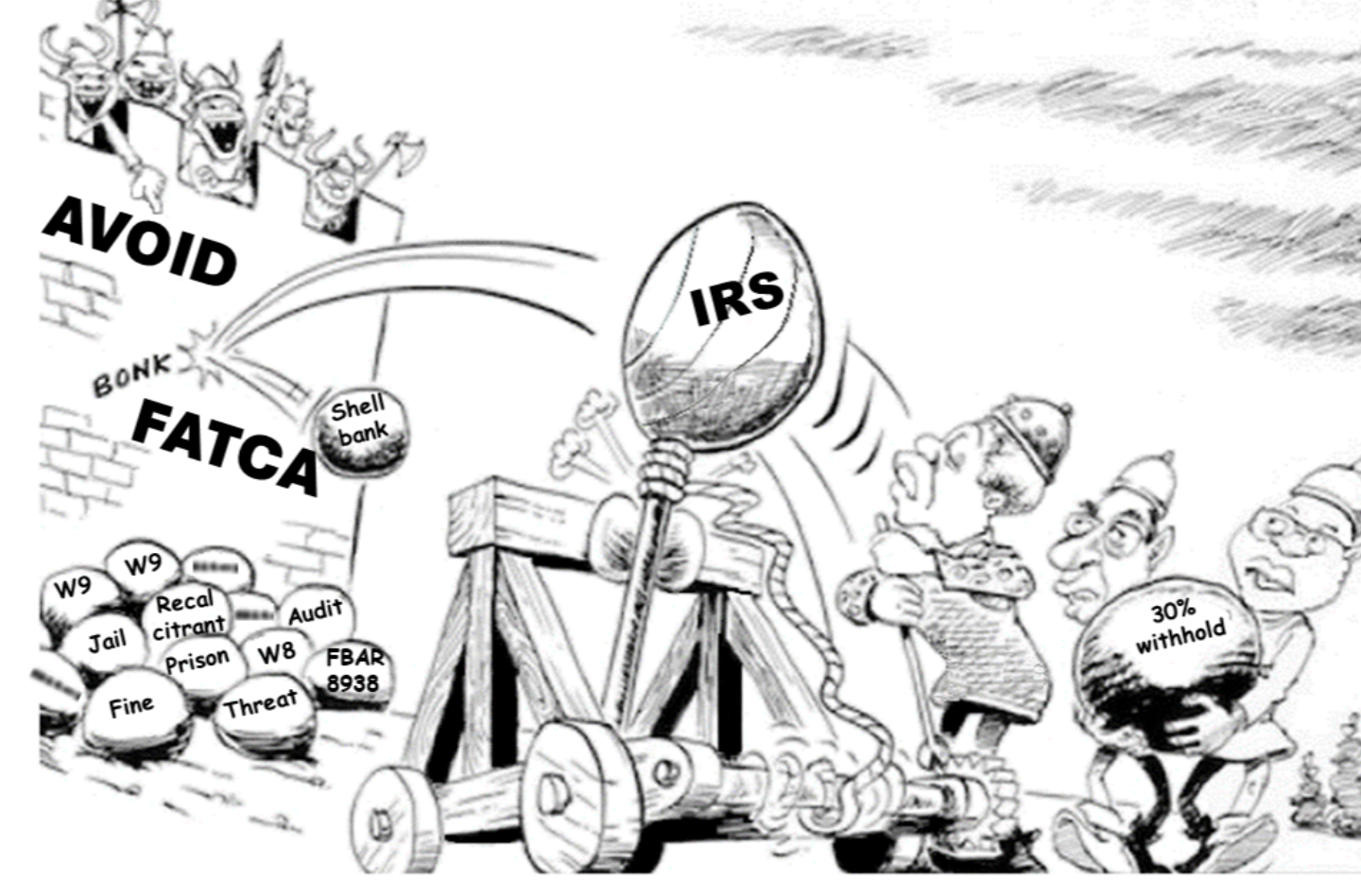


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FATCA falls down completely when dealing with Custodial Institutions in non-participating IGA countries.

Mark Morris CRS and CARF expert. No, truly.

September 11, 2024

Assume a SPV Custodial Institution located in a country that does not have an IGA with the USA, holds an Investment Entity (PMIE) resident in say BVI or Singapore, holding financial assets via an underlying PMIE for a US Person but does not receive any income

- The underlying PMIE does not report for FATCA or CRS as its equity interest is a Custodial Institution which is a FFI and FI.
- The Custodial Institution is a FFI as well as an FI for CRS, based on its income and activity tests.
- The Custodial Institution need not register for a GIIN with IRS if the country where the CI is located is not a FATCA signatory.
- Note the CI is a non-participating FFI even if it doesn't have a GIIN. This is amazing! It means the underlying PMIE legally does not report on its equity interest. Stunning.
- To punish FFIs who do not register or report for FATCA, FATCA imposes a 30% withholding tax on any "withholdable payment" made to a Foreign Financial Institution (FFI).
- To avoid the 30% withholding tax the FFI must comply with the customer identification, reporting, tax withholding, and related requirements.
- However in the scenario described above, there is no withholdable payment made to the FI/FFI Custodial Institution
- The Custodial Institution does not report "recalcitrant accounts" as its not a FATCA signatory
- A recalcitrant account holder is any account holder which fails to comply with reasonable requests by the Reporting FFI that maintains the account (the underlying PMIE) for: (a) information that is necessary to determine the account holder's FATCA status; and/or (b) information that needs to be reported about the account for FATCA purposes.

Comments

Dionis SADIKU and 3 others

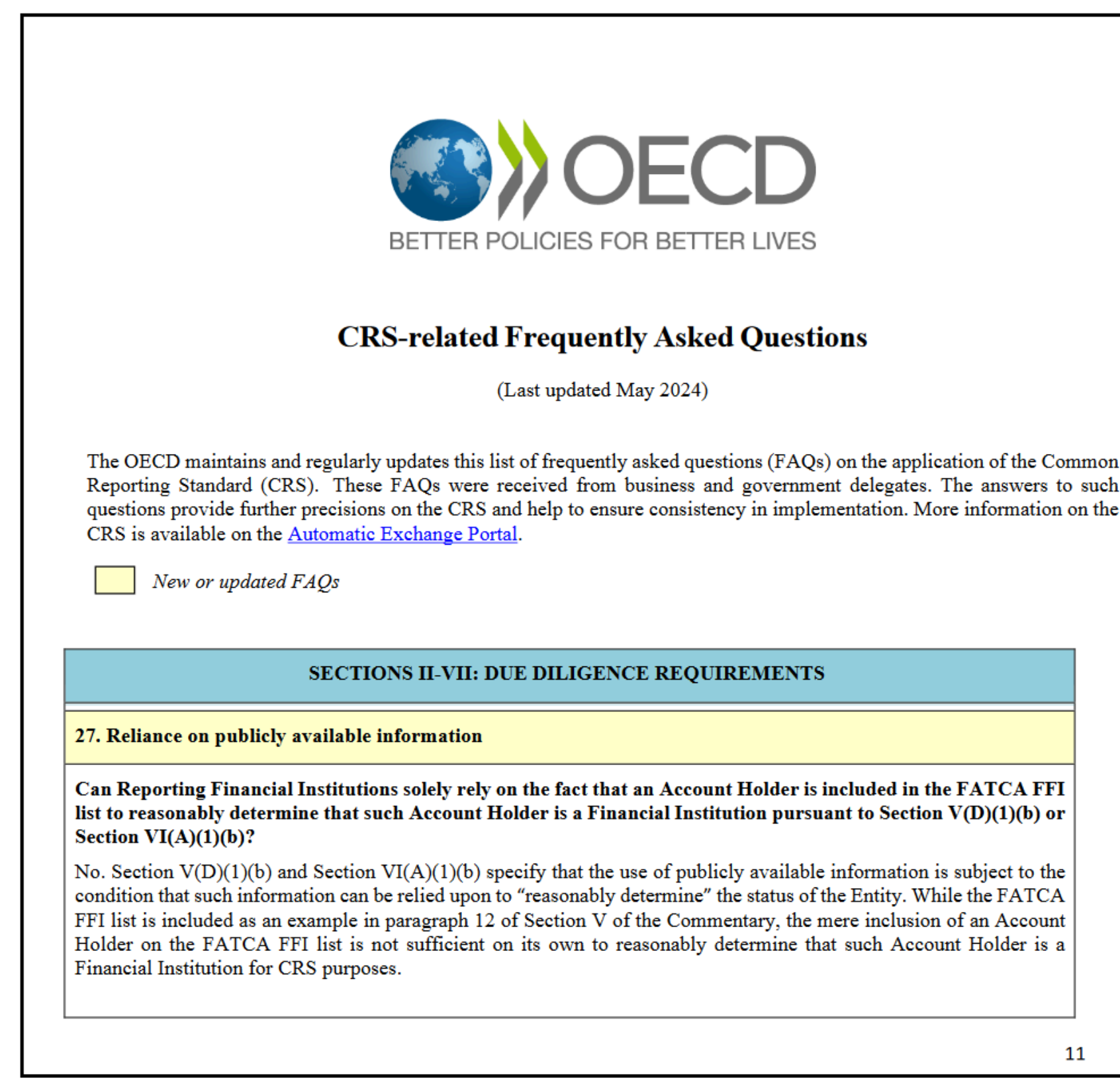
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OECD confirms an entity can be an FI for CRS even if it does not register for a GIIN



Conclusion

- The fatal flaw / weakness of FATCA is an entity is a FFI even if it does not register for a GIIN or report.
- Its a FFI based on its activity and income test, not based on its registration with IRS for a GIIN
- The reliance on 30% withholding is a toothless wonder if it does not receive any reportable payments
- Also there is no FFI report on recalcitrant account holders as CI has no IGA to do so.
- OECD in April 2024 confirmed an entity can be a FI for CRS even if it does not have a GIIN

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=====END=====

Mark Morris CRS and CARF expert. No, truly.

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