

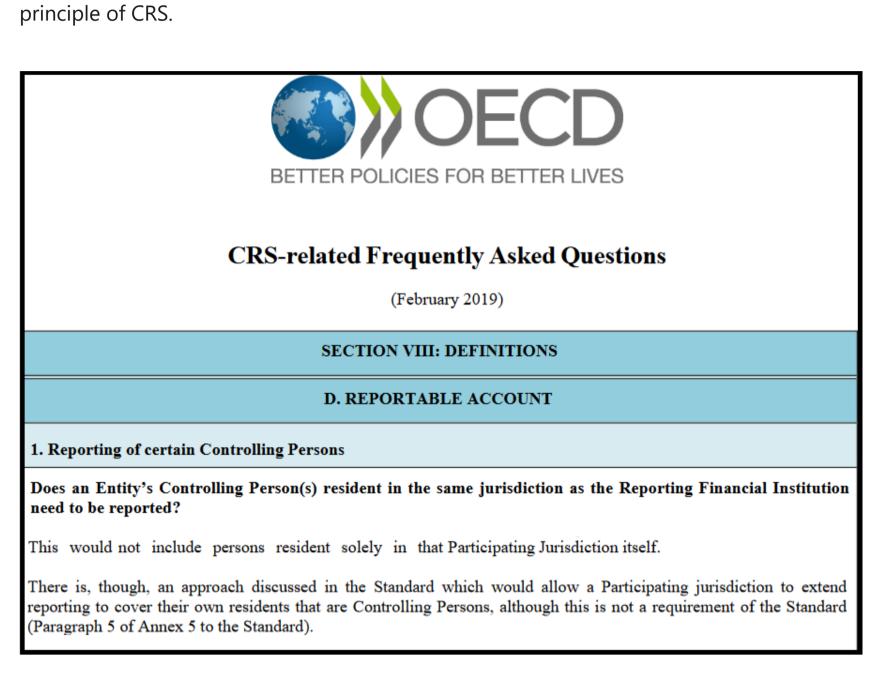
PREFACE: Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdictions, such Financial Institution will be subject to the reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the "Financial Accounts". Another word for maintained is held. The" Financial Account" of an Investment Entity are the shares and the debt interest. The Account Holder of the Financial Account is the shareholder who owns the shares of the Investment Entity Although this is not described in the CRS, the "equity/debt" interest is held by the entity itself. Therefore, the Financial Accounts of the Investment Entity are located where the entity is incorporated, rather than its place of management.

 Although this is not described in the CRS, the "equity/debt" interest is held by the entity • Therefore, the Financial Accounts of the Investment Entity are located where the entity is **incorporated**, rather than its place of management.

An untaxed Professionally Managed Investment Entity must report on its owner even if it is directed by the same owner



• Say you have a BVI Investment Entity. Sadly, many have been mistakenly advised by their palooka tax advisors that if the director is resident in the same jurisdiction as the shareholders, then no reporting person exists. This is based on the same-same exclusion

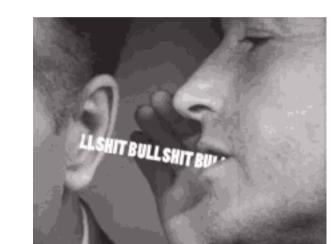


- It is wrong to conclude an untaxed Investment Entity is subject to the jurisdiction of its place of effective management. • Many confuse this with the residence of an untaxed reportable trust, which is completely different from the location of an untaxed legal entity Financial Institution.
- Untaxed managed Investment Entities generally believe

erroneously that they do not report or nil report for CRS if the director is in the same jurisdiction as the Controlling Persons, viz. shareholders.

- The vast majority of entities in tax havens are untaxed companies holding private investment portfolios. The sole director is usually the sole owner of these companies.
- Structuring the company as an Investment Entity removes the CRS reporting obligations from the bank.
- However, the Investment Entity as a Financial Institution would have the obligation to report on its owner.
- Disturbingly, most owners are incorrectly briefed that there is no reporting if the owner is resident in the same jurisdiction as the director... Oops, this this a delusional misinterpretation.

Structuring as a Professionally Managed Investment Entity to avoid CRS



- To illustrate this, let's consider a very common situation of a Chinese tax resident as the director of his own BVI company with its assets managed by an Asian bank.
- The Chinese resident is incorrectly advised by Palooka LLP that their BVI corporate untaxed Investment Entity is resident in its place of management for CRS purposes. • Hey presto! This is the simplest way to escape the evil clutches of CRS because there is no reporting by a Financial Institution located in the same jurisdiction as the account holder.
- Unfortunately, this advice concerning an untaxed Proffessional Managed nvestment Entity is bull crap..

An untaxed Investment Entity (corporate) directed by its single owner does not avoid the CRS

- The deemed location of an untaxed **reporting FI** for CRS is entirely different from the residence of an untaxed reportable entity. Our example Professional Managed Investment Entity must register as a reporting
- Financial Institution in the BVI and report on the Chinese-resident owners. Let's see why...

How does the OECD deem the jurisdiction of an untaxed reporting Financial Institution entity?

- BVI / Cayman companies are not subject to income tax or there is a zero rate corporate
- So the BVI Investment Entity is untaxed. • Bear in mind, that determining the residence of an untaxed reportable entity, is completely different from ascertaining the location of an untaxed reporting Financial
- A. Residence of an untaxed reportable entity (not an FI)
- If a reportable entity (Passive NFE) is incorporated in BVI, the reporting FI (bank) maintaining the entity's account would review the tax-residence rules of BVI regarding the place of incorporation (*none*).
- Also, it would refer to the tax-residence rules of China regarding place of management. • The tax residence of the **reportable entity** would in our case be China.
- But if a reportable entity is tax-resident in dual places then the FI should refer to Double Tax Agreements to determine the single jurisdiction which has the priority tax residence. • If no DTA exists, then the place of management or principal office determines the priority according to the CRS.
- This is **not** the way to determine the residence of an **untaxed Investment Entity** which is a reporting Financial Institution.

B. Determing the residence of untaxed Professional Managed Investment Entities, i.e. an FI

• In contrast, CRS applies deeming provisions to ascertain which jurisdiction an untaxed Professional Managed Investment Entity is subject to. • Tax deeming rules are a mad hatters tea party world, that may not make sense, yet they are nevertheless used to ensnare real-world situations. CRS commentary page 159

paragraph (4):

Jurisdiction.

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

The BVI untaxed "corporate" Proferssional Managed Investment Entity is subject to the jurisdictions of (a) place or incorporation, and (b) place of effective management. Err, both or which one? or (c) See below

• The Chinese-resident-managed BVI untaxed Investment Entity is deemed subject to both the BVI, where it is (a) incorporated, and (b) China, its place of management. • As I said, down the rabbit hole. CRS commentary page 160 paragraph (5) attempts to solve dual residency problems, using another deeming provision...

> (c) 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 Account(s)".

1. What are the "Financial Accounts" of an Investment Entity Do not confuse the Financial Account of an Investment Entity with the bank account,

- which is the financial asset value to be reported. • CRS page 50 paragraph (C)(1)(a) In the case of an Investment Entity, the term "Financial Account" means any "equity or debt interest" in the Financial Institution.
- Thus, the Financial Account of the Investment Entity are the shares (and the debt • The Account Holder of the Financial Account is the Chinese resident who owns the shares
- of the Investment Entity.

2. Where are the Financial Accounts maintained?

- Another word for maintained is held. Does the Investment Entity or the management maintain the Financial Accounts? Although this is not described in the CRS, the "equity/debt" interest is held by the entity
- Therefore, the Financial Accounts of the Investment Entity are located where the entity is **incorporated**, rather than its place of management. • Our untaxed Investment Entity is thus deemed to be subject to the jurisdiction of BVI,
- rather than China. • What if the Account Holder uses a Custodian to hold the shares of the Investment Entity? • Then the Custodian is the Account Holder of the Financial Account. There is no escaping that the Financial Accounts of an Investment Entity are maintained where the entity is
- incorporated, and trumps the place of management. • Normally, place of management trumps place of incorporation, but the fictional deeming world prevails here.

Hold on, I don't agree

- Now for the expected retort. "Wait a stinkin' minute. I'm the Chinese tax-resident director of my BVI Investment Entity. China's tax laws say that a foreign entity with its place of effective management in China, is tax-resident in China. As my Investment Entity is not taxed in BVI, I vehemently disagree that my Investment Entity is resident in BVI."
- Err, can you prove the BVI entity pays tax on its income in China? • If so, then the Investment Entity is taxed, not untaxed. The deeming provisions only apply to **untaxed** Financial Institutions.
- Provide not only the Chinese Tax Identification Number for the BVI entity but also show proof of income tax returns. • Otherwise sorry, it's an **untaxed** FI and must submit to the deeming rules.

What about tax-transparent partnerships?

CRS purposes in Mexico, its place of management.

- 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.
- 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

• The incorrect market thinking is that the partnership as an Investment Entity is located for

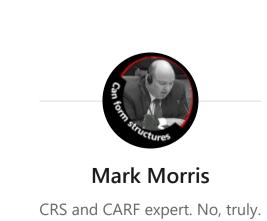
paragraph (5) "Where a Financial Institution, other than a trust, does not have a residence for tax purposes, e.g. because it is treated as fiscally transparent, So, the partnership is subject to the jurisdiction of Canada and must report on its equity interest Account Holders, i.e. those that have rights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

Summary

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• Excluding trusts, an untaxed Investment Entity is subject to the jurisdiction where it is incorporated or established, no matter its place of management. • The Investment Entity should register as a reporting FI and report on its owner even if the

owner is the director.



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