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COMMON REPORTING STANDARD AMENDMENT SHOULD INCLUDE PREVIOUS JURISDICTION RESIDENCIES

AN AMENDMENT TO THE COMMON REPORTING STANDARD SHOULD EXTEND ACCOUNT HOLDER'S REPORTABLE RESIDENCY TO ANY PREVIOUS RESIDENCY CHANGED WITHIN THE LAST TEN YEARS.

THE ACCOUNT HOLDER CAN CONTEST SUCH DEEMING OF RESIDENCY BY DEMONSTRATING THERE IS NO TAX LIABILITY TO THE PREVIOUS RESIDENCIES.

One of the primary weaknesses of the CRS is the utilization of residency certificates issued by tax havens even though the Account Holder is not permanently resident in that Jurisdiction.

A secondary concern is that the Account Holder has multiple residencies but only certifies to the Financial Institution that they are currently resident in their most tax-favoured Jurisdiction, for example one which does not tax non-remitted income / capital..

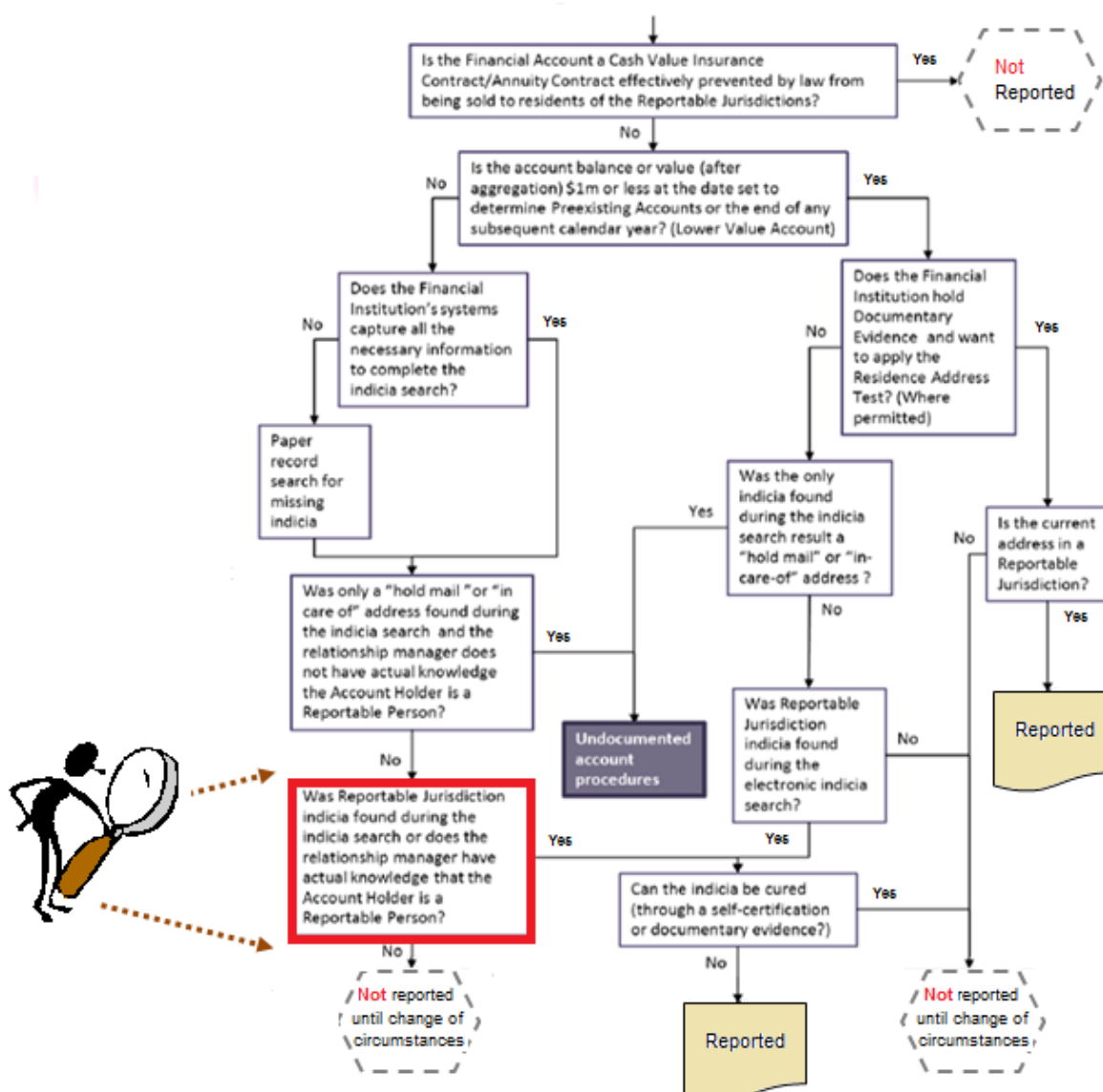
A third issue is when an Account Holder has moved residency but did not declare his assets to his previous residency authorities.

A. Electronic searchable data indicative of residency

1. Indicia are a series of factors that indicate where an Account Holder is resident

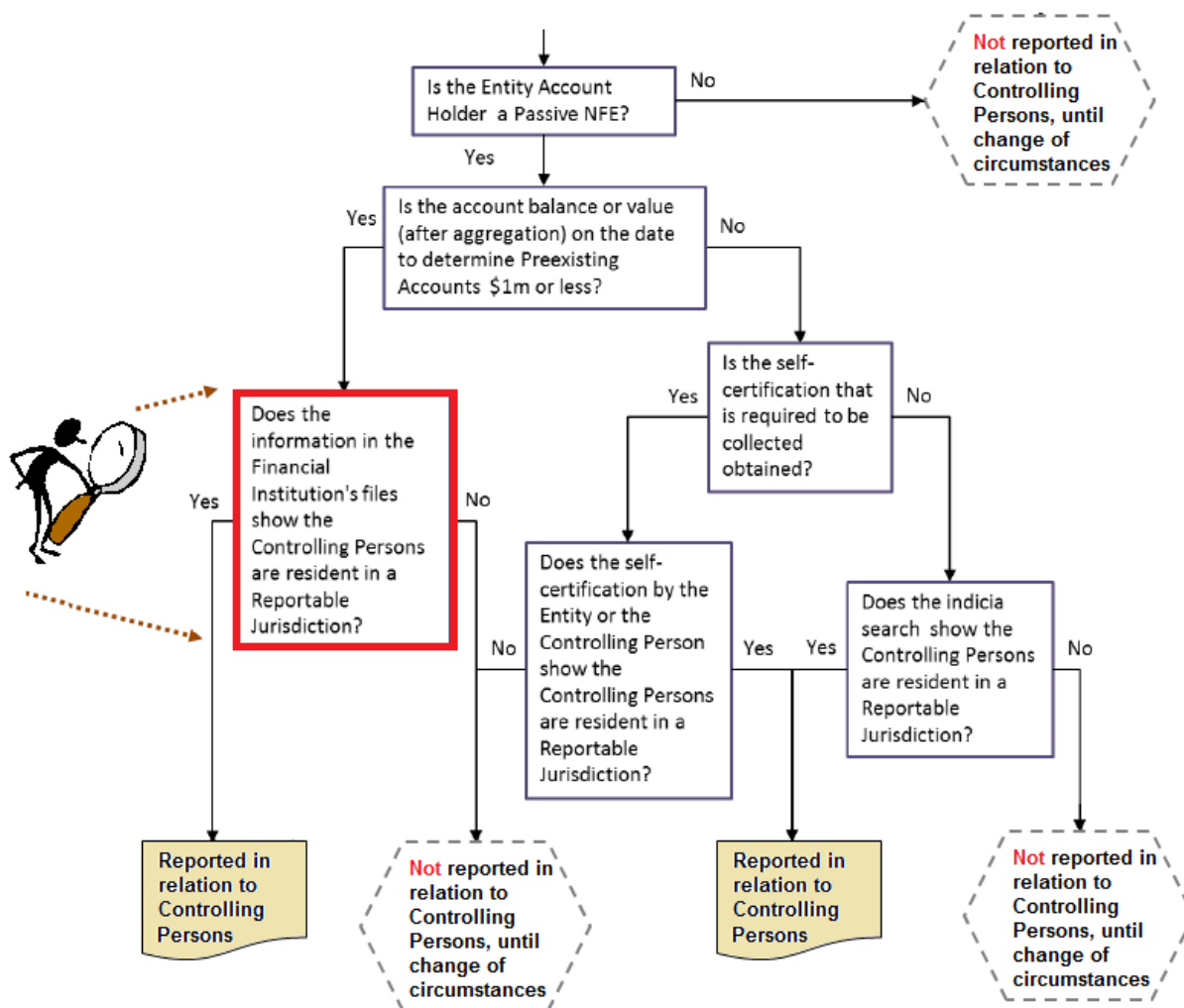
When a Reporting Financial Institution reviews the Financial Accounts it maintains, the CRS stipulates the due diligence procedure to determine if the Account Holder is resident in a reportable Jurisdiction, i.e. in a Jurisdiction with which the reporting Jurisdiction has signed a Competent Authority Agreement. This is done for individuals and controlling persons of entities.

Pre-existing individual accounts in relation to Account Holder



Amending CRS should include previous residencies

Pre-existing entity accounts in relation to Controlling Persons



The Reporting Financial Institution must manually and electronically review searchable data with regard to the Financial Account for any of the following indicia which gives indications where the Account Holder is resident:

- i. Identification of the Account Holder as a resident of a Reportable Jurisdiction
- ii. Current mailing or residence address (including PO box) in a Reportable Jurisdiction
- iii. One or more telephone numbers in a Reportable Jurisdiction and no telephone number in the Jurisdiction of the Reporting Financial Institution
- iv. Standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction

Amending CRS should include previous residencies

- v. Currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or

If none of the above indicia are discovered in the search, no further action is required until there is a “change in circumstances” that results in one or more indicia being associated with the account.

If any of the indicia listed above are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes **of each** Reportable Jurisdiction for which an indicium is identified.

However, in case of a change in circumstances, a Reporting Financial Institution may choose to treat a person as having the same status that it had prior to the change in circumstances until:

- i. the later of the last day of the relevant calendar year or
- ii. other appropriate reporting period, or
- iii. 90 calendar days following the date that the indicium was identified due to the change in circumstances.

2. Account Holder may “cure” the indicia

Indicia found indicating multiple residence Jurisdictions will mostly be genuine. However, indicia may also result in cases of “false or mistaken” indications of residence in a Reportable Jurisdiction.

Financial Institutions should contact their customers to resolve such cases and advise them that if the conflicting indicia cannot be “cured”, information may be exchanged with two or more Jurisdictions. Such course of action results from customer relationship considerations and there is a need to handle customer information with care.

To the extent an Account Holder would nevertheless be reported as resident of more than one Jurisdiction, it is expected that the Competent Authorities would exchange to each respective Jurisdiction of residence. This would allow the relevant Competent Authorities to resolve any residence questions.

The Standard contains a procedure for an Account Holder to “cure” false or mistaken indicia. A Reporting Financial Institution would then not be required to treat an Account Holder as a resident of a Reportable Jurisdiction if:

- i. A self-certification from the Account Holder of the Jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction, **and**
- ii. Documentary evidence establishing the Account Holder’s non-reportable status.

B. OECD concern of synthetic tax residency

The OECD is aware that Account Holders may submit to the reporting Financial Institution maintaining their Financial Account, proof of residence in a Jurisdiction which issues tax resident certificates to individuals who are not permanent residents. There are territories around the world that issue such synthetic tax residency documentation. For example:

1. Panama

An investor can take advantage of the Panamanian Residency Program and obtain permanent residence status if a minimum of US\$300,000 is placed in a 3-year time deposit at any Panama bank.

Stipulations:

- i. The Panama bank time deposit account must be in the personal name of the primary applicant (it may not be in the name of a Panama corporation, Panama foundation, or trust).
- ii. The interest earned from the Panama bank time deposit will be deposited monthly into any savings account at the Panama bank (the Panama savings account may be a personal account, or a corporate account).
- iii. The interest income is not taxed by the Panamanian government, nor is it subject to any tax reporting requirements.

2. Dubai

The UAE can issue a tax residence certificate even if one does not physically reside there. A UAE Free Trade Zone (FTZ) entity is to obtain residence permits and obtain tax residence certificates from the UAE authorities for its foreign owners and executives. A FTZ company, must have physical presence in the UAE and, in that respect, it must own or hire premises, if only a small office including flexi desks. Furthermore, if a local bank account is maintained, the foreign owners and executives can apply to the Ministry of Finance to receive UAE tax residence certificates.

3. Gibraltar

High Net Worth Individuals can establish tax residency in Gibraltar under an alternative tax regime which caps the individual's tax liability in Gibraltar to less than GBP 30,000 in total. Requirements to obtain tax residency are:

- i. More than GBP 2 million of net assets.
- ii. Either purchase or rent accommodation in Gibraltar, which must be of an appropriately high standard, and approved by the Gibraltar Finance Centre.
- iii. Undertake not to engage in any trade, business or employment in Gibraltar.
- iv. No presence is required in Gibraltar in any year of assessment except on the one day to personally collect the annual tax residence certificate.

Clearly synthetic residencies are mostly used to circumvent the CRS reporting.

C. OECD concern of omitting multiple residencies

An Account Holder may be resident in multiple Jurisdictions. However, the Account Holder will self-certify that they are resident only in the Jurisdiction which is most tax-favoured. For example, the Account Holder will demonstrate he is currently resident only in Singapore or is only a UK non-dom, because in that case the Account Holder will only be taxed on income remitted to that Jurisdiction. In such cases, the CRS reporting will have minimal impact on the Account Holder who maintains their assets in another Jurisdiction.

The concern is this Account Holder may be resident in several other Jurisdictions which are not discovered during the reporting Financial Institutions due diligence procedure.

D. OECD concern of non-declaration to previous residencies

An Account Holder may have moved to a Jurisdiction (possibly to dampen the effect of CRS reporting). The concern is the Account Holder never declared their cross-border assets to the previous residence Jurisdiction's authorities.

E. Tackling residency concerns – Include previous residencies

The OECD will tackle the previously described residence lacunae by deeming that the Account Holder has multiple residency in previous residencies. Account Holders wishing to contest this assumption may follow the curing procedure stipulated in the Standard.

Due diligence procedures to determine if the Account Holder is a reportable person focuses on electronic, paper and relationship manager search of data for indicia indicating residence. An amendment to the Standard will now include a new 7th indicium, namely changes from previous residencies within the last ten-years. (10-year due to statute of limitations on taxes and / or length of time authorities and individuals must retain tax related documents).

So if an Account Holder has changed their residency within the last ten years, and this information is found in the data search of the client, then Financial Institution must deem that the Account Holder has multiple residences, the current residence plus previous residencies.

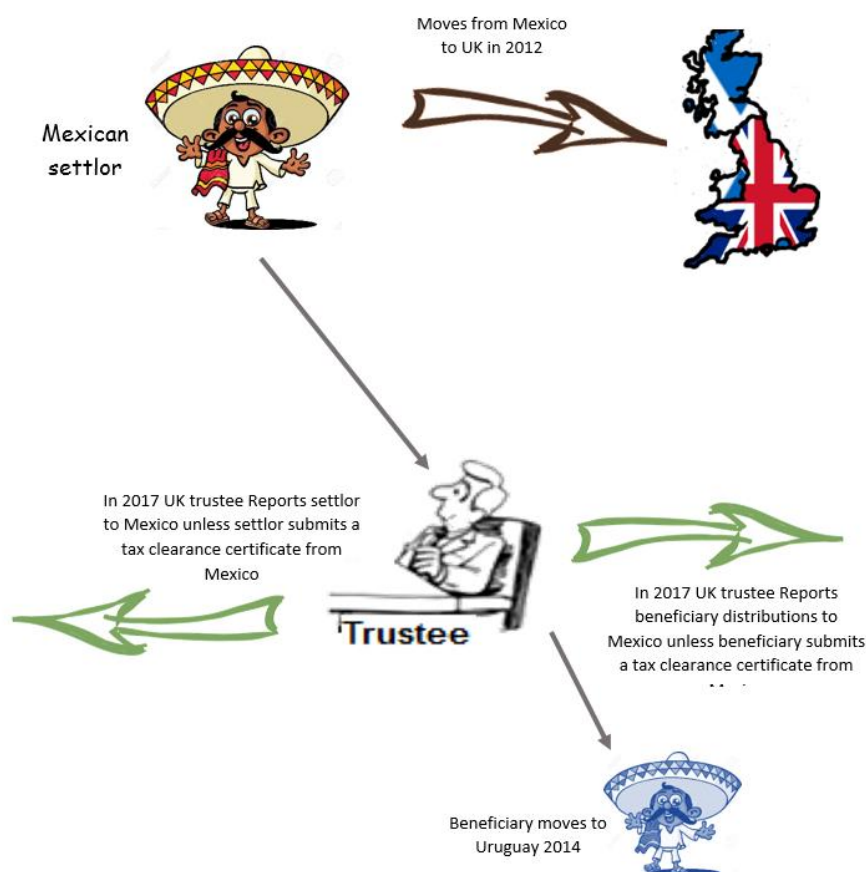
If the Account Holder wishes to contest the validity of indicia indicating previous residence, then there is a method to fix this indicia with the “curing procedure” described in the Standard, namely:

- i. A self-certification from the Account Holder that their residency does not include such indicated Jurisdictions; **and**
- ii. Documentary Evidence establishing the Account Holder’s non-reportable status, such as tax clearance certificate.

Practical examples

Case study I

Account Holder has moved from Mexico to the UK in 2012 and has non-dom tax status. A UK Financial Institution maintains the Account Holder's Financial Account (for example Account Holder is a settlor of a trust with UK trustee). Prior to the CRS amendment concerning previous residencies, the UK trustee would not report on the Settlor because he is resident in the same Jurisdiction as the Financial Institution. However, after the CRS amendment, the UK trustee as the reporting Financial Institution must report to the Mexican competent authorities, unless the Account Holder can demonstrate he has no tax liability to Mexico. It may take several years to obtain such tax clearance documentation from Mexico. In the meantime, the UK trustee must continue reporting to Mexico until the year 2022 unless the Account Holder provides documentary proof of no more tax liability to Mexico. The same will affect beneficiaries who move to say Uruguay.



Case study II

If the trust is a Non Financial Entity (NFE), the Financial Institution maintaining the assets will have to report on the settlor, protector and critically on the beneficiaries current and previous residencies to the Jurisdictions' competent authorities, even if no distributions are made to the beneficiaries.

Case Study III

The previous Account Holder has a BVI company with an Anguilla based corporate director. The company's portfolio is maintained and managed by a bank in the USA. Even though the USA is a non-participating Jurisdiction, the company is an investment entity as its assets are managed by a Financial Institution and it earns income from Financial Assets. The Anguilla director will have to report to both the UK (current residence) and Mexico (previous residence).

In summary, the CRS amendment to include previous residences changed within the last ten years will have significant impact equally on Account Holders who have genuinely or synthetically changed residency.

Dated this, the 14th day of March, 2016



Mark Morris

===== END OF BRIEF =====