Search
Home My Network Jobs Messaging Notifications Me For Business Try Premium for CHF0
Edit article View stats View post

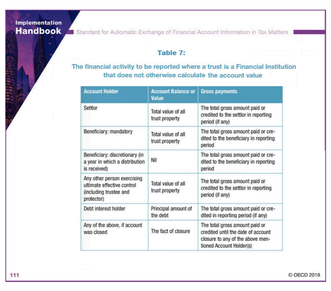

Implementation Handbook
Standard for Automatic Exchange of Financial Account Information in Tax Matters

Table 7:
The financial activity to be reported where a trust is a Financial Institution that does not otherwise calculate the account value

Account Holder	Account Balance or Value	Gross payments
Settlor	Total value of all trust property	The total gross amount paid or credited to the settlor in reporting period (if any)
Beneficiary: mandatory	Total value of all trust property	The total gross amount paid or credited to the beneficiary in reporting period
Beneficiary: discretionary (in a year in which a distribution is received)	Nil	The total gross amount paid or credited to the beneficiary in reporting period
Any other person exercising ultimate effective control (including trustee and protector)	Total value of all trust property	The total gross amount paid or credited to the settlor in reporting period (if any)
Debt interest holder	Principal amount of the debt	The total gross amount paid or credited in reporting period (if any)
Any of the above, if account was closed	The fact of closure	The total gross amount paid or credited until the date of account closure to any of the above mentioned Account Holder(s)

111 © OECD 2018

Why table 7 in the OECD CRS Implementation Handbook is wrong when an FI trust in not an Investment Entity.

Mark Morris
CRS and CARF expert. No, truly.

September 1, 2024

If the trust is purely a Custodial Institution, who is the account holder on which reporting may apply?

- The CRS describes in excruciating detail the account holder subject to reporting diligence for a Depositary Institution, Specified Insurer and Investment Entity.
- If the account holder is a Passive NFE or non-participating investment entity, then the controlling persons are also deemed an account holder.
- But, but, but ... who is the account holder when the Custodial Institution is purely a trust / foundation?

Assume a Custodial Institution trust is holding assets and may or may not distribute investment income

- Let's look at a trust, qualifying as a Custodial Institution.
- **CRS Commentary page 176 par 61**. According to subparagraph C(1)(b), an equity or debt interest in a Financial Institution other than those described in subparagraph C(1)(a) is considered a Financial Account **ONLY** if the class of interests was established with a purpose of avoiding reporting in accordance with Section I.
- Thus, equity or debt interests in a Custodial Institution, Depository Institution, Investment Entity other than an investment advisor or an investment manager described in subparagraph C(1)(a), or Specified Insurance Company, that were established with a purpose of avoiding reporting will be Financial Accounts.

Where do you pick up that equity and debt interest in a FI trust is a financial account, yet ONLY applies if that FI is an investment entity.

Sub pargrapgh C(1)(b) page 50 of CRS

50 – B. COMMON REPORTING STANDARD

C. **Financial Account**

1. The term **"Financial Account"** means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:

   a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term "Financial Account" does not include any equity or debt interest in an Entity that is an Investment Entity solely because it *(i)* renders investment advice to, and acts on behalf of, or *(ii)* manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;

   b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with a purpose of avoiding reporting in accordance with Section I; and

Note: Equity interest as a Financial account only relates to a Investment Entities, and NOT, for example, a trust that is a Custodial Institution.

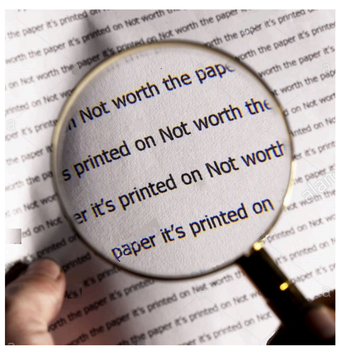
- Who is the account holder, subject to reporting diligence? **The term *equity interest* for trusts only refers to Investment Entities.** (Yeah bitch, suck on that)
- The term *controlling persons* only refers to passive NFEs.
- So, who is the account holder of the Custodial Account? I can assure you, the CRS does not describe who the account holders are for trusts and foundations which qualify as Custodial Institutions.
- So does the Custodial Institution revert to FATF recommendation 25 concerning beneficial owners of legal arrangements?
- There is no guidance on this matter.
- Should the Custodial Institution report the settlor / founder / contributor as well as beneficiaries?
- Should only discretionary beneficiaries be regarded as account holders, or should any beneficiary regardless of distribution be regarded as account holders by the trust Custodial Institution?

I am aware of the CRS anti avoidance clause where interests in a Custodial Institution can be the equity and debt interests, if that class of interests was established to avoid AEOI reporting.

CRS page 50 Section VIII(C)(1)(b)

- An Equity or Debt Interest in a Financial Institution other than those described in CRS page 50 Section VIII(C)(1a) (wealth managers) is considered a Financial Account only if the class of interests was established with a purpose of avoiding reporting under the CRS.CRS Commentary page 176 par 61 subparagraph C(1)(b) An equity or debt interest in a Financial Institution other than those described in subparagraph C(1)(a) is considered a Financial Account only if the class of interests was established with a purpose of avoiding reporting in accordance with Section I.
- Thus, equity or debt interests in a Custodial Institution, Depository Institution, Investment Entity other than an investment advisor or an investment manager described in subparagraph C(1)(a), or Specified Insurance Company, that were established with a purpose of avoiding reporting will be Financial Accounts. The clause "the class of interest was established to avoid reporting" seems **subjective**, not objective or based on fact. Just because the class of interests in a FI is not reportable, how can it be factually determined it was established to avoid CRS?

Opinion on account holder of trust as Custodial Institution - for what it's worth



- There are few definitions in the CRS, Implementation Handbook and the OECD CRS FAQ updates regarding a Custodial Institution.
- A Custodial Institution is defined as an entity holding financial assets on behalf of *other persons*. For trust / foundation Custodial Institutions the *other persons* are the beneficiaries of the trust. Certainly, the Custodian is not holding the assets on behalf of the settlor.
- There is no mention in the CRS that the Custodial Institution trust is under the control or influence of the settlor, as is the case of a Passive NFE trust. The trust Custodial Institution does not regard its equity interest as account holders.
- The only definition of account holder for a Custodial Account is the person for which the account is being held, i.e. the beneficiary. So I surmise the account holder is the beneficiary, regardless of distribution. It is not the settlor.

Big difference between trust being an FI or NFE

- Assuming account holders are reportable persons, if a trust is a Passive NFE then the FI maintaining the trust's assets will be reporting on the settlor and beneficiaries.
- If the trust is an Investment Entity, then it will report on the settlor and beneficiaries in the year of a distribution.
- However, if trust is a Custodial Institution then it will report on all beneficiaries regardless of distribution. This is because the CI is holding assets on behalf of teh beneficiaries, and notthe settlor.
- I have never seen a table or description of these three scenarios.

More unclarified issues on trusts as Custodial Institutions

- There are further unanswered issues regarding Custodial Institutions, such as non-participating jurisdiction management.
- Some countries that have a 25% UBO register threshold for beneficiaries of Custodial Institutions,
- S study of the custody-like fees, especially no. 5 "*fees for providing financial advice with respect to Financial Assets held in (or potentially to be held in) custody by the entity*".

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

Mark Morris
CRS and CARF expert. No, truly.

Comments
Like Comment Share
Add a comment...
No comments, yet.
Be the first to comment.
Start the conversation

More articles for you
Why We Don't Take Commissions
Joseph Jay, CFA
2
Fish Tales: Financial Advisors' Biggest Lies - Asian edition
Andrea Kennedy, CFP
8 • 4 comments
Which QAR proposals cut down adviser costs?
Level up your efficiency
5

Messaging