

Introduction

September 26, 2024



• For CRS, an untaxed FI trust is treated differently from a fiscally transparent FI partnership. • An untaxed trust is always resident for CRS where the trustees reside, but an entity is **COMPLETELY** different • OECD CRS is clear that an entity is resident for CRS purposes where it is incorporated or its place of management. • If in two places that are different, then the tie breaker is where the entity is maintained, i.e. beneficial register or accounts are maintained, etc.

Mexicans used Canadian partnerships to avoid CRS

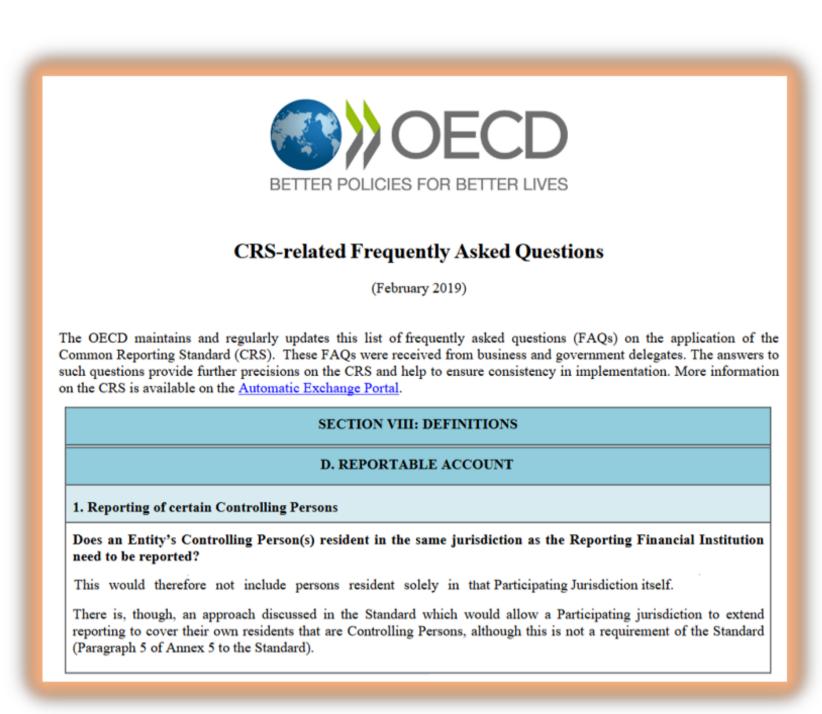


• The partnership is categorized as a managed Investment Entity, a reporting Financial Institution. This is critical to the CRS avoidance structure, else bank would look through a Passive NFE partnership with the Mexican Controlling Persons • The partnership is fiscally transparent. • The General Partner manager resident in Mexico was entitled to say, a 0.1% share of the partnership profits. • The Limited Partners were entitled to say, a 99.9% share of the partnership profits, were also resident in Mexico. • As the Canadian partnership is resident where the General partner resides, the Canadian

So how did this Canadian partnership avoid the CRS?

partnership was resident in Mexico for CRS purposes.

• The Limited Partners were all resident in Mexico.



Nice of the OECD to confirm this structure avoids CRS

• The OECD CRS-RELATED FAQ confirms that a reporting Financial Institution does not report on its Controlling Persons if they are resident in the same jurisdiction of the Financial Institution. • Therefore the Canadian partnership, a reporting Financial Institution as a managed investment Entity, is resident in Mexico and does not report on the partnership Mexican resident Controlling Persons, the Limited Partners.



Joy while the Investment Entity does not report on the partnership's Controlling Persons

Then along came a fly in the ointment



Canada tax authorities deem partnership is resident in Canada

For the Common Reporting Standard, Canada tax authorities deemed fiscally transparent Canadian partnerships to be resident in Canada

Canada - Information on residency for tax purposes Section I – Criteria for Individuals to be considered a tax resident In Canada, an individual's residency status for income tax purposes is determined on a case by case basis. An individual who is resident in Canada can be characterized as ordinarily resident (also known as factual resident) or deemed resident. An individual's whole situation and all the relevant facts must be considered with reference to Canada's tax laws and views of the Courts. An individual who is ordinarily resident in Canada includes an individual who regularly, normally or customarily lives in the usual mode of life in Canada. As a result, residential ties with Canada such as a home in Canada, social and economic interests in Canada, and other connections to Canada are important considerations. It is also important to consider whether any "deeming provision" in Canada's tax laws apply to cause an individual to be a resident of Canada for income tax purposes. (These "deeming provisions" impact certain individuals not otherwise resident in Canada with connections to Canada, such as individuals who spend a total of 183 days or more in a year in Canada or who are employed by the Government of Canada or a Canadian province.) An individual may take into account their residency status under a relevant Canadian tax treaty when determining whether they are a resident in Canada. Extensive information is available on the Canada Revenue Agency (CRA) website on the pages listed below to assist individuals determine their residence status for income tax purposes and the factors to be taken into account in making that determination. Section III - Entity types that are as a rule not considered tax residents A partnership is generally not liable to tax in Canada. Instead, income earned through a partnership is taxed in the hands of its partners. However, for the purposes of the Common Reporting Standard, a partnership with its place of effective management situated in Canada is a resident of Canada.

1. A partnership is generally not liable to tax in Canada. 2. Instead, income earned through a partnership is taxed in the hands of its partners.

However, for the Common Reporting Standard, a partnership with a Canadian partnership is a resident of Canada.

• Canada deems the untaxed Canadian partnership a resident of Canada for CRS purposes. • The partnership's Controlling Persons, the Limited Partners are residents in Mexico. • As Canada and Mexico have a Multilateral Competent Authority Agreement to exchange data, the Canadian partnership as a reporting Financial Institution must report on its Mexican resident Account Holders, the Limited Partners.

How can tax authorities deem something that is not based on laws?

Err, we're screwed by the deeming provision

Deeming Provisions

• Often, we've come across the word 'deemed' while reading a particular Act or law. Going by the dictionary meaning, a deeming provision is a section or clause of a statute, regulation, or other legal instrument that states how something is to be treated or regarded. But generally, the concept of these deemed provisions always leads to a certain amount of speculation and uncertainty about interpretation. There is a general sense of perplexion unless you are particularly familiar with and have a considerable hold over the use of legal jargon. • The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for a statute an artificial construction of a word or phrase that would not

otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain, and what is, in the ordinary sense, impossible. • They have classified deeming provisions under Canadian tax laws into four main categories based on the object/purpose of fiction.

How de fuq did Canada treat partnerships as residents in Canada, despite the place of management?

different from untaxed trusts in their place of residence for CRS. • It's about the place of incorporation or the place where the entity is maintained, e.g. accounts, b.o. register, etc.)

Please read my article on why entities like partnerships and companies are completely

Extract from that article • Planners are also using foreign LP or LLP partnerships as Investment Entities. In this

example, the General Partner, a Mexican resident entity with say 0.1% of the Canadian limited partnership, and the Limited Partners with 99.9% of the partnership are also residents in Mexico. • The incorrect market thinking is that the partnership as an Investment Entity is located for CRS purposes in Mexico, its place of management. • Subsequently, the partnership does not have to report on its Mexican tax-resident limited partners.

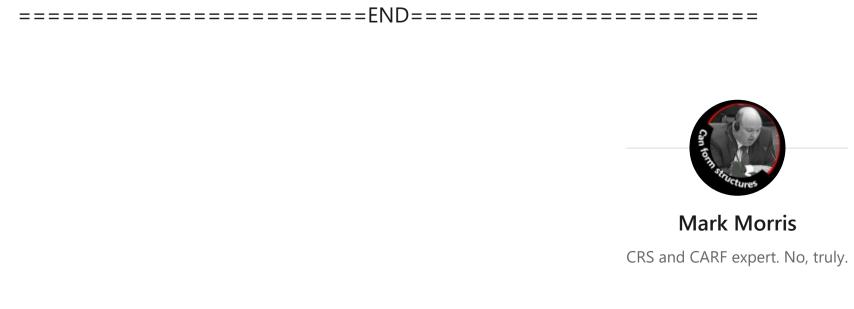
• The CRS deeming applies equally to tax-transparent entities. CRS commentary page 160 paragraph (5) "Where a Financial Institution, other than a trust, does not have a residence for tax purposes, e.g. because it is treated as fiscally transparent, So, the partnership is subject to the jurisdiction of Canada and must report on its equity interest Account Holders, i.e. those that have rights to the income and capital of the partnership.

Summary of why this loophole fell apart

 OECD CRS states an entity is resident for CRS purposes where it is incorporated or its place of management. • If in two places that are different, then the tie breaker is where the entity is maintained, i.e., beneficial register or account are maintained, etc.

What about its cousin, the Scottish Limited Partnership which has similar, if not better features?

 Dead brilliant. Folks, here's a valuable useful article on the SLP. Read "A non-resident Scottish Limited Partnership as a Custodial Institution"



More articles for you

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