



Which jurisdiction is responsible to enforce CRS reporting for untaxed Investment Entities

## CRS question for lawyers - Where is equity interest of untaxed Investment Entities maintained? Determines jurisdiction enforcing AEol reporting.

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OECD CRS states the jurisdiction responsible for enforcing the CRS reporting of an untaxed Investment Entity, other than trusts, is where its equity interest is maintained. I've asked several tax authorities where they think this is... "Uhh, we've been waiting clarification since 2014". Great....

Banks exploit this blackhole and tell ther clients if they own and manage an untaxed Investment Entity, other then trusts, then no CRS reporting need be done because the FI is subject to the jurisdiction where the client director resides.

### Which jurisdiction is responsible to enforce reporting of the Investment Entity?

**Typical offshore structure:** Chinese resident owns BVI company with its bank account in Singapore. The Chinese resident is also the director, and the bank manages the portfolio on a discretionary basis. The BVI company is thus an Investment Entity. Simple so far...

**Typical bulldust advice:** Bank whispers in the Chinese client's ear that "there is no need for the Investmentt Entity to report for CRS because the BVI FI is subject to the jurisdiction of China due to its place of management, and hence does not report on its Chinese resident account holders".

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(4) CRS Commentyary page 159: Where a Financial Institution (other than a trust) does not have a residence for tax purposes (e.g. because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Participating Jurisdiction and it is, thus, a Participating Jurisdiction Financial Institution if:

a) it is incorporated under the laws of the Participating Jurisdiction;

b) it has its place of management (including effective management) in the Participating Jurisdiction; or

c) it is subject to financial supervision in the Participating Jurisdiction.

In this context, the term "Participating Jurisdiction" refers to a jurisdiction that has implemented the Common Reporting Standard.

5. Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdictions, such Financial Institution will be subject to the reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the Financial Accounts.

### CRS unique resolving of residence of untaxed FI

In kindergarten language, the CRS says an Investment Entity is considered to be subject to the jurisdiction of (a) where it is incorporated, and (b) it place of effective management. So our BVI Investment Entity is subject to **both** BVI and China jurisdictions. CRS Commentary resolves the multiple residency problem that the single jurisdiction an untaxed FI will be subject to is where it maintains the financial accounts. **Huh**, what does that mean?

### Where is the Financial Account of an Investment Entity maintained?

Where finnacial account maintained? No such equivalent clause exists in tax legislation, treaty or guideline. This is truly unique yet there is not a single article on the web I can find describing this...

CRS page 50 Definition of Financial Account: The term "Financial Account" means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and: in the case of an Investment Entity, any equity or debt interest in the Financial Institution. So the jurisdiction responsible for enforcing the reporting of an untaxed Investment Entity is where the equity and debt interest in maintained.

### So where is the Equity and Debt Interest of an Investment Entity maintained???

To me it's simple. The Equity Interest is maintained where the share register is kept, i.e. place of incorporation. A lawyer recently told me that the share register of a BVI company can be maintained in, say, Delaware, USA. I think that's hogwash. Also the debt interest is where the accounts are maintained, which is more flexible. However, let's keep the focus of this article to equity interest, because banks are advising owner-directors of their BVI company is subject to the jurisdiction of where the director is resident, i.e. in China.

If it was a simple as place of management, the CRS Commentary would not have not stated "where financial accounts are maintained" but rather mentioned "place of effective management", to resolve multiple jurisdictions.

Furthermore, I can assure you the Chinese owner-director will register their Investment Entity's GIIN for FATCA as being in BVI else China will become aware of the FI if the GIIN is registered in China.

### SO MY OPEN QUESTION TO LAWYERS IS.. WHERE DO YOU OPINE THE EQUITY INTEREST OF AN UNTAXED INVESTMENT ENTITY, OTHER THAN TRUSTS, IS MAINTAINED?

Please ignore partnerships for now.



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