

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

OECD CRS states the tie breaker rule to determine jurisdiction responsible for enforcing the CRS reporting of an untaxed Investment Entity, other than trusts, is where its equity interest

in which it maintains the Financial Accounts.

is maintained.

NOTE: The Financial Accounts of the Investment Entity is not the bank accounts. Its the Equity and Debt Interest of the Investment Entity. So I ask all tax professionals where are the equity and debt interests maintained. Get this right then I'll eat my hat on live stream.



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

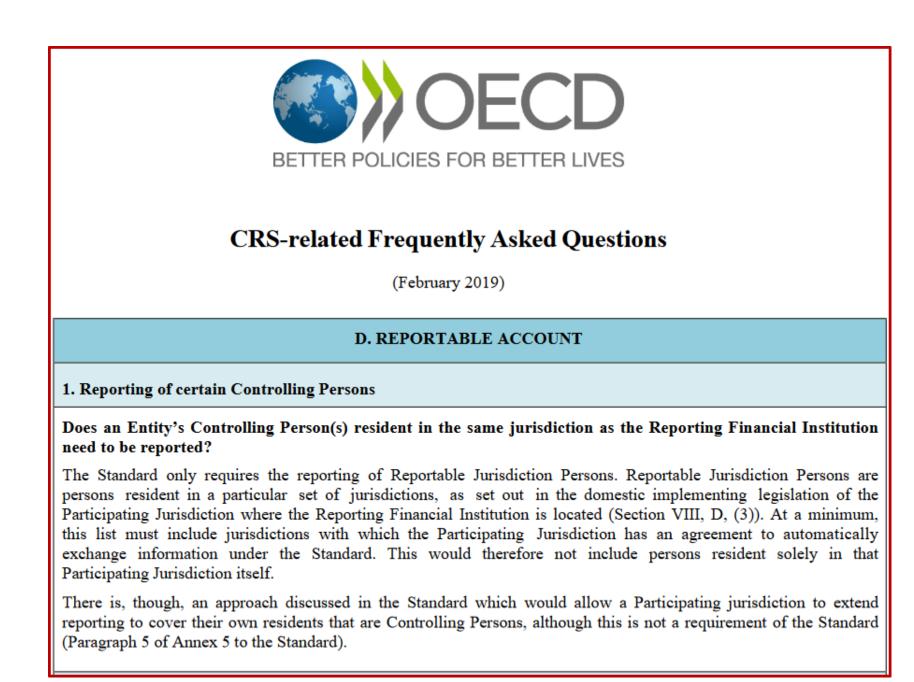
Beware: This is not the same as the OECD Model Tax Convention tie breaker rules for individuals

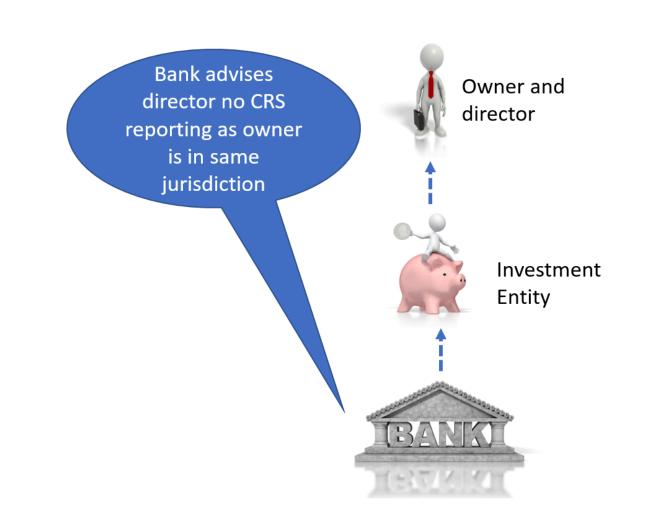
I've asked several tax professionals where they think this is... "Uhh, we've been waiting clarification since 2014". Great.... but banks exploit this blackhole for their clients where they own and manage an untaxed Investment Entity, other then trusts. Then no CRS reporting need be done because the FI is subject to the jurisdiction where the client director resides.

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 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.

What if dual resident?

Fls, other than trusts, must have a single jurisdiction that enforces AEoI reporting

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) 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 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,

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???

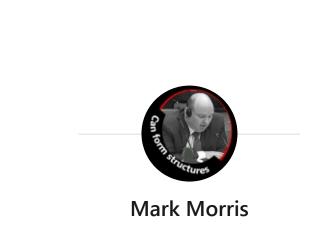
• The Equity Interest is maintained where the share register is kept, i.e. place of incorporation. A lawyer recently told me that the share register of a BVI company can be maintained in, say, Delaware, USA. I think that's hogwash. • Also the debt interest is where the accounts are maintained, which 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.

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



CRS and CARF expert. No, truly.

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