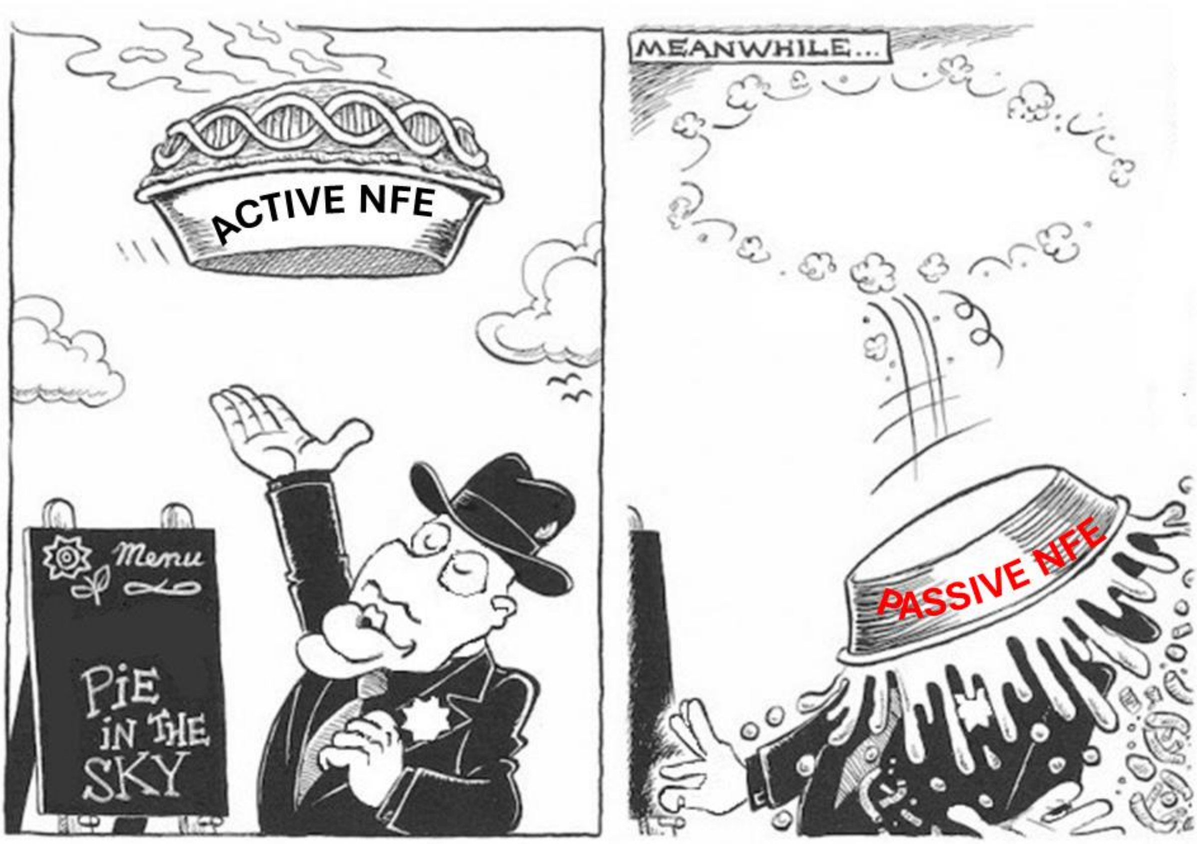
How crooked banks help clients avoid CRS by bull shitting that a PASSIVE NFE is an ACTIVE NFE



- An Active NFE is supposed to be a non-financial entity such as a factory, builder, cargo transport, etc. Active NFEs are exempt from AEOI because the OECD/IRS did not want to flood exchange of information by the millions of operational companies.

- The technical definition of an Active NFE is:

  - Financial assets Is less than 50% of total assets

AND

  - Passive income (interest, gains on investments, etc) is less than 50% of total assets

However banks wrongly define the definition of Active NFE by two ways.

I. **Define Active NFE being only one of the conditions (by using OR between the two conditions**)

Here is HSBC CRS guidelines definition of Active NFE

Active Non-Financial Entity (Active NFE)	An Active NFE generally refers to an entity that operates an active trade or business with <50% passive income (gross) or have <50% assets that produce passive income*. ** Passive income includes dividends and interest.* It also include listed companies, Governmental entities, International Organisations (e.g. United Nation or NATO), Central Bank, or their subsidiaries; start-up NFEs, NFEs that are liquidating / emerging from bankruptcy; and non-profit NFEs.	An Active NFE generally refers to an entity with trading activities including manufacturers, wholesalers, retailers, restaurants and bars, hotels, construction companies, health and social work.

- So, HSBC defines the definition with or, making it easy for entity to be wrongly classified as Active NFE is more than 50% assets are not financial assets **OR** more than 50% income is not passive income, rather than **AND**.

OECD

BETTER POLICIES FOR BETTER LIVES

CRS-related Frequently Asked Questions

(February 2019)

D. REPORTABLE ACCOUNT

2. Passive Non-Financial Entities

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?

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.

- 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 actually produce any income in the period concerned?

- 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.

You demonstrate the cash is not to be used to produce interest, then it won't count toward excluding it from being an Active NFE.

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

- Demonstrate to compliance at the bank that the cash is to be used for purposes other than producing Passive income
- Some websites for downloading free architectural plans and designs can be customized and downloaded. Buildmyhouse.com
- This website features a collection of free residential home plans that can be downloaded and used as a starting point for your own building projects.

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.
- 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 not held for the production of 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.).
- 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 to produce passive income.

How to disguise your company as a non-reportable Active NFE?

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

Watch out if you do invest the cash

- Ensure that less than 50% of the assets are invested in Financial Assets. Keep the rest in non-interest-bearing cash (checking account?)
- Ensure to continuously trim the investment portfolio of financial assets investments to below 50% if it grows
- Ensure the income from investments and capital gains is less than the income from commissions or consulting.

==========================END========================