

# Trust companies: how to implement CRS

**BASED ON OECD SOURCES & HONG KONG GUIDANCE**

A complete practical seminar tailored to the needs of the trust industry taking into account the **OECD sources** (Handbook, Commentary, FAQ) and, where available, **local jurisdiction's sources** (legislation, regulations, Guidance Notes, FAQs as applicable).



## **PETER COTORCEANU**

CEO and Founder of GATCA & Trusts Compliance Associates LLC (G&TCA)  
and Of Counsel to Anaford Attorneys at Law, Zurich

### **Implementing the OECD's Standard for Automatic Exchange of Financial Account Information in Tax Matters in the trust industry:**

- Participating Jurisdictions, Non-Participating Jurisdictions & Reportable Jurisdictions
- Applicable jurisdiction
- Entity classification (e.g., FI v. NFE, "deemed" passive NFEs, Active NFEs v. "regular" Passive NFEs, etc.): trusts, trustees, charitable entities, PTCs, foundations
- Sponsorship and third-party service providers
- Accounts and account holders (including account value)
- Controlling persons
- Due diligence
- Reporting
- Avoiding reporting



## Peter Cotorceanu

- CEO and Founder of GATCA & Trusts Compliance Associates LLC (G&TCA)
- Of Counsel to the Zurich office of Anafor AG, a boutique law firm
- Peter Cotorceanu led UBS's implementation of FATCA for its offshore trust companies located in the Bahamas, the British Virgin Islands, the Cayman Islands, Jersey, and Singapore. It was there that he developed a deep expertise in the practical AEOI implementation issues facing fiduciaries. At UBS, he was Head of Product Management for Trusts and Foundations and, before that, Head of Wealth Structuring Consulting for UHNW clients.
- Before joining UBS, Peter Cotorceanu practiced law for over 20 years, both in Switzerland and the U.S., most recently at Baker & McKenzie Zurich. His practice concentrated on U.S.-related trust and estate planning and transfer taxes.
- Certified as a Trusts and Estates Practitioner (TEP) by STEP, member of the International Bar Association and of the ITPA.
- Author of numerous articles on the challenges fiduciaries face in fulfilling their FATCA and CRS obligations, and of the chapter on the fiduciary industry in the LexisNexis Guide to FATCA Compliance.

## Trust companies: how to implement CRS

The seminar on implementing the OECD's Standard for Automatic Exchange of Financial Account Information in Tax Matters, often referred to the Common Reporting Standard (CRS) will be tailored to the fiduciary industry. The objective is to provide the in-depth and practical information trust companies need to implement CRS. The seminar will cover every aspect including determining the applicable jurisdiction, entity classification (FI v. NFE), due diligence, reporting, and determining account holders and controlling persons.

The seminar will use case studies whenever possible and will be useful for front-line personnel, responsible officers, and compliance professionals. It will be stripped of legalese and explained in easy-to-understand terms.

### INTRODUCTION

- Introduction to CRS
- The four different parts of CRS (including the "real" Common Reporting Standard)
- Terminology
- Comparisons and contrasts with FATCA
- Basic structure
- Understanding Participating Jurisdictions / Non-Participating Jurisdictions/Reportable Jurisdictions

### APPLICABLE JURISDICTION

The OECD does not make law, it only proposes law. The only law that binds an entity is the local law of the jurisdiction where it is resident for CRS purposes. But where are entities resident for CRS purposes? Tax residence generally controls, but what if the entity is tax transparent (e.g., a partnership) or is in a jurisdiction that has no income tax and therefore no concept of tax residency, e.g., a BVI company? The answers here may surprise you.

### ENTITY CLASSIFICATION

**(e.g., FI v. NFE, "deemed" passive NFEs, Active NFEs v. "regular" Passive NFEs, etc.)**

- We will look at the different types of Financial Institutions (FIs) and Non-Financial Entities (NFEs). In addition to standard entity classification questions, we will consider the following specific issues:
- Is a company with a corporate director or a director who is an employee of a fiduciary company or corporate services provider professionally managed? Is there flexibility here?
- Is there an argument that a settlor-reserved-investment-powers (SRIP) trust where the assets are not professionally managed is an NFE even if it has a corporate trustee? What if the trust has an underlying company whose assets are professionally managed?

What planning opportunities (if any) may this present?

- How should we interpret the Active NFE exceptions to the definition of an Investment Entity FI given that the exception is circular?
  - For example, can a professionally managed trust be an Active NFE holding "company" if it owns a company engaged in a trade or business either directly or through one or more subsidiaries?
  - What is a "subsidiary" for this purpose?
- Charitable entities as FIs. What does this mean in terms of reporting persons and entities who receive charitable donations from the charities?
- How should PTCs be classified?
- How should foundations be treated?

### WHAT ABOUT SPONSORSHIP/THIRD-PARTY SERVICE PROVIDERS?

### ACCOUNTS AND ACCOUNT HOLDERS (INCLUDING ACCOUNT VALUE)

In addition to the general concepts of equity and debt interests in trusts and companies, we will consider the following specific questions:

- Who is covered by "any other natural person exercising ultimate effective control over the trust"?
- Do protectors have equity interests in trusts? Does it depend on the powers they hold? How should you value that interest (if at all)? How much weight (if any) should you give to the OECD CRS Implementation Handbook and FAQs?
- What about trustees? And whom do you report (if anyone) if the trustee is a corporate trustee? Do you need to look through entities that hold equity interests in trusts (e.g., corporate settlors or beneficiaries) even if they are FIs (as required by the Handbook)?

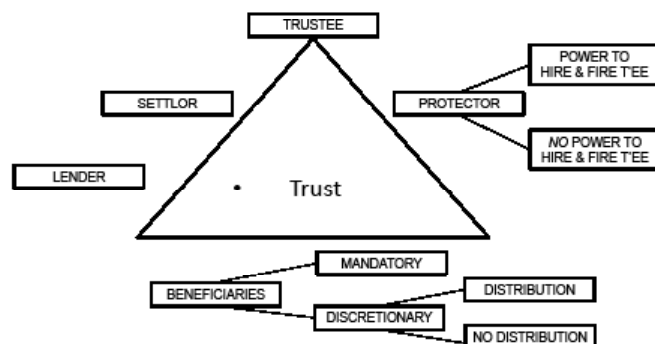
## SCHEDULE

8.30 Registration & welcome coffee

9.00 Beginning of the seminar

12.30-14.00 Lunch

17.30 End of the seminar



## ACCOUNTS AND ACCOUNT HOLDERS (INCLUDING ACCOUNT VALUE) (continued)

- What about settlors of irrevocable trusts? Does it matter if they are a beneficiary?
- How much flexibility (if any) is there to define value differently from the CRS default definitions?
- How should loans by trustees be treated, i.e., should they be treated as distributions? What about uncompensated use of trust property, such as allowing a beneficiary to live rent free in a property owned by the trust or the underlying company of a trust?

## CONTROLLING PERSONS

In addition to the general definitions of Controlling Persons of trusts and companies, we will consider the following specific questions:

- How do you treat discretionary beneficiaries who don't receive a distribution? What sort of procedures must an FI have in place to identify when a distribution is made to a discretionary beneficiary of the trust in a given year to enable the FI to report such beneficiary as a Controlling Person?
- How do you apply the FATF definition of "beneficial owner" to the definition of "Controlling Person"?
- Who are the Controlling Persons of a Passive NFE company owned by a trust? Are they:

- (i) the persons who would be the Controlling Persons of the trust if the trust were (or is) a Passive NFE?
- (ii) nobody if the trustee is a corporate trustee?
- (iii) the Senior Managing Official (SMO) of the trust company?
- (iv) the SMO of the underlying company (e.g., a director? And what if the director itself is a corporate director?),
- (v) a combination of the above, or (vi) there is flexibility here?

- If a Passive NFE is owned by an FI, does the search for Controlling Persons end? In other words, is the FI a "blocker" for CRS purposes because it will do its own reporting in any event?

## DUE DILIGENCE

In addition to the general rules for pre-existing and new accounts and for entity accounts and individual accounts, we will discuss a "magic bullet" approach that will eliminate the need for searching paper and electronic records for "indicia". We will also discuss Changes in Circumstances.

## REPORTING

In addition to the general reporting rules, we will discuss the following important issues:

- Who is a Reportable Person? Who is not a Reportable Person?
- What about deceased or missing persons or persons you cannot locate?
- Who reports (if anyone) when a trust or company that is an FI terminates? That is an account closure, but since the FI no longer exists when reports are due, must (or even can) a report be filed? If so, by whom?
- When does a discretionary beneficiary's equity interest in a trust open and close and what are the practical consequences, for example, in years where the beneficiary does not receive a distribution? What about in years where they receive more than one distribution?
- Are nil returns required? Is registration required?

## AVOIDING REPORTING

Many clients, especially in high-kidnapping-risk countries, are extremely nervous about CRS reporting. Is it ethical to help them reduce or avoid reporting? Is it legal? What is the practical impact of anti-avoidance legislation? What are some of the potential strategies to avoid reporting?

## CONCLUSION AND NEXT STEPS

## ACADEMY & FINANCE

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## PRACTICAL INFORMATION

### Venue

Five Star hotel in Central Business District.

### Fee

HKD 7900

Additional registrations from the same company: - 30%

### How to register

by phone: +852 3757 5535

by e-mail: rchan@academyfinance.com.hk

Academy & Finance (HK) Ltd

Unit 1104A, Kai Tak Comm. Bldg.,

317-319 Des Voeux Road Central,

Hong Kong

www.academyfinance.ch

### Registration & payment

Upon reception of your registration Academy & Finance (HK) Ltd will send you an invoice. Payment can be made by credit card or bank transfer. Your registration will be binding on the organisers only after payment has been fully received by Academy & Finance (HK) Ltd.

- Credit card payments will be debited immediately upon the receipt of card details. Credit card payments will be subject to a surcharge of 3% to cover commission charges.

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### Substitution & Cancellation policy

Substitutions from the same company are accepted at any time. Cancellation requests must be received in writing, by fax or by post up to the following dates end of business:

- 6 February 2017 refund of 50%
- after 6 February 2017 no refund will be made for cancellation.

## REGISTRATION FORM

I register for the seminar «Trust companies: how to implement CRS» in Hong Kong on Monday 6 March 2017.

### FIRST PARTICIPANT

Full name .....

Position .....

E-mail .....

### SECOND PARTICIPANT (-30%)

Full name .....

Position .....

E-mail .....

Company .....

Address .....

Postcode ..... City .....

Tel ..... Fax .....

Mastercard ☐ VISA ☐ AMEX ☐

Credit card N° : \_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_ Expiry date: \_\_\_\_/\_\_\_\_

Cardholder .....

Address of AMEX cardholder .....

Date ..... Signature .....

Credit card payments will be subject to a surcharge of 3% to cover commission charges.

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