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...SO WHAT WOULD YOU LIKE TO BE?
A nominee!

Best confidential structures for CARF. Eg., nominee instead of investment entity. Plus 12 other ways to avoid CARF entirely. Long read, but worth it.

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CRS and CARF expert. No, truly.

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Contact author for minutiae details omitted here and
practical ways to implement...
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You'd be sorely mistaken thinking a Professionally Managed Investment Entity provides some control over reporting for CRS/CARF

A PMIE has onerous obligations, responsibilities and audit risks

Its far better for the entity to be a nominee agent.

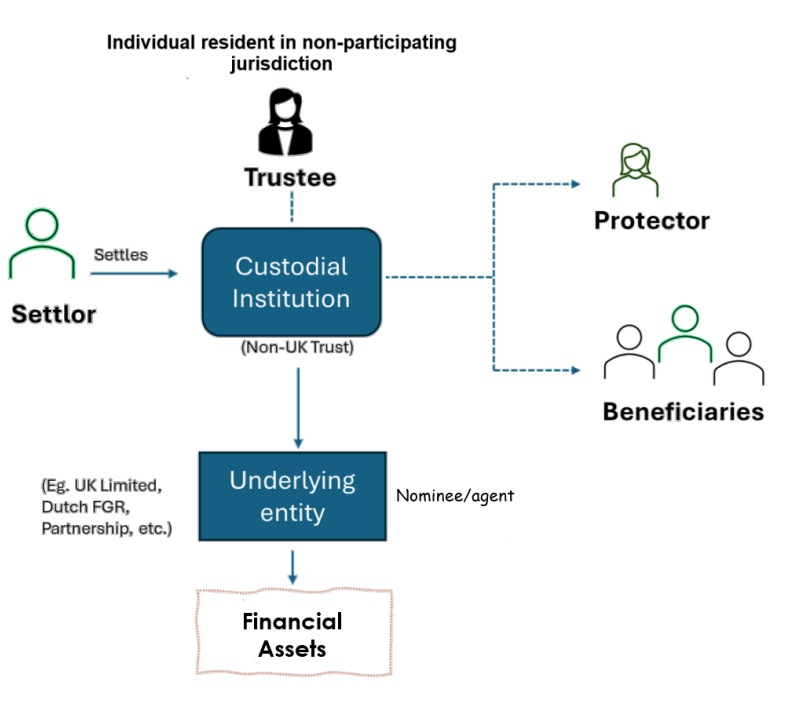
- PMIEs are highly likely to be audited by tax authorities, especially if nil reports are submitted
- A PMIE is an FI and has obligations to have systems, procedurers, materials to be an FI
- The location of a untaxed PMIE is different to untaxed Passive NFEs, resulting in unpleasant surprises for owners

The prime factor for locating the residence of an untaxed Investment Entity is where its equity interest is maintained. If it's an NFE then its Place of of Effective Management.

Read Where is an untaxed NFE vs Managed Investment Entity located for CRS? It's far from simple.

Untaxed Entities
Are You Ignorant or Oblivious?
For CRS where are they located as an NFE vs an FI?

Recommended structure of using a nominee for CARF /CRS



- Under OECDs Crypto-Asset Reporting Framework (CARF), the treatment of a company underlying a trust and engaging in Relevant Transactions pivots on the classification of the company under the OECD's common reporting standard and its operational role in the specific structure.
- Where the company qualifies as a Financial Institution (FI) for purposes of CRS, then it will likewise qualify as a Crypto-Asset User (CAU) for CARF, akin to an account holder under CRS.
- ‼ Where, however, the company specifically qualifies as a professionally-managed Investment Entity (PMIE) FI, it will not qualify as an Excluded Person for purposes of CARF. ‼**(Note: This is CARF's biggest difference to CRS)**
- Accordingly, any Reporting Crypto-Asset Service Provider (RCASP) with which the company conducts a Relevant Transaction would need to document it for purposes of CARF by looking through to the company's Controlling Persons and reporting any who are resident in a Reportable Jurisdiction.
- ‼‼ If, however, the company qualifies as a Non-Financial Entity (NFE) for purposes of CRS and operates in an agent/nominee capacity, then it may be ignored for purposes of CAU identification. ‼‼**(This is a CRS clause most people are unaware of)**
- **If so, the RCASP with which the company conducts a Relevant Transaction would need to document the trust as the CAU and report accordingly. (key to the structure)**

AEoI treatment if the underlying company is not a nominee/agent

(whatever applies to CARF also applies to CRS)

- Because the underlying company (UC) will be the party conducting Relevant Transactions with an RCASP, the UC will be assumed to be the CAU and therefore be subject to CARF due diligence by the RCASP.
- Following the due diligence rules set forth in Section III(B), the RCASP will request a self-certification form from the UC.
- By means of that self-certification form, the RCASP will determine that the **UC is not an Excluded Person** (because it's not a nominee/agent) for purposes of CARF because this definition explicitly excludes PMIE FIs.
- As such, the RCASP will need to obtain self-certification forms for the Controlling Persons of the UC and report them accordingly.
- As the first rank of Controlling Persons of a company consists of its shareholders (with an equity interest greater than or equal to 10% or 25%, depending on the applicable rules), the Trust, as the sole shareholder of the UC, must be addressed.
- The Trust, as a probably Custodial Institution FI under CRS, would qualify as an Excluded Person under CARF
- There is no indication that the inclusion of an Excluded Person (the CI trust) in the legal chain of ownership functions as a blocker to the identification of Controlling Persons under CARF.
- Accordingly, the RCASP will be obliged to identify the natural persons exercising indirect control over the UC and thus will need to look through the Trust to its Controlling Persons.
- To the extent that the UC and/or any of the Controlling Persons of the trust is resident in a Reportable Jurisdiction for the RCASP, it will need to report them.

CARF treatment of nominees/agents

CRS Commentary page 200 Miscellaneous Paragraph E

Subparagraph E(1) – Account Holder

Pragraph 138.

> Subparagraph E(1) defines the term "Account Holder" as the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. This is regardless of whether such person is a flow-through Entity. Thus, for example, if a trust or an estate is listed as the holder or owner of a Financial Account, the trust or estate is the Account Holder, rather than its owners or beneficiaries. Similarly, if a partnership is listed as the holder or owner of a Financial Account, the partnership is the Account Holder, rather than the partners in the partnership.

Paragraph 139

> A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, intermediary, or legal guardian, is not treated as holding the account according to subparagraph E(1). Instead, such other person is treated as holding the account. For these purposes, a Reporting Financial Institution may rely on information in its possession (including information collected pursuant to AML/KYC Procedures), based on which it can reasonably determine whether a person is acting for thebenefit or account of another person.

Alternate classification analysis of structure, if the underlying company is a NFE nominee/agent

UC must fire the wealth manager so it is not a PMIE, but a NFE

- The above analysis shifts dramatically if the underlying Company (UC) meets two conditions (see :

  1) the UC is not an FI per CRS

  and

  2) the UC functions in an nominee/agent capacity on behalf of another party.

- In the case where both conditions are fulfilled, an exception to the standard for the identification of the CAU applies.
- This exception, borrowed from CRS, instructs the relevant RCASP to disregard the nominal party to the transaction (viz. the UC) and, instead, to document the party on whose behalf the nominal party is entering into the Relevant Transaction (viz. the Trust).
- The instruction only applies where the nominal CAU is operating "as an agent, custodian, nominee, signatory, investment advisor, or intermediary". **(see CRS Commentary Account Holder page 200 par 38-39)**
- The full scope of this exception will likely depend on local legislation and guidance, but a claim that such a company is operating as a sub-custodian for a Custodial Institution FI seems prospectively plausible.
- Assuming that the UC does meet the two conditions for being disregarded, then any RCASPs conducting a Relevant Transaction with the UC will ignore it for CARF due diligence purposes.
- Instead, the RCASPs would look to the Trust as the CAU and document it by requesting a self-certification form from the Trust, the completion of which requires a CRS classification for the Trust.
- The threshold inquiry for any entity classification process under CRS is whether the entity is governed by the CRS rules in force in any jurisdiction implementing CRS.
- The criteria for identifying a jurisdictional nexus with any particular jurisdiction tend to mirror that jurisdiction's concept of "tax residence" for purposes of its income tax regime.
- Accordingly, corporations tend to be resident where incorporated and partnerships tend to be resident where managed and controlled.
- Trusts, however, are subject to a special rule because few of them are resident for income tax purposes in any jurisdiction. For purposes of CRS, therefore, trusts are deemed to be resident in any jurisdiction where one or more of the trustees of the trust is resident.
- In the proposed structure, all trustees will be individuals resident in a non particpating jurisdiction
- As such, entities resident not deemed to be resident in any Participating Jurisdiction for purposes of CRS or CARF are not directly subject to the reporting regimes and thus are not obliged to classify themselves and fulfil the compliance duties corresponding to their classification.
- In the absence of further viable alternatives, evidently no jurisdiction's CRS rules govern the Trust's classification or assign any compliance duties to the Trust.
- If an entity in a non-CRS jurisdiction needs a CRS classification to be documented as an Account Holder, the entity applies the rules governing the Participating Jurisdiction FI maintaining that particular account.
- CARF mandates the same approach.
- So, the CRS classification rules for the Trust will depend on the jurisdiction of the RCASP conducting the Relevant Transaction.
- A typical approach for trusts under CRS analyses them initially as potential PMIE FIs.
- An entity qualifies as a PMIE if it:

  (a) is managed by a Financial Institution (other than a PMIE)

  and

  (b) earns at least 50 percent of its gross income from Financial Assets.

- Provided that a discretionary trust holds Financial Assets, many jurisdictions automatically categorize them as PMIEs based on the assumption that the trustee of a discretionary trust conducts sufficiently management-like activities.
- However, that applies only where one or more of the trustees is also an entity, which is not the case here.
- Also there is no FI managing the trust owned assets (viz. the shares of the UC, not the financial assets owned by the UC)
- Thus, the Trust cannot qualify as a PMIE due the management authority vested in its trustee because that trustee is an individual.

There is, however, another FI category for which it may be eligible

1. The definition of a Custodial Institution type FI is any entity that:

   a) "holds Financial Assets for the account of others"

   and

   b) earns 20% or more of its gross income from providing such services.

- The text of the first criterion seems to squarely apply to the classic purpose of a trust scenario: To hold legal title in a fiduciary capacity over assets at the behest of the settlor on behalf of named beneficiaries.
- The UK's HMRC CRS guidance concurs, contemplating that FI trusts may be either Custodial Institutions,

  or

- PMIEs and, furthermore, providing guidance on how to comply with CRS where the trust is classified as Custodial Institution FI.
- Thus, it is impossible to state that the Trust does not satisfy the first criterion of the test for a Custodial Institution type FI.
- As for the gross income criterion that 20% or more of the entity's gross income derives from providing such services the UK provides a useful list of which types of fees would qualify as compensation for "holding financial assets and providing related financial services.
- These include, but are not limited to, financial advisory on assets held or may be held, custody and account maintenance fees. Such fees, irrespective of their label, are the lifeblood of fiduciary service providers.
- That conclusion settles the analysis, if and only if those fees are paid to the custodian for such services and they amount to 20 percent or more of the entity's income.

CARF reporting duties of the non-participating Custodial Institution Trust

- FIs resident in a CRS non-participating jurisdiction do not incur reporting obligations under the CRS regime.

- While the CARF jurisdictional nexuses differ from CRS, the principle remains intact.
- Accordingly, if the trust is resident in a non-participating jurisdiction for purposes of CARF, then the trust does not itself have any CARF reporting obligations, irrespective of its status as a Custodial Institution FI.

Other confidential structures for CARF

1. Related to Regularly traded entity

Read **"Global Transparency Forum just published will peer review jurisdictions not implementing AEoI on crypto. Exploiting the term 'related' to avoid CARF."**

2. Active NFE holding some crypto

"Read **"OECD now supports a widely used CRS loophole. Thousands of entities can safely be non-reportable Active NFEs because money not a Financial Asset."**

3. New Active NFE every two years

Read **"Ten years I've said a new NFE company every 2 years as a non-reportable Active NFE is for crooked banks. Unbelievably this shit still goes on in Asia."**

4. Broad participation retirement plan

As long as the retirement plan qualifies for one of the four conditions to be a non reporting FI.

5. Serbia non participating

Read **"Serbia pulls the wool over the OECD's eyes on AEoI"**.

6. Controlling person threshold

The 25% controlling person threshold is too easy to manipulate so that there is no reportable controlling person.

7. Convert Passive NFE into Active NF

- This loophole shows why there should be no such category as Holding Active NFE. To escape reporting the Controlling Persons, ***Entity A*** establish a new parent Entity B which own 100% of subsidiary ***Entity A***.
- Parent Entity B strips subsidiary ***Entity A*** of all its cash by means of loans and dividends, i.e. subsidiary ***Entity A*** loans all its excess cash to its parent Entity B.
- Future dividends can offset these loans. Subsidiary **Entity A** should own non-financial assets such as computers, vehicles, furniture, IP, etc.
- Subsidiary ***Entity A*** ensures its non-financial assets are worth more than the retained cash. The CRS does not describe if the asset test for Active NFE type A is annually, quarterly, average over the year, etc.
- As subsidiary **Entity A**'s income is mostly passive and most of its assets cannot produce Financial Income, then subsidiary ***Entity A*** will qualify as an Active NFE type A (business or trade).
- The second part of the alchemy process is where parent Entity B can be elect to be categorized as an Active NFE type D Holding because more than 80% of its activities consists (income or value) of holding subsidiaries engaged in business or trade.
- Astoundingly, countries like Liechtenstein define a subsidiary in this particular context as holding 10% or even less (enabling easy qualification of Active NFE) whereas rest of the world generally follows IFRS standard that a subsidiary is at least 50%ownership.

8. Report nil value for Zero Cash Value investment linked policy

Swiss, Liechtenstein, Luxembourg insurers still continue to report a nil value, by perverting the understanding of surrender value and surrender fees. For an insurance policy where policyholder has voluntarily surrendered his rights to access the policy assets, despite a high chance that the policy premium were undeclared assets.

9. Report nil value for settlors of Investment Entity irrevocable trusts

You can thank Singapore, Liechtenstein and Cyprus for guiding a non sensical nil value for the value of undeclared illicit assets contributed to an irrevocable trust, despite half the world not recognising a trust or wanting to impose gift tax on setting up irrevocable trust.

10. Wealth managers managing assets held by non-participating FIs:

Many CRS wealth managers blatantly advertise on their website that the assets are custodied with US banks such a Pershing for security.... and here is the OECD reaction to assets being moved to the USA...

11. Trusts USA

Global trust companies based in the CRS jurisdictions decided it was a good tactic to set up trusts in the USA and have the clients "request" that he trust be moved, lock stock and two smoking barrels to the USA.

12. Cash value not permitted

Imbecilic exemption by OECD for pre-existing policies that were provided despite being prevented by law from being sold to residents of a country. Duh, Andorran insurers ecstatic.

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

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