Streamlining CRS Reporting

Introduction

Any structuring of portfolio investments through companies, partnerships, and trusts resident in CRS Participating Jurisdictions should consider, in addition to local tax and estate planning issues, whether the jurisdiction of residence of the settlor is a Participating Jurisdiction in CRS, and has introduced CRS anti-avoidance legislation in its local CRS implementing legislation or adopted the OECDs Mandatory Disclosure Rules.

In the case of portfolio investments held individually in one or more accounts with Custodial Institutions (banks) in Participating Jurisdictions, and assuming the account holder is resident in a CRS Participating Jurisdiction, the amount of financial information reported under the CRS by Custodial Institutions is vast, and includes the total balance or value of the account, the gross amounts of interest, dividends and other income, as well as the total gross proceeds, or 'turnover' of the account. In addition, in the case of multiple bank accounts, each bank would file a separate CRS report with the competent authority, resulting in multiple CRS reports exchanging extensive amounts of financial information.

Streamlining

Streamlining reporting under CRS would involve the process of designing an investment structure that holds portfolio investment accounts through a trust resident in a Participating Jurisdiction which would be classified as a Financial Institution under CRS, specifically as a Professionally Managed Investment Entitiy (PMIE), rather than holding such accounts through personal accounts or passive NFEs. The trust treated as a PMIE would report the information required under CRS, and is not intended to avoid or circumvent the CRS reporting. Indeed, the CRS authorizes streamlining, and expressly allows Reporting Financial Institutions to align the reporting treatment of beneficiaries of passive NFE trusts treated as controlling persons with the reporting treatment of beneficiaries of trusts that are Financial Institutions.

Thus, a more suitable arrangement to hold portfolio investments accounts would be through a properly drafted, constituted and administered discretionary trust resident in a Participating Jurisdiction. This arrangement would provide estate-planning benefits, possibly tax-planning benefits depending on the type of trust and the jurisdiction of residence of the settlor, and possibly asset-protection benefits. The trust would be classified as a PMIE under CRS and would be administered by a commercial trust company resident in a Participating Jurisdiction, holding its assets through an underlying investment vehicle that would also be classified as a PMIE resident in a CRS participating jurisdiction. The assets held by the underlying company of the trust could be managed with discretionary authority by a Financial Institution.

Such a trust structure would have a significantly reduced CRS reporting profile. The custodian bank would have no CRS reporting obligations with respect to the accounts held by the underlying investment vehicle PMIE as the reporting obligations would be held by the PMIE. Since the underlying investment vehicle PMIE would be held by a trust that is itself a PMIE, the CRS reporting obligations of the underlying investment vehicle PMIE would flow up to the PMIE trust, which would have the CRS reporting obligations. In this fact pattern, the PMIE trust would report the settlor as to the value of the trust assets, any amounts paid to the settlor or beneficiaries, as well as the protector if required by local legislation. By the very nature of how reporting works under the CRS with respect to Equity Interests in

PMIEs, neither the total income generated in the bank accounts of the underlying PMIE, nor the gross proceeds (turnover) of the account would be reported.

CRS Anti-Avoidance Rules

As stated above, the jurisdiction of residence of the settlor may have introduced anti-avoidance rules as part of its CRS implementing legislation. In addition, or alternatively, the jurisdiction of residence of the settlor may have adopted the OECD's Mandatory Disclosure Rules (MDR), which function essentially as CRS anti-avoidance rules, and have no force or effect in any jurisdiction unless adopted by local legislation.

The MDR attempts to prohibit avoidance arrangements, which are designed to circumvent the CRS. Examples given in the model rules of the MDR include:

- transferring a Financial Account, or its assets, to a jurisdiction that does not exchange information with the tax residence of the taxpayer;
- the re-domiciliation of an FI into an FI that is resident in a jurisdiction that does not exchange information with the tax residence of the taxpayer;
- allowing an entity to qualify as an active NFE; and
- classifying a payment to an Account Holder as a payment that is not reportable.

In sum, avoidance arrangements are those that result in non-reporting under the CRS. In addition, the MDR attempts to prohibit opaque offshore structures, which are designed to disguise or shield the identification of beneficial ownership. The MDR requires intermediaries, including promoters and service providers, with a nexus to a jurisdiction that has adopted the MDR, and possibly clients, to disclose the details any CRS avoidance arrangements or opaque offshore structures to their respective tax authorities.

Streamlining CRS reporting as described above is not intended to avoid CRS reporting but rather to reduce the type and amount of information reported under CRS by holding portfolio investments through trusts properly treated as PMIEs.