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Listing on a sh*thole stock exchange is a CRS loophole that the OECD can easily tackle.



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September 22, 2024

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Listed companies on an exchange above a relatively small total market cap is a CRS loophole supported by the OECD. An entity per week is listed on smaller exchanges around the world e.g. Curacao / Malta / Cyprus to avoid the CRS.

(i) Beneficial owners are not identified by the Financial Institution according to FATF due diligence recommendations, or

(ii) in many cases FIs incorrectly categorize a listed company as a non-reportable Active NFE, despite it not being regularly traded.

Regularly Traded

- Securities are considered “regularly traded” if there is a meaningful volume of trading with respect to the stock on an on-going basis.
- The objective tests discussed in paragraphs 112-115 of the CRS Commentary on section VIII which allows that there is a meaningful volume of trading on an ongoing basis if both:
 - trades in a class of stock are effected, other than in *de minimis* quantities, on at least 60 business days during the prior calendar year
 - the aggregate number of shares in the class traded on the market during the prior year was at least 10% of the average number of shares outstanding in that class.

What if not regularly traded? Beneficial Owners of listed companies

Lawyers have cottoned onto the public listing CRS loophole. CRS helpfully quotes an incomplete but misleading extract from the FATF recommendations that beneficial ownership of listed entities need not be identified.

According to the CRS, the Financial Institution is not required to determine the beneficial ownership of the financial account maintained by a listed entity. This is reinforced in the OECD implementation handbook.

“...it is accepted that a Reporting Financial Institution will not be able to determine the Controlling Persons for CRS purposes”.

- A CRS evader lists their offshore investment company on a small stock exchange such as in Curacao or Malta. Despite being listed, there is no trading of the entity's shares as the original owner wishes to retain 100% equity. The Financial institution maintaining the listed entity's account does not report the account because they do not have to determine any controlling person according to the FATF AML. Thus, the FI cannot determine if the controlling person is a reportable person.
- CRS Implementation Handbook Pg. 69 par (144) The term Controlling Persons corresponds to the term “beneficial owner” as described in the Financial Action Task Force Recommendations. CRS Pg. 39 par(2)(b) to determine the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained under AML/KYC Procedures

FATF Recommendations do not require the determination of beneficial ownership if an Entity is (or is a majority owned subsidiary of) a company that is listed on a stock exchange and is subject to market regulation and to disclosure requirements (either by stock exchange rules or through law or enforceable means) to ensure adequate transparency of beneficial ownership. Further, FATF Recommendations do not require determination of beneficial ownership of a controlling interest that is held by an Entity described in the preceding sentence. Thus, in such cases, it is accepted that a Reporting Financial Institution will not be able to determine the Controlling Persons for CRS purposes.

- As an extra barrier to avoid CRS reporting, FIs incorrectly categorize the listed entity as a non-reportable Active NFE, despite it not qualifying as a regularly traded entity. It only costs about USD 30,000 to list a company so this is a relatively cheap way to circumvent the CRS... or is it?

How the OECD can easily close the listed entity loophole by applying the FATF recommendation more studiously

- The CRS defines account holders that do not always follow AML to the letter, e.g. protectors of trusts.
- The OECD can easily define account holders of listed entities as those that own equity above a minimum threshold of the listed entity. But wait! I hear you quote from the CRS that it is accepted that the FI need not identify beneficial owners of listed entities according to FATF.
- Hold your horses. Study carefully what the FATF says about identifying beneficial owners of listed entities. The OECD has glossed over the FATF that there no requirement by the FI to determine beneficial ownership if the entity:

is listed on a stock exchange and is subject to market regulation and to disclosure requirements, either by stock exchange rules or through law or enforceable means, to ensure adequate transparency of beneficial ownership.

So get this... no requirement to determine the beneficial ownership if and only if the entity is listed on exchange where beneficial ownership, usually above a threshold, is subject to disclosure requirements. For example, Hong Kong requires any owner above a de minimis threshold of 5% must be registered with regulators. Now the sentence from the FATF on this subject that the OECD unforgivably omitted is...


The relevant information data may be obtained from a public register, from the customer or other reliable sources.

- So the OECD can update the CRS with a simple definition of beneficial owner of a listed entity are the ultimate beneficial owner individual(s) who hold more than 25% of the equity, or failing this, the person(s) who control more than 25%. This information can be obtained from the directors with confirmation from public registers, as the FATF says “listing is subject to disclosure requirements, either by stock exchange rules or through law or enforceable means”.
- If on the other hand, this information is not available from the exchange, then the FATF exemption of identifying beneficial owners does not qualify as the exchange must ensure adequate transparency, then FI must in any event identify beneficial owners (say over 25% which is the threshold for all other entities).
- This is a simple loophole to close using the same FATF's recommendation that information can be obtained because regulation ensures transparency.

Instead, the OECD has rolled over and accepts that a Reporting Financial Institution will not be able to determine the Controlling Persons for CRS purposes.

- One forgotten issue is if some of the entity's assets are managed by an FI and it predominately earns income from financial assets then as a reporting investment entity.
- The investment entity should be reporting on account holders who have equity and debt interest without any de minimis.

=====END=====



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