

CRS question for AML/KYC- where is equity interest of untaxed Investment Entities maintained, determining jurisdiction enforcing AEoI reporting.

August 14, 2024

CRS Commentary page 159: 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.

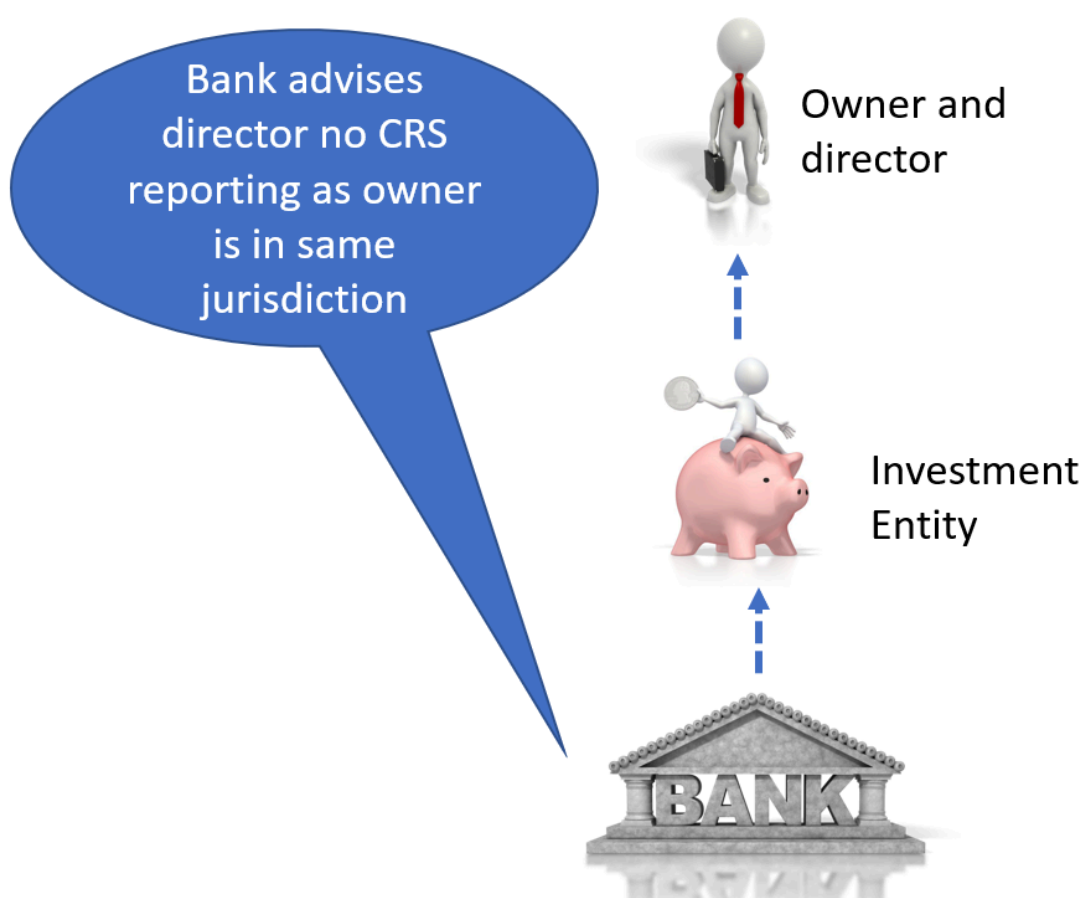
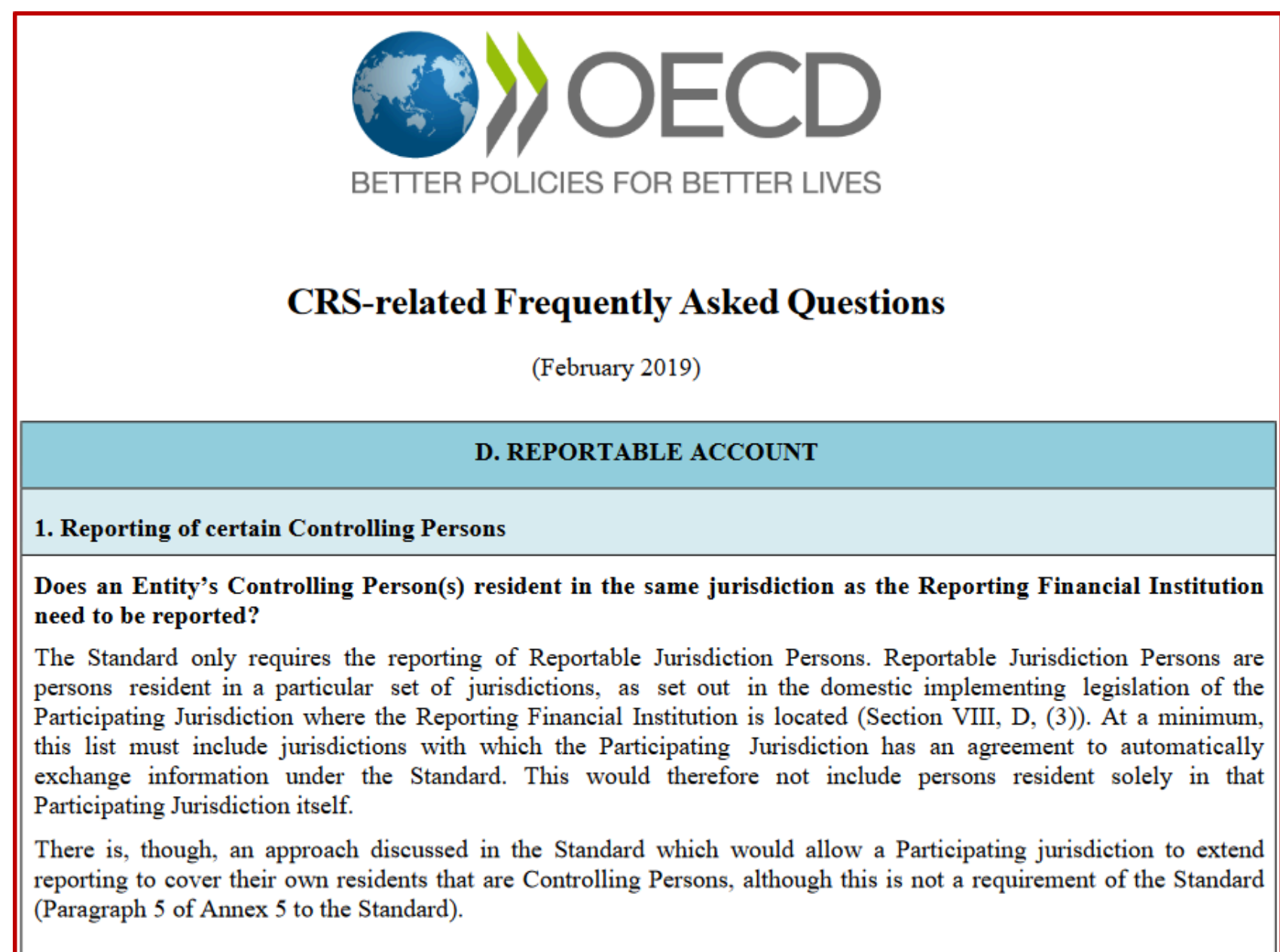


Where financial account maintained? No such equivalent clause exists in tax legislation, treaty or guideline. This is truly unique yet there is not a single article on the web I can find describing this...

Beware: This is not the same as the OECD Model Tax Convention tie breaker rules for individuals

I've asked several tax professionals where they think this is... "Uhh, we've been waiting clarification since 2014". Great.... but banks exploit this blackhole for their clients where 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.

- **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 some or all the portfolio on a discretionary basis. The BVI company is thus an Investment Entity. Simple so far...
- **Typical bull dust advice:** Bank whispers in the Chinese client's ear that "there is no need for the Investment Entity to report for CRS because the BVI FI is subject to the jurisdiction of China due to its place of effective management, and hence does not report on its Chinese resident resident account holders".



CRS Commentary 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.

d). 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 rule on resolving of residence of untaxed FI

The CRS says an Investment Entity is considered to be subject to the jurisdiction of (a) where it is incorporated, and (b) its place of effective management.

So our BVI Investment Entity is subject to **both** BVI and China jurisdictions. CRS commentary resolves the multiple residence problem that the single jurisdiction an untaxed FI will be subject to is where the financial accounts maintained. **Huh**, what does that mean?

Where is the Financial Account of an Investment Entity maintained?

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

RS 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 Investment Entity is where the equity and debt interest is maintained.

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

CRS on location where untaxed non FI entities are located (different to FIs)

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