Grifters selling cellular captive insurance from UK territories and depedencies as CRS non-reportable, don't be surprised being stuck up the creek.

Mark Morris
CRS and CARF expert. No, truly.

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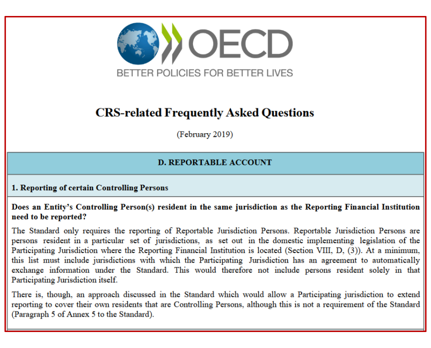
Grifters loves the expression "Bullshit baffles Brains"

Grifters will give the following bullshit reasons, which sound plausible, of why capitive insurance policies issued by Incorporated Cell or Protected Cell companies are excluded reportable persons or non-reporting FIs

- You are manager of your cell. This the cell is located in in your jurisdiction. So no self reporting. If you believe the cell is located in the jurisdiction where you live, I've got a bridge in centre of London to sell you.


OECD
BETTER POLICIES FOR BETTER LIVES

CRS-related Frequently Asked Questions

(February 2019)

D. REPORTABLE ACCOUNT

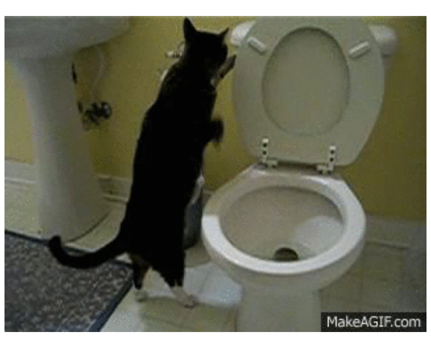
1. Reporting of certain Controlling Persons

Does an Entity's Controlling Person(s) resident in the same jurisdiction as the Reporting Financial Institution need to be reported?

The Standard only requires the reporting of Reportable Jurisdiction Persons. Reportable Jurisdiction Persons are persons resident in a particular set of jurisdictions, as set out in the domestic implementing legislation of the Participating Jurisdiction where the Reporting Financial Institution is located (Section VIII, D, (3)). At a minimum, this list must include jurisdictions with which the Participating Jurisdiction has an agreement to automatically exchange information under the Standard. This would therefore not include persons resident solely in that Participating Jurisdiction itself.

There is, though, an approach discussed in the Standard which would allow a Participating jurisdiction to extend reporting to cover their own residents that are Controlling Persons, although this is not a requirement of the Standard (Paragraph 5 of Annex 5 to the Standard).

- The cell issues zero cash value policies. Read how OECD shot down this myth grifters love to promote.
- If FATCA excludes these policies, then CRS must follow. (grona... read rest of this article)
- The cell is a PMIE so reporting is optional (See Shell bank loophole)
- If a grifter approaches you regarding non-reporting of catptive insurance, di what tghe cat does with the proposal.



Although the CRS is similar to FATCA, there are several differences and it is important to assess entities under the separate regimes to ensure the correct classification under each.

- There may be entities that are not Reporting Financial Institutions (**RFIs**) under FATCA but which are RFIs under the CRS. Captives and (re)insurance companies will be RFIs under the CRS if they are classified as Specified Insurance Companies or Investment Entities.
- It is important to note that the definition of an 'Investment Entity' is wider under the CRS than under FATCA and will capture more entities than FATCA. The CRS does not recognise elections made under section 953(d) of the Internal Revenue Code.
- Generally, for captives, the following definitions will be relevant in determining the correct classification of an entity under the CRS which largely fall into two categories – 'Financial Institutions' and 'Non-Financial Entities':

Financial Institution

- The term "**Financial Institution**" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

1. Specified Insurance Company

- The term "**Specified Insurance Company**" means any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

2. Investment Entity

- 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 on behalf of other persons; or

b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial 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) above.

3. Non-Financial Entity or NFE

The term **NFE** means any entity that is not a Financial Institution.

1. Passive NFE

- The term "**Passive NFE**" means any: (i) NFE that is not an Active NFE (see below); or (ii) an Investment Entity meeting the definition set out in b) above that is not a Participating Jurisdiction Financial Institution.

2. Active NFE

- The term "**Active NFE**" means any NFE that meets any of the criteria set out in the CRS. The most common type of Active NFEs are entities where less than 50% of the NFE's gross income for the preceding calendar year is passive income and less than 50% of the assets held by the NFE during the preceding calendar year are assets that produce or are held for the production of passive income. An entity may also be classified as an Active NFE if its stock is regularly traded on an established securities market or the NFE is a Related Entity of an Entity that has stock which is regularly traded on an established securities market.
- Entities should ensure they understand their CRS classification as this will determine whether or not a captive has obligations under the CRS. If so, the RFI must comply with the Bermuda CRS Regulations and Guidance. Bermuda recently updated its Regulations to require nil return filings which means that RFIs in Bermuda must file a return even if there are no reportable accounts for any given reportable period.
- The following table may assist with captive entity classification:

- Although many captives are NFEs it is important that the proper consideration is given to ensuring the correct classification under the CRS and that any changes are monitored. Financial institutions, such as banks, will require captives to submit self-certifications certifying entity classification and tax status and may impose consequences for failure to co-operate.
- If a (re)insurance company or captive has reporting obligations under the CRS then its Directors are responsible for compliance with the relevant laws and for establishing the correct policies and procedures under the CRS.

Captive Insurance and FATCA

IRS warning to taxpayers of "Dirty Dozen" tax scams includes the Puerto Rican captive insurance con

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The problem is that, just as with microcaptives, there is
no risk distribution going on since the fronting company
acts as no more than a passthrough of the liability and
premiums of the taxpayer's operating business. The
promoters try to claim that the fronting company provides
the risk distribution, although this is demonstrably false.
This by itself makes the deal an abusive tax transaction.
But even worse, the promoters then try to use arbitrage the
difference in Puerto Rico tax rates and ordinary US tax
rates to supercharge the tax benefits to the taxpayer. This
would be fine if the taxpayer actually lived in Puerto
Rico, but of course, they usually do not. This is a shelter
built upon a shelter.
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Internal Revenue Service adds Puerto Rico captive insurance arrangements to its dirty scam list

WASHINGTON — The Internal Revenue Service began its "Dirty Dozen" list, which includes potentially abusive arrangements that taxpayers should avoid. The potentially abusive arrangements in this series focus on four transactions that are wrongfully promoted and will likely attract additional agency compliance efforts in the future. Those four abusive transactions involve charitable remainder annuity trusts, Maltese individual retirement arrangements, **foreign captive insurance**, and monetized instalment sales.

Puerto Rican and Other Foreign Captive Insurance.

- In these transactions, US owners of closely held entities participate in a purported insurance arrangement with a Puerto Rican or other foreign corporation with cell arrangements or segregated asset plans in which the U.S. owner has a financial interest.
- The US-based individual or entity claims deductions for the cost of "insurance coverage" provided by a fronting carrier, which reinsures the "coverage" with the foreign corporation.
- The characteristics of the purported insurance arrangements typically will include one or more of the following:

1. implausible risks covered,
2. non-arm's-length pricing, and
3. lack of business purpose for entering into the arrangement.

FORBES MONEY PERSONAL FINANCE

IRS Dirty Dozen List Includes Abusive Puerto Rico Captive Insurance Transactions

Cover Wealth Preservation in its legal permutations: Jay Adkisson Contributor Jun 7, 2022

Tax shelter Tax Shelter Promoters Never Die, They Just Go On

Even after IRS warnings on the insurance con, certain promoters have continued to hawk the Puerto Rico Captive Deal with the representations that their deal has been vetted by lawyers

- The IRS released their 2022 "Dirty Dozen" list of allegedly abusive tax transactions by way of IR-2022-113
- Among the other transactions on this list is the so-called "Puerto Rico Captive Deal", which I first warned about four years ago in my article, Beware The Puerto Rico Captive Insurance Tax Shelter.

> *Old tax shelters never die. They just get a new acronym and a thicker opinion letter*

- The IRS itself first warned about these deals in IR-2020-226 , as follows: "Also, as part of IRS's continued focus in this area, the IRS has become aware of variations of the abusive micro-captive insurance transactions.

> IRS expands enforcement focus on abusive micro-captive insurance schemes. For those taxpayers that do not exit the transaction and continue taking such deductions, the IRS will disallow tax benefits from transactions that are determined to be abusive and may also require domestic captives to include premium payments in income and assert a withholding liability related to foreign captives. The IRS will also assert penalties, as appropriate, including the strict liability penalty that applies to transactions that lack economic substance under sections 7701(o) and 6662(i). The IRS Office of Chief Counsel will continue to litigate these abusive transactions in Tax Court.

- Examples of these variations include certain Puerto Rico captive insurance arrangements that do not involve section 831(b) elections."

Nonetheless, even after these warnings, certain promoters have continued to hawk the Puerto Rico Captive Deal with the as-expected representations that their deal has been fully vetted by top-notch tax lawyers, the IRS is overreaching, etc.

- And not much seemed to happen with these deals as the IRS was throwing its limited manpower against the more straightforward microcaptive transactions and of course, the COVID pandemic slowed down enforcement action.
- Now, with COVID mostly out of the way and the IRS having worked its way through the bulk of the microcaptive transactions, the Service appears to be ready to start **taking down the Puerto Rico Captive Dea**l as well.

This is how the IRS describes the Puerto Rican Captive Insurance transaction

> In these transactions, US owners of closely held entities participate in a purported insurance arrangement with a Puerto Rican or other foreign corporation with cell arrangements or segregated asset plans in which the US owner has a financial interest.

> The US based individual or entity claims deductions for the cost of 'insurance coverage' provided by a fronting carrier, which reinsures the 'coverage' with the foreign corporation.

> The characteristics of the purported insurance arrangements typically will include one or more of the following: implausible risks covered, non-arm's-length pricing, and lack of business purpose for entering into the arrangement."

> There are of course many variants to the Puerto Rico Captive Deal, but probably the most typical way this deal is structured is as follows.

> The promoter first arranges for a non-captive property/casualty ("p/c") insurance company with a Class "A" license allowing it to sell p/c insurance to anybody.

> This company will act as the "fronting company" from which the taxpayer's operating business will purchase insurance. This fronting company takes on no real insurance risk, or at best a very thin sliver of risk, and is basically just renting out its license to the promoter.

> The taxpayer's operating business makes a premium payment for insurance coverage to the fronting company, and takes a business deduction for that insurance.

> The next step is for the promoter to set up a captive insurance company owned by the taxpayer.

> This captive insurance company will enter into a reinsurance deal with the fronting company such that the fronting company passes ("cedes") all or most of its risk to the taxpayer's captive, thus removing from the fronting captive any significant risk of loss, and in exchange for which the fronting company pays nearly all the premium that it received from the taxpayer's operating business to the taxpayer's captive.

- It is important to note that such fronting relationships are not per se wrong, immoral, illegal, or even fattening, but instead, they occur quite a bit in the legitimate insurance world, and particularly in the captive insurance world.
- This usually occurs because a captive insurance company has a limited insurance license that restricts the captive to only underwriting the risks of companies affiliated with the captive owner, or selling reinsurance to a fully licensed carrier.
- Thus, if a business owner wishes to use a captive to cover workers' compensation liability the captive cannot do so directly because the employees are third parties not affiliated (at least in the captive sense) with the owner of the captive.
- Thus, the captive cannot offer workers compensation insurance directly. However, the captive cut a deal with a fronting carrier which has a license permitting it to offer workers' compensation insurance, so that the fronting carrier issues the certificates of insurance on the front end, but the captive retains all or most of the risks through a reinsurance treaty.
- However, even in these situations, for the premiums to be deductible by the operating business, the captive still must satisfy risk distribution requirements for tax law purposes.
- Thus, the fronting relationship itself is not the problem with the Puerto Rico Captive Deal.

Why this is an abusive tax transaction

Promoters claim that the fronting company provides the risk distribution, although this is demonstrably false

- The problem is that, just as with microcaptives, there is **no risk distribution going on since the fronting company acts as no more than a passthrough of the liability and premiums of the taxpayer's operating business.**
- The promoters try to claim that the fronting company provides the risk distribution, although this is demonstrably false.
- This by itself makes the deal an **abusive tax transaction**.
- But even worse, the promoters then try to use arbitrage the difference in Puerto Rico tax rates and ordinary US tax rates to supercharge the tax benefits to the taxpayer.
- This would be fine if the taxpayer lived in Puerto Rico, but of course, they usually do not.
- In that regard, the Puerto Rico Captive Deal is very similar to the US Virgin Islands Economic Development Programshelters that went around shortly after the turn of the century.
- So what you're talking about here is a shelter built upon a shelter.

What to do if a carnival barker attempts to hawk one of these tax-abusive schemes

.... but my lawyer I paid $150,000 to has vetted the arrangement as legit

Another closely related bogus tax avoidance strategies

Micro-captive insurance arrangements

- Also called a small captive, a micro-captive is an insurance company whose owners elect to be taxed on the captive's investment income only.
- Abusive micro-captives involve schemes that lack many of the attributes of legitimate insurance. These structures often include implausible risks, failure to match genuine business needs and in many cases, unnecessary duplication of the taxpayer's commercial coverages. In addition, the "premiums" paid under these arrangements are often excessive, reflecting non-arm's length pricing.
- Abusive micro-captive transactions continue to be a high-priority enforcement area for the IRS.
- The IRS has won all micro-captive Tax Court and appellate court cases decided on their merits since 2017.

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