

**MEMO# 29540**

December 10, 2015

# **ICI Global Letter to OECD on Applying Common Reporting Standard (CRS) to Collective Investment Vehicles (CIVs)**

[29540]

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TO: TAX MEMBERS No. 27-15

INTERNATIONAL MEMBERS No. 44-15

ICI GLOBAL TAX COMMITTEE No. 22-15

INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 30-15 RE: ICI GLOBAL LETTER TO OECD ON APPLYING COMMON REPORTING STANDARD (CRS) TO COLLECTIVE INVESTMENT VEHICLES (CIVs)

## **Background - In General**

The Organisation for Economic Co-operation and Development (OECD) has been working diligently with governments and the business community to develop an administrable standard for the automatic exchange of information (AEOI) for tax purposes. [\[1\]](#) The product of that work – the Common Reporting Standard (CRS) [\[2\]](#) – is based largely on the Model 1 Intergovernmental Agreement (IGA) [\[3\]](#) that was developed by the United States to implement the Foreign Account Tax Compliance Act (FATCA). [\[4\]](#) Under the CRS, financial institutions will be required to determine the tax residence of their customers and report information regarding nonresidents to their own governments. This information then will be exchanged automatically with the nonresidents' own governments.

The CRS is expected to become effective in fifty-four countries beginning on January 1, 2016. [\[5\]](#) These countries will collect information for 2016 and exchange that information with the account holders' own governments by September 2017. An additional twenty-one countries will begin exchanging information for tax purposes by September 2018. Approximately twenty other countries have announced that they intend to sign the agreement implementing the information exchange. The United States, while participating actively at the OECD in the CRS' development, has not announced any plan to sign this

agreement. [\[6\]](#)

## **Background - Controlling Persons of U.S. Funds**

Because the United States is not implementing the CRS, U.S. funds will be treated differently under the CRS than most other countries' funds. Specifically, U.S. funds will be subject to the information collection and reporting rules developed for "passive nonfinancial entities" (passive NFEs). Consequently, financial accounts that U.S. funds have with non-U.S. financial institutions will be subject to customer due diligence identification procedures similar to those applied by FATCA. One such requirement is that financial institutions in participating jurisdictions will collect and report information regarding the "controlling person(s)" of every U.S. fund.

The CRS provides different rules for determining the controlling person(s) of entities that are legal persons and of trusts. If the account holder is an entity, the controlling person is the natural person (or persons) who exercises "control" over the entity. The CRS requires that control be identified: first, based on ownership (e.g., owning twenty-five percent or more of the entity); second, if there is no controlling owners(s), by "other means;" and finally, if no controlling person is identified under either of the first two steps, by naming a "senior managing official." In contrast, if the account holder is a trust, every beneficial owner would be treated as a controlling person; many others, including a fund's portfolio manager(s), also might be treated as controlling persons.

## **ICI Global Letter**

The ICI Global letter first states that the CRS Commentary should be changed so that funds report as controlling persons only natural persons owning twenty-five percent or more of a fund. When the senior managing official has no tax liability associated with managing the CIV, no CRS benefit is gained by requiring such reporting. Indeed, the useless information that is collected, maintained, and reported burdens the FIs and makes it harder for tax authorities to find taxpayers who are not reporting their income properly.

The letter then requests that guidance be issued clarifying two "controlling persons" issues. Importantly, the letter notes that financial institutions with a full understanding of how U.S. funds are organized and operated will come to the answers we recommend; all financial institutions, however, would benefit from prompt clarifying guidance.

The first requested clarification is a Frequently Asked Question (FAQ) stating that a fund treated as a passive NFE should use its best judgment to determine who, in the absence of a twenty-five percent owner, should be identified as its controlling person. The clarifying flexibility provided by the requested FAQ would reduce substantially any difficulties in identifying a senior managing official.

The second requested clarification is a clear statement that a fund organized in the U.S. as either a business trust or as a statutory trust is treated as an entity, rather than as a trust, for controlling person purposes. Under this clarification, all U.S. funds would treat as controlling persons only a senior managing official. To ensure that comparable funds (if any) organized as trusts in any other non-participating jurisdiction receive comparable controlling persons treatment, the letter also suggests that information regarding the proper treatment of these other countries' funds also be placed on the AEOI section of the OECD's website (also known as the "Automatic Exchange Portal"). [\[7\]](#)

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## Attachment

### **endnotes**

[1] <http://www.oecd.org/tax/automatic-exchange/>. This link (to the OECD's "Automatic Exchange Portal") provides access to detailed information regarding AEOI.

[2] <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm>.

[3] [https://www.ici.org/my\\_ici/memorandum/memo26344](https://www.ici.org/my_ici/memorandum/memo26344)

[4] [https://www.ici.org/my\\_ici/memorandum/memo24186](https://www.ici.org/my_ici/memorandum/memo24186)

[5] <http://www.oecd.org/ctp/exchange-of-tax-information/mcaa-signatories.pdf>. This information is current as of December 3, 2015.

[6] As the OECD has noted, "The United States has indicated that it will be undertaking automatic information exchanges pursuant to FATCA from 2015 and has entered into intergovernmental agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. They also include a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange." <http://www.oecd.org/tax/transparency/AEOI-commitments.pdf>.

[7] See Footnote 1.