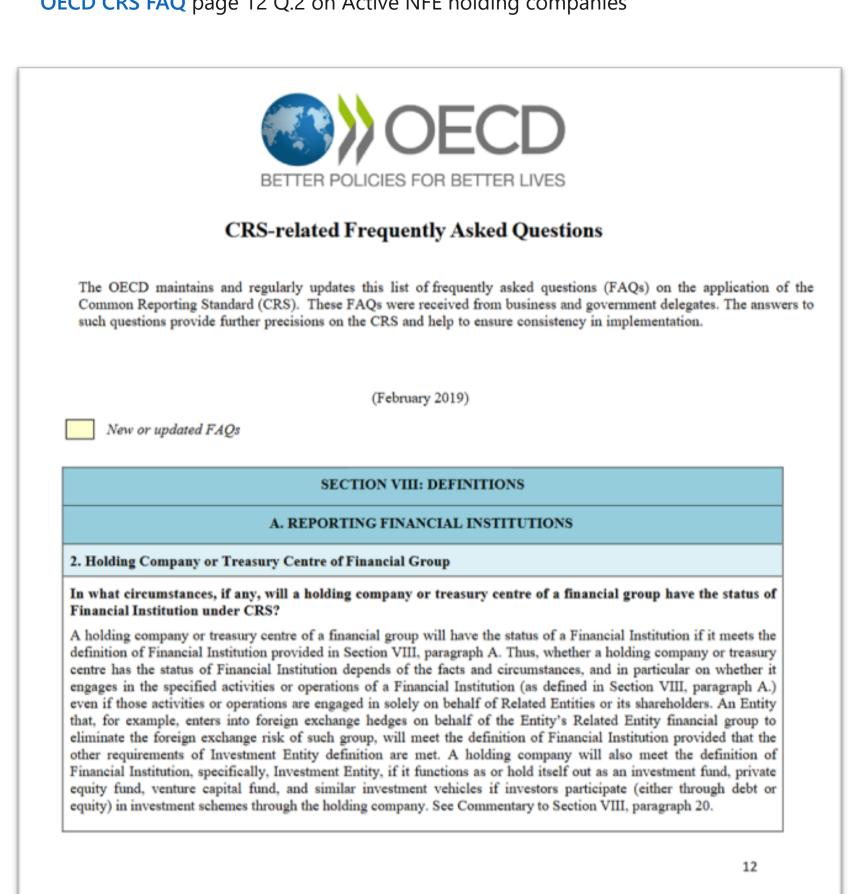


OECD CRS FAQ page 12 Q.2 on Active NFE holding companies



Possible loophole with holding company as a nonreportable Active NFE

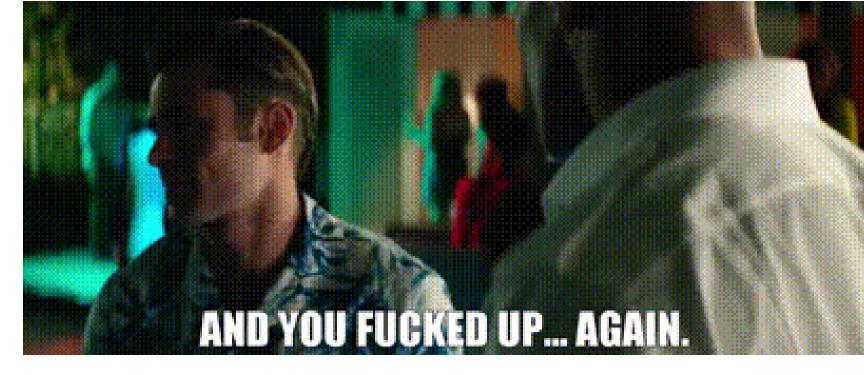


 Establish the underlying company as a Passive NFE Ensure you have an entity holding the Passive NFE

- Make the Passive NFE a Nominee holding its assets on behalf of the Holding Company, with say a Nominee agreement
- As per CRS Page 200 paragraph 139 The reporting Financial Institution will not treat the Account Holder Nominee as the Account Holder but the person for whom the Nominee is holding the account is deemed the Account Holder, i.e. the holding company is the de facto Account Holder
- company, nor the underlying Passive NFE Nominee as it's not an Account Holder.

• As the holding company is an Active NFE, the reporting FI will not report on the holding

Now for fuckup no. 2: The OECD should not permit a trust to be an Active NFE type holding as it is an easily exploited loophole to distribute untaxed income. Trusts and holding companies have different purposes.

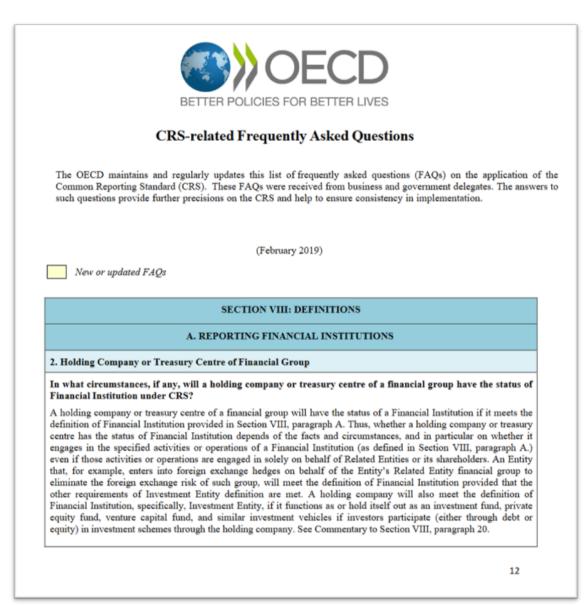


Set up a trust to hold an offshore operational company. The trust collects dividends and distributes the ill-gotten gains with accounts in the US, without AEoI reporting because CRS stupidly classifies the trust as an Active NFE holding type. What a loophole care of OECD.

CRS / FATCA should not treat a trust the same as a holding company. Trust should be a Passive NFE or Investment Entity. Although holding companies and trust companies have some similarities, they are separate types of businesses. The distinction is clear when viewing the definitions for each company, as well as



CRS definition of a holding Active NFE



• CRS page 58 par 9(d) - The term Active NFE means any NFE that substantially all the activities of the NFE consist of holding, in whole or in part, the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution. Whether the OECD / IRS intended it or not, the holding Active NFE includes a trust that holds subsidiaries that are engaged in trade or business. Liechtenstein considers subsidiaries as 10% holding, what a con.

The international standard definition of a holding company



• A holding company is a business or firm that owns the outstanding voting stock of other companies. • The amount of voting stock the holding company owns is significant enough to let the

holding company have a notable say in what the stock-issuing companies do. • Because they can dictate the stock-issuing companies' operations in this way, holding companies also are known as parent companies. • Generally, these companies don't produce any goods or services on their own, but the companies whose stock they own are often producers and service providers.

Trust Company Definition

• A trust company is a business or firm that has a fiduciary, agent, or trustee relationship with another individual or business. • The trust company oversees the management of whatever assets a settlor encompasses in the trust arrangement.

• These companies often are used when a settlor feels the trust company can do an equal or better job managing the assets than an individual person, or if the settlor does not know of anyone else who can act as trustee.

Assets

 Holding companies can own their own tangible and intangible assets, such as land, buildings and copyrights. However, they also own the stock of the stock-issuing company, which means they also own a percentage of the tangible and intangible assets of that company.

• If the stock-issuing company has profit, the holding company is entitled to some of that profit based on the amount of stock owned. • Trust companies also have their own tangible and intangible assets. Instead of additional stock, however, these companies own whatever assets the settlor has placed within the

trust. Control

> As a partial owner of the stock-issuing company, the holding company usually is entitled to vote on issues within the stock-issuing company. They can directly control the stock-issuing company in this way and do not give up this right until they sell their stock.

A trust company, by contrast, has the right to manage the trust assets, but only within the confines of the trust deed terms. In a revocable trust in which the terms can change, even though assets are titled over to the trust company, the settlor retains control of the trust and therefore still controls the assets.

If the settlor dissolves the trust, the trust company's right to manage the assets disappears. With an irrevocable trust in which the terms cannot change, the settlor does not retain control of the assets in this way. However, the trust company must act under

the fiduciary duties of loyalty and care on behalf of the beneficiaries at all times,

Setup

and therefore control still is limited.

 Holding companies generally are started by entrepreneurs who understand the relationship between stock, company ownership, profit potential, and voting rights. • Their sole purpose is to manage the operations of other companies to make money. • A trust company usually is started to provide specific goods or services, and the settlor selects the trust company based on how those specific goods or services relate to the

• For example, an investment management company might become the trustee for a settlor's stocks, bonds, or individual retirement account, while a bank may act as the trust company for savings, checking and certificate of deposit accounts the settlor has. Trust

companies, therefore, generally have employees who are experts in the assets within the

trust. Summary

• The OECD should not permit a trust to be an Active NFE type holding as its an easily exploited loophole to distribute untaxed income. Trusts and holding companies have different purposes.

 A trust holding a company engaged in business or trade should be a managed Investment Entity as it earns dividends and is administered by an FI trustee, else it should be a Passive NFE... but never an Active NFE holding.

CRS and CARF expert. No, truly. **(**) More articles for you Look Out SMB's! The ATO Wants Your FIDLEG SOLUTION – Breaking News 7 May A colossal, enormous CRS loophole that does not work, but used like it's going out Money of fashion. Sam Cannata Dominik Oberholzer Mark Morris 🖒 20 · 1 comment **1 1**8

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Mark Morris