Institution **not described in subparagraph C(1)(a)**, any **equity or debt interest in the Financial Institution**, if the class of interests was established with a purpose of avoiding reporting in accordance with Section I (Section I of CRS contains the definitions of "Competent Authority", "Reporting FI", "Reportable Account", "Person", Reportable Person", TIN, etc.)

What this means

...in the case of a Financial Institution not described in subparagraph C(1)(a),

- this means Equity Interest in Financial Institutions other than Managing Investment Entity that **was established with a purpose of avoiding reporting under the CRS is an Account Holder, subject to due diligence**
- this means equity interest professionally managed Investment Entities
- this means equity interest in Custodial Institutions
- this means equity interest in Specified insurer
- this anti-avoidance clause does not apply to equity interest held in Investment Entities

Why this is useless



- Assume on non-reporting Equity interest in a PMIE, such as a non-participating Custodial Institution
- The bank with the PMIE as account holder will not report because its Account Holder is a non-reporting FI
- The PMIE has the non-participating CI as the equity interest
- In such case the PMIE must treat the CI as an Account Holder and look through the CI which is a FI

Requiring taxpayers to report on themselves is a Mr. Plod move



- This is equivalent to a note on police bulletin board in Noddyland: "Will the jingle-hat bearing thief who stole Noddy's car, please report to the police station with enough pyjamas for three nights."
- This is as brainless as the taxpayer is responsible to dob himself in if their is no reporting intermediary

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