

15 January 2018

International Co-operation and Tax Administration Division, OECD/CTPA.

To whom it may concern,

Thank you for the opportunity to provide input to the draft discussion draft “Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures”.

The Financial Transparency Coalition is a global civil society network¹. We work to curtail illicit financial flows through the promotion of a transparent, accountable, and sustainable financial system that works for everyone.

Please find below our main recommendations with regard to this consultation:

Active NFEs: Countries should require Active NFEs to be looked-through and identify/report their beneficial owners (BO), unless they were incorporated in a jurisdiction with (public) registries of beneficial ownership. The definition of BO should use lower thresholds than 25% (e.g. 5%).

Disguising residency of account holders and controlling persons: Sub-paragraph 1.1 (c) (ii) refers to arrangements that disguise the residency of account holders and controlling persons, and notes that a number of countries offer tax incentives to individuals to encourage them to take up residence in that jurisdiction.

Countries should be required to refer to a common, independent source to identify those jurisdictions offering schemes that may be used to disguise residency. For instance, the Tax Justice Network’s Financial Secrecy Index 2018 (forthcoming) will include a list of jurisdictions with lax residency/citizenship certificates. Countries under the MCAA’s Annex A (sending, but not receiving information) should also be included under this list.

The list should be considered a (non)-binding recommendation to establish enhanced CDD for any account holder or BO with a residence/passport from those jurisdictions. This enhanced CDD should include requiring all past residencies and citizenships, require birth-certificate and check actual presence in the alleged jurisdiction of residency/citizenship (e.g. by looking at passport stamps).

Definition of Account Holder: Consider anyone with a power of attorney or any right to manage, transfer, or withdraw money as an account holder to be reported.

¹ The members of the FTC coordinating committee are Centre for Budget and Governance Accountability, Christian Aid, Eurodad, Fundacion SES, Global Financial Integrity, Global Witness, Latindadd, PALU, Tax Justice Network – Africa, Tax Justice Network, and Transparency International.

Sanctions and penalties: In addition to the penalties proposed in the draft rules, countries should put in place measures allowing for the possibility to freeze or revoke the license of any corporate service provider, lawyer, etc. offering CRS avoidance schemes at a personal level. This should apply for example for repeated non-compliance in the stipulated time-frame.

Countries should also seek forms of 'restorative' justice, where the focus is on the harm done to victims, including extraterritorial responsibility for victims abroad, and seek measures that would both offer access to effective remedy, including compensation for harms caused.

If the person is not subject to license requirement, it should be possible to disqualify him/her from operating in the financial sector and also the directors or officials from the company offering the CRS avoidance schemes.

In addition, country authorities should be required to publish aggregate yearly data on the penalties and sanctions imposed for failing to comply with disclosure rules. These should include the number and monetary values of penalties imposed, and the number and types of administrative sanctions such as license freezing.

Whistle-blowers: Jurisdictions should ensure comprehensive whistle-blower legislation is in place that extends to whistle-blowers reporting CRS avoidance schemes. They should also offer incentives to whistle-blowers reporting these schemes, such as compensation, or a % of the expected or resulting monies obtained as penalties/fines while having a strong emphasis of using recovered funds for preventive activities by various stakeholders.

Reporting of client requests on CRS avoidance: Require all law firms, corporate service providers, accounting firms, etc. to report (tip off authorities) on all requests from clients to implement schemes to avoid or go against the spirit of the CRS, similar to AML's STRs.

Threshold for Disclosure of Arrangements entered into after 15 July 2014 and before the effective date of these rules: eliminate the threshold of USD 1.000.000 (point 4.2) for arrangements or reduce to at the most USD 10.000.

Public disclosure of arrangements. Disclosure of arrangements should not be sent to authorities only, but should be publicly available.

We are happy to provide further detail and background to these recommendations. Please feel free to contact Andres Knobel of the Tax Justice Network at andres@taxjustice.net or Sargon Nissan, Director, Financial Transparency Coalition, at snissan@financialtransparency.org.

Sargon Nissan
Director
Financial Transparency Coalition