



OECD Update - Draft Mandatory Disclosure Rules

The road continues

OECD publishes Draft Mandatory Disclosure Rules for Addressing Common Reporting Standard ("CRS") Avoidance Arrangements and Offshore Structures

On December 11, 2017, the OECD announced the publication of [a consultation document](#) seeking comments on new tax rules that would require disclosure of CRS avoidance arrangements and offshore structures.

The draft rules are intended to target promoters and service providers with a material involvement in the design, marketing or implementation of CRS avoidance arrangements or offshore structures. The proposed rules would require such intermediaries to disclose information on the scheme to their national tax authority. The rules contemplate that information on those schemes (including the identity of any user or beneficial owner) would then be made available to other tax authorities in accordance with the requirements of the applicable information exchange agreement.

Interested stakeholders may submit their comments to the consultation draft by **January 15, 2018** via email to MandatoryDisclosure@oecd.org in Word format. Comments should be addressed to the International Co-operation and Tax Administration Division, OECD/CTPA.

Key Elements of the Mandatory Disclosure Rules

Model Hallmarks

Chapters 1 and 2 of the draft rules set out the hallmarks of CRS Avoidance Arrangements and Offshore Structures.

- The hallmark for CRS Avoidance Arrangements captures any arrangement where it is reasonable to conclude that it has been designed to circumvent or marketed as, or has the effect of, circumventing the CRS.
- The hallmark for Offshore Structures targets passive offshore vehicles that are held through an "Opaque Ownership Structure." Provides more specific examples of the types of offshore structures for which it is reasonable to conclude that it has the effect of undermining or exploiting weaknesses in the due diligence procedures under the CRS. The hallmark would also capture offshore structures that would not ordinarily be expected to be subject to CRS reporting (such as real estate holding structures).

Definition of Intermediary and Timing of Disclosure Obligations

Chapter 3 of the draft rules defines who are Intermediaries (defined as those persons responsible for the design or marketing of CRS Avoidance Arrangement and Offshore Structure (e.g. promoters) as well as those with a sufficient level of involvement in the design, marketing, implementation or management of these schemes (e.g. service providers) to be aware that the scheme is likely to be used to circumvent the CRS or to obscure or disguise the identity of the underlying beneficial owner) and sets out rules governing when an Intermediary is required to make disclosure under these rules.

Information required to be disclosed

Chapter 4 of the draft Mandatory Disclosure Rules sets out the information required to be disclosed in respect of a CRS Avoidance Arrangement or Offshore Structure. This includes the details of the scheme itself as well as the users or potential users of that scheme and any other persons involved in the supply of that scheme. The draft rules do not require the Intermediary to disclose information that is subject to client confidentiality or where such disclosure would result in duplicate disclosure to the same tax. In the event the Intermediary is outside of the scope of disclosure obligations or not required to disclose due to client confidentiality rules, the disclosure obligation falls onto the Reportable Taxpayer.

Penalties

While the topic of what penalties should apply for non-disclosure should be determined by each country, the draft rules include some commentary that provides an illustration of a possible approach to sanctions.

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