




## I get paid commissions, offshore salary, or foreign property rental income. How can I avoid CRS and CARF?

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The May 2024 OECD CRS-related FAQ update confirms how to establish a non-reportable Active NFE to collect non passive income. So go ahead and collect your commissions, offshore salaries, rental income or any other non passive income, and not be subject to Automatic Exchange of Information (CRS, FATCA, CARF)



An Active Non Financial Entity (Active NFE) is not a reportable account.

[OECD CRS FAQ: Passive Non-Financial Entities](#)



### CRS-related Frequently Asked Questions (February 2019)

D. REPORTABLE ACCOUNT
<b>2. Passive Non-Financial Entities</b>
<b>An Entity is an Active Non-Financial Entity if less than 50% of its income is passive income and less than 50% of its assets produce or are held for the production of passive income. What if the assets could produce passive income but do not actually produce any income in the period concerned?</b>
The test of whether an asset is held for the production of passive income (Section VIII, D, (9), a) and the associated Commentary) does not require that passive income is actually produced in the period concerned. Instead, the asset must be of the type that produces or could produce passive income. For example, cash should be viewed as producing or being held for the production of passive income (interest) even if it does not actually produce such income.

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#### Income test

- Passive income is interest, dividends, investment gains, etc
- If more than 50% of the entity's income is **not passive**, such as rental income, commissions, intellectual property income, salaries, etc. then the entity passes the first prong of the tests to be a Passive NFE

#### Asset test

- If an entity is holding more than 50% cash and the accumulated cash is held for the purpose of business, for example will be used to buy the next shipment of widgets or is to be used to build a factory or to be used to renovate the office, then the OECD related FAQ states the cash held is is held for the production of passive income even if it does not produce interest, even if it is held for business purposes.
- There is no more "purpose of holding cash" argument here.
- Cash is cash and is held for the production of passive income, even if it doesn't

### However not all countries regard the CRS-related FAQ as part of the CRS legislation

- So why do CRS entity self-certification forms still provide guidance that assets of an Active NFE applies to businesses such as management consulting?
- Many banks are fixated only on the income test and ignore the passive NFE asset test, especially if the cash is to be used for purposes other than producing passive income.
- Here is a clear example by a major Swedish bank whose [Entity self-certification form](#) states that assets derived from other than passive income count towards it being an Active NFE.
- This bank goes off the rails when its self-certification form guides that "assets of more than 50 % held by the entity relates to other than passive assets, for instance assets **related to the sales of goods and/or services** (e.g. hairdresser, restaurant, consultancy firms, etc.).
- Wow, so the bank opines cash derived from sales of widgets or consulting services is "other than passive assets" and does not count towards the asset being held for the production of passive income.

#### Summary

- It will be up to the bank to categorize your entity as a non reportable Passive NFE if the cash is held for purposes other than to produce passive income
- Most banks in Asia categorise an entity whose income is predominantly non passive (eg consulting, commissions) and the assets are predominantly cash not earning interest and the purpose of the cash is not to produce interest but is being accumulated for say purchase of stock or renovate offices or buy factory.

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