

• The banks had no FATCA or CRS reporting obligations as their account holders were Reporting Financial Institutions, namely Professionally Managed Investment Entities We'll get back to this no obligation by bank in CARF later in the article. filed "no reportabale persons". • The shell bank loophole is not a loophole as it's just cheating. • I'd rather call it a flaw.

• Embedded craftily within the 104-page CARF, the OECD drafted it so that a PMIE a reportable person, while it remains a Financial Institution. It took me weeks before this was brought to my attention, so I can imagine the rest of you may be unawrae that a PMIE is not an excluded person

The MFs drafting CARF go to great lengths to describe in CARF that a Investment Entity is a **Financial Institution** Under the definition of reporting Financial Institutions

Section VIII: Defined terms

A. Reporting Financial Institution

b) holds Specified Electronic Money Products or Central Bank Digital Currencies for the benefit of customers. 6. The term "Investment Entity" means any Entity: a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer: i. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; ii. individual and collective portfolio management; or iii. otherwise investing, administering, or managing Financial Assets, or money , or Relevant Crypto-Assets on behalf of other persons; or b) the gross income of which is primarily attributable to investing, reinvesting, or trading in *Financial* Assets or Relevant Crypto-Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a). An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets or Relevant Crypto-Assets for purposes of subparagraph A(6)(b), if the Entity's

gross income attributable to the relevant activities equals or exceeds 50 per cent of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. For the purposes of subparagraph A(6)(a)(iii), the term "otherwise investing, administering, or managing Financial Assets, money, or Relevant Crypto-Assets on behalf of other persons" does not include the provision of services effectuating Exchange Transactions for or on behalf of customers. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g). This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

Then, like a fecking crypto hacker in the night, the OECD sneaks in under cover of darkness and steals the non-reportable status of a professionally managed investment entity...



• ...they do this with a clause, citing another clause. You'd have to be a fecking detective Sherlock Holmes to catch this one sentence clause in 104 pages of the CRAF rules... and it's such a critical aspect of CARF versus CRS. • OECD CARF Standard, E.1 (excluding any entities, including a Financial Institution from the definition of Excluded Person described in Section IV.E5(b)). Section IV.E5(b) describes the Professionally Managed Investment Entity.

E. Excluded Person . The term "Excluded Person" means (a) an Entity the stock of which is regularly traded on one or more established securities markets; (b) any Entity that is a Related Entity of an Entity described in clause (a); (c) a Governmental Entity; (d) an International Organisation; (e) a Central Bank; or (f) a Financial Institution other than an Investment Entity described in Section IV E(5)(b). 5. The term "Investment Entity" means any Entity: b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets or Relevant Crypto-Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph E(5)(a). CRYPTO-ASSET REPORTING FRAMEWORK AND AMENDMENTS TO THE COMMON REPORTING STANDARD © OECD 2022

OK four eyes, what does this mean? Well, the US Senate Committee's shell bank loophole report MFs certainly motivated the OECD to destroy the use of PMIEs to avoid reporting with two hands. • Firstly, the Reporting FI maintaining the Crypto Financial Assets of a Crypto Asset User, must identify the controlling persons of the entity if its a PMIE. Note that status of the parents in the legal chain of ownership is irrelevant when trying to identify reportable controlling persons. • I was under the impression that if a parent of the PMIE was an FI, especially a non PMIE FI, then there would be no-look through of that parent for the Controlling person, as that parent could be anothertype of FI than a PMIE, such as a custodial institution or depositary institution or specified insurer. • However, after a debate with Hong Kong based Assiciate professor of tax law #Noam Noked#, he patiently explained to me why the CARF look-through of PMIEs is the exactly

the same as the 2019 update to the OECD CRS FAQ guidance on look-throughs of

Passive NFEs. No arguments there...

WTF, how can the PMIE retains its status in CARF as a reporting Financial Institution when its no longer excluded from being reported?

• As seen above in my article, the OECD went to great lenghts to define the Professionally Managed Investment Entity as a Reporting Financial Institution! • So, get this folks, have a seat... there will be duplicate CARF reporting regarding the beneficial owners of the PMIE.

• I do not use the term of Controlling Persons for both reports, as you'll see why.

By the way, duplicate reporting exists in CRS when there is look-through of Parent reportig FIs of Passive NFEs, and then the parent FI of the Passive NFE also reports... In fact there could be many duplicate reportis if there are a chain of FIs in th eowbership of the Passive NFE.

Now for the tricky details and not explained at all by OECD

I. Who does the Crypto Asset Service Provider (CASP) identify as the beneficial owner sof the crypto assets? There is no such thing as Controlling Person of a PMIE. It is only Equity and Debt interest. However only a Reporting FI trust can identify Equity and Debt interest. So I assume the Reporting Crypto Asset Servic eProvider will treath te PMIE as a Passive NFE to enable reporting on B.O.s • Rember, in CRS, non particiüating PMIEs are deemed Passive NFEs so that beneficial owners can be identified. This is what is reported when a trust is deemed/regarded as a Passive NFE

II. OK, so what is reported by the PMIE in its duplicate reporting obligations This is what is reported by the FI trust

So what's difference?

does not report on loans not yet repaid

The look-through of the PMIE trust by the CASP: • does not report discretionary beneficiaries at all if no distribution made reports on unnamed class of beneficiaries regardless if distribution made reports on any other person excercising ultimate control

 reports on settlor and mandatory beneficiaries, same as PMIE reports The PMIE trust on the other hand:

reports only on protectors for persons who excercise ultimate control

reports on debt interest holders (loans not yet repaid)

reports on discretionary beneficiaries only in a year where distribution made

 Reports on settlor and mandatory beneficiaries, same as RCASP reports THE BIGGEST DIFFERENCE IS THAT RCASPS WILL REPORT ON DISCRETIONARY BENEFICIARIES ALL THEIR DETAILS, EVEN IF

THE TRUST AS A REPORTING FINANCIAL INSTITUTION WILL NOT REPORT DETAILS OF THE DICRETIONARY BENEFICIARIES IF NO DISTRIBUTION IS MADE THAT YEAR. THE DOWNSIDE IS THAT DEBT INTEREST WILL BE REPORTED. THAT'S A BUMMER AS I KNOW TRUSTS OFTEN DISTRIBUTE TO FAMILY AS A LOAN THAT'S NEVER REPAID.

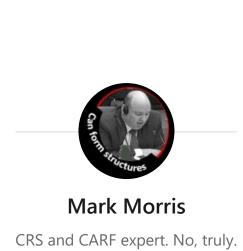
NO DISTRIBUTION IS MADE THAT YEAR. SHOCKER, EH? THE

UPSIDE IS THERE IS NO REPORT ON DEBT INTERESTS I.E.

LOANS NOT YET REPAID. THAT'S A BIG ADVANTAGE

QUESTION OF THE YEAR

• Will the OECD copy CARF and redact the non reporting (Excluded) status of PMIEs... • My feeling this is too much effort to implement across the 120 countries, with new agreements needed...



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