

Public Discussion Draft

Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures

Consultation period:

11 December 2017 - 15 January 2018



MANDATORY DISCLOSURE RULES FOR ADDRESSING CRS AVOIDANCE ARRANGEMENTS AND OFFSHORE STRUCTURES

Discussion draft for public consultation

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**DRAFT FOR PUBLIC CONSULTATION
ON MANDATORY DISCLOSURE RULES FOR ADDRESSING
CRS AVOIDANCE ARRANGEMENTS AND OFFSHORE STRUCTURES**

11 December 2017

The Bari Declaration, issued by the G7 Finance Ministers on 13 May 2017, calls on the OECD to start “discussing possible ways to address arrangements designed to circumvent reporting under the Common Reporting Standard or aimed at providing beneficial owners with the shelter of non-transparent structures.”

The Declaration states that these discussions should include consideration of “model mandatory disclosure rules inspired by the approach taken for avoidance arrangements outlined within the BEPS Action 12 Report.” While the Action 12 Report does not represent a minimum standard, it provides a framework for mandatory disclosure rules that is based on international best practices and presents tax administrations with options to address perceived risks. The report sets out the key elements of mandatory disclosure rules that are designed to target the most high risk structures and promoters, while limiting the compliance burdens on low-risk taxpayers.

Information on offshore tax planning released by media organisations, such as the ICIJ’s co-ordinated releases commonly known as the Panama Papers and the Paradise Papers, combined with information collected through the compliance activities of a number of tax administrations, discussions with advisors, as well as the results from OECD’s CRS public disclosure facility demonstrate that certain professional advisers continue to design, market or assist in the implementation of offshore structures and arrangements that can be used by non-compliant taxpayers to circumvent the correct reporting of relevant information to the tax administration of their jurisdiction of residence.

In light of this context and in response to the mandate from the G7 Finance Ministers, the OECD is currently considering a range of approaches that could be taken to address arrangements designed to circumvent or attempt to circumvent the CRS (“CRS Avoidance Arrangements”) and the use of non-transparent offshore structures to conceal actual beneficial ownership (“Offshore Structures”). Such approaches include measures focussed on improving intelligence for tax administrations within the existing information exchange and legislative framework (e.g. improved collaboration through JITSIC, as well as the use of group requests and spontaneous exchanges of information), as well as policy measures, such as additional regulatory intervention or additional disclosure obligations.

One of the approaches under consideration is the use of mandatory disclosure rules for CRS Avoidance Arrangements and Offshore Structures, drawing on the recommendations in the Action 12 Report and adapted to address the compliance issues raised by these types of arrangements and structures.

This consultation document, in addition to this cover note, contains three main parts:

- A brief introduction to the draft Mandatory Disclosure Rules;
- The draft Mandatory Disclosure Rules, including the related draft Commentary, arranged in chapters addressing the following key aspects:
 - Chapter 1 – Definition of a CRS Avoidance Arrangement
 - Chapter 2 – Definition of an Offshore Structure
 - Chapter 3 – Disclosure requirements on Intermediaries
 - Chapter 4 – Information reporting
 - Chapter 5 – Penalties; and
- An Annex containing the consolidated Mandatory Disclosure Rules.

The proposals included in this consultation draft do not represent the consensus views of the Committee on Fiscal Affairs or its subsidiary bodies but are intended to provide stakeholders with substantive proposals for analysis and comment.

Interested parties are invited to send their comments on this consultation draft by 15 January 2018 by email to mandatorydisclosure@oecd.org in Word format (in order to facilitate their distribution to government officials). They should be addressed to the International Co-operation and Tax Administration Division, OECD/CTPA. Comments in excess of ten pages should attach an executive summary limited to two pages.

Please note that all comments on this consultation draft will be made publicly available. Comments submitted in the name of a collective “grouping” or “coalition”, or by any person submitting comments on behalf of another person or group of persons, should identify all enterprises or individuals who are members of that collective group, or the person(s) on whose behalf the commentator(s) are acting.

MODEL MANDATORY DISCLOSURE RULES AND COMMENTARY

Purpose of the MDR for CRS Avoidance Arrangements and Offshore Structures

1. The purpose of these model rules is to provide tax administrations with intelligence on both the design and supply of CRS Avoidance Arrangements and Offshore Structures as well as to act as a deterrent against the marketing and implementation of these type of schemes where they are being used to circumvent CRS reporting or to obscure or disguise the beneficial ownership in an offshore vehicle.
2. The model rules require an Intermediary (or taxpayer) to disclose certain relevant information to its tax administration regarding CRS Avoidance Arrangements and Opaque Offshore Structures. Disclosures of such information can assist tax administrations in gathering intelligence on schemes that are being used or marketed to taxpayers in their respective jurisdictions. Further, the model rules were designed to facilitate the spontaneous exchange of information where the information provided by Intermediaries relates to one or more specific Reportable Taxpayers. It is contemplated that such information would be spontaneously exchanged with the tax administration(s) of the jurisdictions in which the concerned Reportable Taxpayer is resident for tax purposes pursuant to the applicable international legal instruments. The modalities, timing and form of the information to be spontaneously exchanged will be further defined in an operational agreement

Key elements of the MDR

3. As set out in the Action 12 Report, there are five key elements in the design of a mandatory disclosure regime:
 - (a) A description of the arrangements that are required to be disclosed (i.e. the hallmarks of a disclosable scheme).
 - (b) A description of the persons required to disclose such arrangements (i.e. the Intermediaries that are subject to reporting obligations under the rules);
 - (c) A trigger for the imposition of a disclosure obligation (i.e. the point in time when an obligation to disclose crystallises under the rules)
 - (d) A description of what information is required to be reported (including any exceptions from reporting).
 - (e) Appropriate penalties for non-compliance

These five elements are reflected in the design of the model mandatory disclosure rules set out below.

Model Hallmarks

4. Chapters 1 and 2 of the model 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. This generic test is supplemented by specific hallmarks that target known features of CRS Avoidance Arrangements. These specific hallmarks have been developed in light of the experiences of a number of tax administrations and in response to schemes that have been disclosed under WP10's own disclosure facility.

5. The hallmark for Offshore Structures specifically targets passive offshore vehicles that are held through an "Opaque Ownership Structure". The purpose of this hallmark is to supplement the disclosure rules for CRS Avoidance Arrangements by providing 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).

6. Like the hallmark for CRS Avoidance, the definition of "Opaque Ownership Structure" has a generic element that tests whether the ownership structure has the effect of obscuring or disguising the identity of the beneficial owner and it also specifically targets specific tax planning techniques that can be used to achieve this outcome such as the use of undisclosed nominees.

Definition of Intermediary and Timing of Disclosure Obligations

7. Chapter 3 defines who is an Intermediary and sets out rules governing when an Intermediary is required to make disclosure under these rules. Intermediaries are defined as those persons responsible for the design or marketing of CRS Avoidance Arrangement and Offshore Structure (i.e. promoters) as well as those with a sufficient level of involvement in the design, marketing, implementation or management of these schemes (i.e. 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. By restricting the definition of Intermediary to those persons responsible for, or with a direct involvement in, the design, marketing or management of the scheme, the disclosure rules create a second compliance filter, in addition to the hallmarks, that limits the operation of the disclosure rules to those Intermediaries and schemes that are likely to present the greatest risk from a compliance perspective.

8. An Intermediary is required to file a disclosure in respect of a CRS Avoidance Arrangement or Offshore Structure at the time the scheme is first made available for implementation or when the Intermediary provides services in respect of the scheme. This ensures that the tax administration is provided with early warning about potential compliance risks as well as ensuring that it has current information on the actual users of the scheme at the time it is implemented.

Information required to be disclosed

9. The information required to be disclosed in respect of a CRS Avoidance Arrangement or Offshore Structure is set out in Chapter 4. This information required to be disclosed 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 information reporting requirements under the model rules are designed to capture the information that is likely to be most relevant from a risk-assessment perspective and to make it relatively straightforward for a tax administration to determine the jurisdictions with which such information should be spontaneously exchanged consistently with the applicable terms of the information exchange agreement.

10. The 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

administration. 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

11. The question of what penalties should apply for non-disclosure should be determined by each country in light of its particular circumstances. However the model rules include some commentary that provides an illustration of a possible approach to penalties.

CHAPTER 1

DEFINITION OF A CRS AVOIDANCE ARRANGEMENT

Model Rule

12. This Chapter sets out the hallmark for a CRS Avoidance Arrangement. The hallmark begins with a general description of the core features of CRS Avoidance Arrangements (the generic hallmark) and then provides examples of specific arrangements that fall within this general description (specific hallmarks). This approach is designed to ensure that the hallmarks capture known CRS Avoidance Arrangements while retaining the flexibility to cover as yet unidentified arrangements that may pose risks to the integrity of the CRS.

1. Definition of a CRS Avoidance Arrangement

1.1 A “CRS Avoidance Arrangement” is any Arrangement for which it is reasonable to conclude that it is designed to, marketed as or has the effect of, circumventing CRS Legislation or exploiting an absence thereof. In any case a CRS Avoidance Arrangement includes, but is not limited to:

- (a) the use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;
- (b) an Arrangement to:
 - (i) transfer a Financial Account, or the monies and/or Financial Assets held in a Financial Account to a Financial Institution that is not a Reporting Financial Institution;
 - (ii) convert or transfer a Financial Account, or the monies and/or Financial Assets held in a Financial Account, to a Financial Account that is not a Reportable Account; or
 - (iii) convert a Financial Institution into a Financial Institution that is not a Reporting Financial Institution;

where it is reasonable to conclude that such conversion or transfer is designed to, marketed as or has the effect of circumventing CRS Legislation or exploiting an absence thereof;

- (c) an Arrangement for which it is reasonable to conclude that it is designed to, marketed as, or has the effect of undermining, or exploiting weaknesses in, the due diligence procedures used by Financial Institutions to correctly identify:
 - (i) an Account Holder and/or Controlling Person; or
 - (ii) all the jurisdictions of tax residence of an Account Holder and/or Controlling Person;
- (d) an Arrangement for which it is reasonable to conclude that it is designed to, marketed as, or has the effect of allowing:
 - (i) an Entity to qualify as an Active NFE;
 - (ii) an investment to be made through an Entity without triggering a reporting obligation under the CRS; or
 - (iii) a person to avoid being treated as a Controlling Person; and
- (e) an Arrangement for which it is reasonable to conclude that it is designed to, marketed as, or has the effect of classifying or disguising a payment made for the benefit of an Account Holder or Controlling Person as a payment that is not reportable under CRS Legislation.

1.2 The following capitalised terms shall have the meanings set out below:

- (a) “Arrangement” means an agreement, scheme, plan or understanding, whether or not legally enforceable, and includes all the steps and transactions that bring that Arrangement into effect.
- (b) “CRS Legislation” means the Standard for Automatic Exchange of Financial Account Information in Tax Matters as implemented in the domestic laws of the jurisdiction where the relevant account is maintained and includes any international legal instrument for the exchange of information collected pursuant to such laws that is in force and effect for that jurisdiction.

Capitalised terms that are not otherwise defined shall have the meanings given to them under the CRS Legislation.

Commentary

1.1 Generic hallmark for a CRS Avoidance Arrangement

13. The generic definition of a “CRS Avoidance Arrangement” is set out in the opening language of Section 1.1. It describes any arrangement that has, is designed to have or marketed as having, the effect of circumventing the CRS information reporting and exchange requirements under the laws of the jurisdiction where the relevant account is maintained.

14. An arrangement will be treated as circumventing CRS Legislation where it avoids the reporting of CRS information to the jurisdiction(s) of residence of a taxpayer, including by:

- exploiting the absence of CRS Legislation or adequate implementation of such legislation;
- exploiting the absence of a CRS exchange agreement with one or more jurisdiction(s) of residence of such taxpayer;
- undermining or exploiting weaknesses in the due diligence procedures applied by a Financial Institution under CRS Legislation; or
- otherwise undermining the intended policy of the CRS.

The generic test therefore covers arrangements that have features which take the arrangement outside the scope of CRS reporting (*de jure* avoidance arrangements) as well as arrangements that while not legally removing a CRS disclosure obligation as a practical matter may result in no reporting or the reporting of inaccurate or incomplete CRS information to the jurisdiction of residence of the user of that arrangement. Therefore an arrangement would not fall within the definition of a CRS Avoidance Arrangement if it results in the exchange of the same Financial Account information, by the United States under a FATCA inter-governmental agreement with the jurisdictions of residence of the taxpayer, that would have been reported and exchanged under the CRS.

15. An arrangement will fall within the scope of the generic hallmark if that arrangement actually has the effect of circumventing the CRS or if it is designed to have, or is marketed as having, that effect. This means that the generic hallmark covers both schemes that are or can be used to avoid or frustrate the legal requirements of the applicable CRS legislation as well as those based on a misinterpretation or misapplication of that legislation. The term “design” refers to those features of the arrangement that are included to facilitate a non-reporting outcome. A scheme should be treated as “marketed” as a CRS Avoidance Arrangement if there is collateral evidence (e.g. written or oral statements made by a promoter) that refer to non-reporting under the CRS as one of the benefits of the arrangement. The term “marketed” would not include providing a legal opinion given to a client on whether an existing or proposed arrangement presented by such client is subject to CRS reporting (or on the way in which an arrangement should be reported under the CRS). It would, however, include any subsequent use of that opinion to sell an investment or investment structure to a third party based on its CRS treatment.

16. The test of “reasonable to conclude” is to be determined from an objective standpoint without reference to the subjective intention of the persons responsible for the design, marketing or using the scheme. Thus the test will be satisfied where a reasonable person in the position of a professional adviser with a full understanding of the terms and consequences of the arrangement and the circumstances in which it is designed, marketed and used, would come to this conclusion. .

1.1(a) – Financial investments that are not Financial Accounts

17. The first specific hallmark covers those cases where a person offers a financial product that provides the investor with the core functionality of a financial account but which includes features that are designed to take it outside the definition of a "Financial Account" for CRS purposes. This specific hallmark could cover, for instance, the use of certain types of e-money or the issuance of certain types of derivative contracts by financial institutions. The hallmark refers to the "use" of such a product and would therefore cover the offering of such products as well as arrangements to transfer funds into such an investment.

1.1(b) – Arrangements to transfer funds outside the scope of CRS reporting

18. The second specific hallmark in the model rules covers arrangements that shift money or other financial assets to financial institutions or accounts that are not subject to CRS reporting. Unlike the first hallmark which focuses on the specific features of the product that take it outside the legal scope of the CRS, this hallmark looks to the jurisdiction where the financial product is offered and the domestic exemptions from reporting within that jurisdiction to identify arrangements that give rise to CRS avoidance risks. This hallmark would include moving money to a bank in a jurisdiction that is not exchanging CRS information with the taxpayer's country of residence for tax purposes; certain transfers of funds to a non-reportable account of a financial institution in a participating jurisdiction or strategies such as dividing the amounts held in a bank account to remain under the USD 250,000 threshold for CRS reporting.

19. This hallmark would not capture a financial institution that simply transferred money between accounts or to an account at another bank in accordance with the instructions from its customer. Such a transfer would not, by itself, be sufficient evidence of an arrangement between the bank and the customer to circumvent CRS legislation (or to exploit the absence of such legislation). Even if the transfer formed part of a CRS Avoidance Arrangement between the customer and a third party promoter, the bank would not be an "Intermediary" in respect of the arrangement under Chapter 3 unless it could reasonably be expected to know of that arrangement and its CRS implications. The specific hallmark would apply, however, if the bank, in its role as an investment manager, advised the customer to move the funds to another jurisdiction or account in order to escape CRS reporting.

20. This specific hallmark applies to transfers of money or other financial assets and includes those cases where there is a change in the investment structure that has the effect of taking the financial account outside the framework of CRS reporting. The specific hallmark sets a bright-line test that focuses on known risks which can be tested at a single point in time (i.e. the time of transfer or conversion) making it easier for Intermediaries such as investment managers to develop appropriate compliance procedures.

1.1(c) – Arrangements undermining the effectiveness of and exploiting weaknesses in due diligence procedures

21. The third specific hallmark targets arrangements that undermine or exploit weaknesses in the due diligence procedures used by financial institutions to collect CRS information on an account holder and the controlling persons of a passive non-financial entity (NFE). Arrangements undermining the effectiveness of due diligence procedures are those that frustrate the intended outcomes of those procedures (such as the misuse of residence certificates as described in Section 1.1(c)(ii) below). Arrangements exploiting weakness in due diligence procedures include those arrangements that rely on the absence or inadequate implementation of such due diligence procedures, for example by taking advantage of weak AML implementation. This hallmark would cover the use of opaque offshore structures that can be used to obscure the identity of such persons and the reliance on indicia or documentary evidence to mislead a financial institution about the actual country(ies) of residence of an account holder in order to facilitate inaccurate or incomplete reporting under the CRS.

1.1(c)(i) – Arrangements that disguise the identity of the Account Holder or Controlling Person

22. This sub-paragraph covers those cases where an arrangement, such as an asset holding structure, is used to obscure the identity of the underlying beneficial owners in a way that it is reasonable to conclude that it has the effect of frustrating the application of the due diligence procedures under the CRS. It should be noted that, in the most simple and commonly used offshore structures, the due diligence procedures applied by financial institutions will generally be sufficient to identify the account holders and controlling persons. For example:

- a bank that opens an account for a trust with foreign beneficiaries could be expected to request a copy of the trust deed which should identify the beneficiaries (and other beneficial owners of the trust) named in the deed; and
- a share broker that maintains a share trading account for an offshore entity can be expected to require that entity to provide information on its shareholders or other evidence that the entity is a financial institution or Active NFE.

These types of simple structures will not usually be expected to fall within the specific hallmark in Section 1(1)(c)(i) unless they were designed or marketed as, part of a CRS Avoidance Arrangement or they contained features that would lead a reasonable person to conclude that the arrangement, as a whole, would have the effect of undermining the due diligence procedures applied by financial institutions under the applicable CRS legislation..

1.1(c)(ii) – Arrangements that disguise the residency of account holders and controlling persons

23. Sub-paragraph (ii) of this hallmark applies to arrangements that can be used to avoid accurate and comprehensive reporting of CRS information to the jurisdiction of residence of the account holder or controlling person. This hallmark would, for instance, apply to a person promoting the use of a tax residence certificate as a method of facilitating the avoidance of the CRS.

24. A number of countries offer tax incentives to individuals to encourage them to take up tax residence in that jurisdiction. These incentives may involve temporary or permanent exemptions from tax on foreign source income and obtaining such tax residency may only require the resident to have a minimal presence in that jurisdiction. A person who is tax resident in more than one jurisdiction may use

such a certificate to hide the fact that he is a tax resident in another jurisdiction. Presenting such a certificate to a financial institution as proof of residence in order to undermine the financial institution's due diligence procedures would fall within the specific hallmark in Section 1(1)(c)(ii) as an arrangement for which it is reasonable to conclude that it has the effect of undermining or exploiting weaknesses in, the due diligence procedures used by Financial Institutions to correctly identify all the jurisdictions of tax residence of an Account Holder and/or Controlling Person.

25. While procuring a tax residence certificate (or providing assistance in completing the formal procedures for obtaining tax residency) in these circumstances could be an arrangement that has the effect of allowing taxpayers to circumvent the CRS, a person who provides such services would not be considered to be an Intermediary in respect of a CRS Avoidance Arrangement unless that person was responsible for marketing the tax residency certificate as way of avoiding CRS reporting or was in a position to know that one of the reasons for obtaining the certificate was to circumvent CRS reporting.

1.1(d) – Exploiting Active NFE status or avoiding Controlling Person Status

26. The fourth specific hallmark addresses arrangements that take advantage of the fact that an active NFE is not subject to disclosure or reporting obligations with respect to its controlling persons under the CRS and targets arrangements involving the use of a passive NFE that are designed to circumvent the requirement to disclose controlling persons. The model rules in Section 1.1(d) focus on three areas of known risk:

- the marketing of a shelf company that purports to qualify automatically for active NFE status in their jurisdiction of incorporation
- back-to-back investment arrangements made through a non-financial entity that are intended to prevent the investor having to reveal his identity under the CRS
- investments in a passive NFE that are structured in such a way as to prevent the investor falling within the definition of a Controlling Person under the CRS

The final element of the hallmark would also cover a plan to switch from a trust to a company as an investment vehicle in order to avoid reporting of the trust's discretionary beneficiaries as controlling persons.

27. The hallmark uses the relevant definitions in the CRS to accurately target these risks without specifying the particular technique used to achieve them. The mere fact, however, that an entity qualified as an "Active NFE" under the CRS or that a person had a financial investment in an active or passive NFE would not bring the arrangement within the scope of this hallmark unless the transactions contain an element that is designed to qualify the entity as an Active NFE for CRS purposes or the way the investment in the NFE was structured would lead a reasonable person to believe that the arrangement had been expected to have the effect of undermining the CRS due diligence procedures.

1.1(e) – Non-reportable payments to an Account Holder

28. The final specific hallmark relates to arrangements that disguise or convert a payment to an Account Holder or Controlling Person into one that is not reportable under the CRS. The model rules cover arrangements that both "classify" and "disguise" a payment, in order to address sham transactions that have no legal effect, and include the additional precision that the payment must be to or "for the benefit of" an Account Holder or Controlling Person. This hallmark could for instance pick up a trust that pays the bills on behalf of a beneficiary or crediting amounts to a pre-paid debit card.

1.2 Other Definitions

29. Many of the definitions in the hallmark for CRS Avoidance Arrangements take their meaning from the defined term as used in the CRS. However there are a number of capitalised terms that have a specific definition under these draft rules.

1.2(a) - “Arrangement”

37. The term “Arrangement” is used as part of the definition of CRS Avoidance Arrangement. As set out in the Action 12 Report, this definition is intended to be sufficiently broad and robust to capture any agreement, scheme, plan or understanding (whether enforceable or not) and all the steps and transactions that form part of or give effect to that Arrangement.

1.2(b) – “CRS Legislation”

31. The definition of CRS Legislation refers to the Standard for Automatic Exchange of Financial Account Information, as implemented in the domestic laws of the jurisdiction where the relevant account is maintained. It includes agreements in effect to exchange the information collected pursuant to such laws. . Thus an arrangement will be treated as circumventing the CRS not only where it results in a Financial Institution failing to report (or reporting inaccurate) information to a tax authority but also where it prevents that information from being exchanged with the tax authority in the taxpayer’s jurisdiction of residence.

CHAPTER 2

DEFINITION OF AN OFFSHORE STRUCTURE

Model Rule

32. This Chapter sets out a draft hallmark for an offshore structure. This hallmark includes specific examples of opaque ownership arrangements such as the use of nominee shareholders, indirect control arrangements or arrangements that provide a person with access to assets held by, or income derived from the offshore vehicle without being identified as the beneficial owner.

33. The hallmark supplements the specific hallmark for CRS Avoidance Arrangements in Chapter 1 by specifically identifying those features of offshore structures that are commonly used to hide the identity of the beneficial owner. The focus of this hallmark then is on structures that hold assets other than Financial Accounts, i.e. those not reportable under the CRS (e.g. real estate). The text of the draft hallmark is set out below.

1. Definition of Offshore Structure

- 1.1 An Offshore Structure means a Passive Offshore Vehicle that is held through an Opaque Ownership Structure.
- 1.2 Subject to paragraph (3) below, a “Passive Offshore Vehicle” means an offshore Legal Person or Legal Arrangement that does not carry on a substantive economic activity that is supported by staff, equipment, assets and premises.

A Legal Person or Legal Arrangement will be treated as “offshore” for the purposes of this paragraph if it is incorporated, resident, managed, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the Beneficial Owners and an “offshore jurisdiction” is any jurisdiction where such Legal Person or Legal Arrangement is incorporated, resident, managed and controlled or established (as applicable).

- 1.3 A Passive Offshore Vehicle does not include a Legal Person or Legal Arrangement that is an Institutional Investor or that is wholly owned by one or more Institutional Investors.
- 1.4 An Opaque Ownership Structure is an Ownership Structure for which it is reasonable to conclude that it is designed to have, marketed as having, or has the effect of allowing a natural person to be a Beneficial Owner of a Passive Offshore Vehicle while obscuring such person’s Beneficial Ownership or creating the appearance that such person is not a Beneficial Owner. An Opaque Ownership Structure includes, but is not limited to, a structure that has one or more of the following

features:

- (a) the use of nominee shareholders with undisclosed nominators;
- (b) the use of means of indirect control beyond formal ownership;
- (c) the use of arrangements that provide a natural person with access to assets held by, or income derived from the Ownership Structure without being identified as a Beneficial Owner of such structure;
- (d) the use of Legal Persons in a jurisdiction where there is:
 - (i) no requirement and/or mechanism to keep Basic Information and Beneficial Owner information on such Legal Persons accurate and up to date;
 - (ii) no obligation on shareholders or members of such Legal Persons to disclose the names of persons on whose behalf shares are held; or
 - (iii) no obligation on shareholders or members to notify such Legal Persons of any changes in ownership or control.
- (e) the use of Legal Arrangements organised under the laws of a jurisdiction that do not require the trustees (or in the case of a Legal Arrangement other than a trust, the persons in equivalent or similar positions as the trustee of a trust) to obtain and hold adequate, accurate, and current beneficial ownership information regarding the Legal Arrangement.

2. Other definitions

The following capitalised terms shall have the meanings set out below:

- 2.1 “Basic information” on a Legal Person shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations and includes, at a minimum, information about the legal ownership and control structure of the Legal Person. This includes information about the status and powers of the Legal Person, its shareholders or members and its directors
- 2.2 “Beneficial Owner” shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations and shall include any natural person who exercises control over a Legal Person or Legal Arrangement. In the case of a trust, such term means any settlor, trustee, protector (if any), beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust, and in the case of a Legal Arrangement other than a trust, such term means persons in equivalent or similar positions.

2.3 “Institutional Investor” means a Legal Person or Legal Arrangement:

- (a) that is regulated as a bank (including a depository or custodial institution), insurance company, collective investment vehicle or pension fund;
- (b) the shares or interests in which are regularly traded on an established securities market; or
- (c) that is a governmental entity, central bank, international or supranational organisation or a Legal Person or Legal Arrangement wholly owned by one or more of the foregoing.

2.4 “Legal Arrangement” means an express trust or other similar legal arrangement, such as fiducie, treuhand and fideicomiso.

2.5 “Legal Person” means any entity, including a company, body corporate, foundation, anstalt, partnership, association and other relevantly similar entity, but does not include a natural person.

2.6 “Ownership Structure” means an Arrangement concerning the direct or indirect ownership or control of a person or asset.

Commentary

1.1 – Offshore Structure

34. In general terms, a passive offshore vehicle will fall within the scope of this hallmark where the ownership of that vehicle has been structured so as to obscure the identity of natural person(s) with ultimate effective control over that entity or arrangement.

35. The definition of Passive Offshore Vehicle is set out in Section 1.2 and 1.3 while the definition of Opaque Ownership Structure is set out in Section 1.4. Other defined terms are set out in Section 2.

1.2 – Passive Offshore Vehicle

36. Section 1(2) defines when a legal person or arrangement is a passive offshore vehicle.

37. A passive entity is one that does not carry on a substantive economic activity that is supported by staff, equipment assets and premises. All four elements must be satisfied in order for an offshore vehicle to be treated as active (and therefore outside the scope of hallmark) under this test. A passive entity would, for example, include an entity that merely leased a furnished apartment on a short-term or long-term basis but it would not include a hotel where the entity directly employed staff that supplied reception and other services to guests on the premises. An offshore entity established in Country A that invoices a related company for services supplied by a contractor in Country B would be considered “passive” under the definition in Section 1.2(a). Such an entity would not employ any staff or own any equipment, assets or premises from which the substantive economic activity is carried on. The recruitment of staff, purchase of assets or equipment or the leasing of premises should not be treated as giving rise to a substantive economic activity if this has been done solely for the purposes of avoiding the definition of a passive offshore vehicle.

38. A vehicle is “offshore” if it is incorporated, resident, managed, controlled or established outside the jurisdiction of residence of its beneficial owners. The types of entities and arrangements that will be treated as wholly-domestic (and therefore outside the intended scope of this hallmark) would generally include a locally incorporated company held only by resident shareholders and the domestic family trust with resident beneficiaries, where the trustees and others with control over the trust are all resident in the same jurisdiction as the beneficiaries.

39. The definition of “offshore” is drafted in such a way that if any beneficial owner is resident in a jurisdiction other than the jurisdiction where the vehicle is incorporated, resident, managed, controlled or established then that vehicle will be treated as offshore with respect to all its beneficial owners. This is to prevent tax planners setting up an offshore entity with one or more local beneficial owners, simply in order to circumvent the reporting requirements of the model rules. It also means, however, that an otherwise plain vanilla domestic family trust with a single non-resident beneficiary will fall within the offshore definition. Note however, that the definition of Intermediary in Chapter 3 means that such a trust would not become reportable simply because a beneficiary of the trust moves to another country.

1.3 – Carve-Out for Institutional Investors

40. The offshore structure definition only applies to private investment vehicles that are closely-held. Section 1.3 therefore excludes from the definition of “passive offshore vehicle” any legal person or arrangement that is an “institutional investor”, as defined in Section 2.3., or wholly owned by one or more “institutional investors” as it is unlikely that such legal persons or arrangements would be used to obscure the identity of natural person(s) with ultimate effective control.

1.4 – Opaque Ownership Structure

41. A passive offshore vehicle will be treated as held through an “opaque ownership structure” (and therefore form part of an offshore structure) where the ownership of the vehicle is structured in such a way as to obscure a person’s beneficial ownership in that vehicle or create the appearance that such person is not the beneficial owner. This description of an opaque structure, which is the generic element of the hallmark, covers those situations, for instance, where the ownership structure uses an entity established in a jurisdiction where the lack of transparency regarding ownership makes it difficult to identify the beneficial owner of the Passive Offshore Vehicle. The term also includes arrangements that provide a person outside the ownership chain with indirect control over the passive offshore vehicle or its assets such as an undisclosed nominee structure. The paragraphs below provide specific instances of the kinds of arrangements that can trigger disclosure of the offshore structure under these rules.

1.4(a) – Use of Nominee Shareholders with Undisclosed Nominators

42. The FATF Guidance on Transparency and Beneficial Ownership (October 2014) identified (at paragraph 9(e)) that one of the important ways in which offshore structures can be used to obscure beneficial ownership is through the use of nominee shareholders where the identity of the nominator is undisclosed.

43. A nominee shareholder is any person that holds those shares on behalf of another person (the nominator). A precise legal nature of the nominee relationship will depend on the arrangements between the nominee and nominator and the circumstances in which the nominee relationship arose. For example, a nominee could be operating as an agent or a bare trustee or could hold the shares on behalf of the purchaser under an uncompleted sale transaction. A nominee will only fall within the specific hallmark in Section 1(4)(a), however, where the nominee is undisclosed. A nominee shareholder whose status as a nominee has been declared to the company on a timely basis and is included in the relevant register should not be treated as an undeclared nominee for the purposes of this paragraph.

1.4(b) – Indirect control beyond formal ownership.

44. Another common feature of offshore structures is the ability of natural person to indirectly control the offshore vehicle under informal arrangements with persons with direct control over that vehicle. These types of informal control arrangements obscure the identity or the beneficial owner, either by making it difficult to identify the natural persons with direct or indirect control over the passive offshore vehicle or creating the appearance that the person with such control is the beneficial owner when, in reality, the effective control rests with a third party or parties.

45. For example, this hallmark would capture a lawyer with a controlling interest in an entity or arrangement who habitually acts under instructions from his client even though such client is not recognised as a protector under the trust deed.

46. This hallmark targets those legal or formal arrangements that have the effect of depriving a legal owner of the economic benefit of the asset or income in favour of a third party such that the third party has the benefit of the asset without being recognised as the beneficial owner. This hallmark would apply to an arrangement whereby a natural person provided funding to a non-affiliated company in exchange for an option to acquire all or substantially all of the assets of that company for a nominal sum. Such an arrangement would have the effect of providing the option holder with ultimate effective control over the company or those assets held by that company without being identifiable as their legal owner

1(4)(c) – Arrangements that provide a person with access to assets or income without being identified as the Beneficial Owner

47. This specific hallmark targets techniques used to take money or value out of an offshore structure without such payments coming to the attention of the tax administration in the jurisdiction of residence as well as arrangements used to disguise the source of those funds. This would include the use of prepaid debit cards and interest free loans.

2 – Other definitions

48. Most of the definitions in Section 2 are taking from equivalent terms used in the FATF Recommendations and the guidance that has been developed in the FATF context can be used to interpret those terms. The following terms, however, are specific to the Offshore Structure hallmark.

2.3 Institutional Investor

49. The definition of Institutional Investor is intended to cover vehicles that are, or that are owned by, institutional investors. Institutional investors include: a) regulated entities, b) publicly traded entities, and c) governmental entities, central banks or international or supranational organisations. An international or supranational organisation means any intergovernmental organisation or organisation whose members are primarily governments.

2.6 Ownership Structure

50. An “Ownership Structure” means an Arrangement concerning the direct or indirect ownership or control of a person or asset. The term Arrangement has the same meaning as given to that term in Chapter 1, Section 1.2(a).

CHAPTER 3

DISCLOSURE REQUIREMENTS ON INTERMEDIARIES

Model Rule

51. This Chapter defines who is an Intermediary for the purposes of the model rules and describes the circumstances in which an Intermediary is required to disclose an Offshore Structure or CRS Avoidance Arrangement.

52. The rules require Intermediaries that are resident, incorporated or managed in the reporting jurisdiction (i.e. local Intermediaries) to disclose a CRS Avoidance Arrangement within 15 working days of making the arrangement available for implementation or supplying relevant services in respect of arrangement. Equivalent disclosure obligations are imposed on foreign intermediaries that supply relevant services in respect of CRS Avoidance Arrangements or make such arrangements available for implementation through a branch located in the reporting jurisdiction.

1. Definition of Intermediary

“Intermediary” means a Promotor or a Service Provider.

2. Obligation on Intermediary to disclose CRS Avoidance Arrangements

Any person that is an Intermediary with respect to a CRS Avoidance Arrangement or Offshore Structure must disclose that Arrangement or Offshore Structure to the tax authorities in [Country Name] if that person:

2.1 is resident, incorporated or has its place of management in [Country Name]; or

2.2 makes that Arrangement or Offshore Structure available for implementation, or provides Relevant Services in respect of that Arrangement or Offshore Structure through a branch located in [Country Name].

3. When information required to be disclosed

The disclosure required under paragraph (1) shall be made fifteen working days after the Intermediary:

3.1 makes the CRS Avoidance Arrangement or Offshore Structure available for implementation; or

3.2 supplies Relevant Services in respect of the CRS Avoidance Arrangement or Offshore Structure.

4. Disclosure of Arrangements entered into after 15 July 2014 and before the effective date of these rules

4.1 A Promoter shall disclose a CRS Avoidance Arrangement within 180 days of the effective date of these rules where:

- (a) that Arrangement was implemented on or after 15 July 2014 but before the effective date of these rules; and
- (b) that person was a Promoter in respect of that Arrangement;

irrespective of whether that person provides Relevant Services in respect of that Arrangement after the effective date.

4.2 No disclosure shall be required under paragraph 4.1 where the Intermediary knows that:

- (a) the aggregate balance or value of the Financial Account subject to the CRS Avoidance Arrangement immediately prior to its implementation was less than [USD 1'000'000] or
- (b) there is no Reportable Taxpayer in respect of that Arrangement at the time disclosure is required in accordance with this rule.

5. Other definitions

The following capitalised terms shall have the meanings set out below:

5.1 “Promoter” means any person who is responsible for the design or marketing of a CRS Avoidance Arrangement or Offshore Structure.

5.2 “Relevant Services” in respect of a CRS Avoidance Arrangement or Offshore Structure, means providing assistance or advice with respect to the design, marketing, implementation or organisation of that Arrangement or Offshore Structure.

5.3 “Reportable Taxpayer” means, in respect of a CRS Avoidance Arrangement, any actual or potential end user of that Arrangement and, in respect of an Offshore Structure, a natural person whose identity as a Beneficial Owner is obscured by the Opaque Ownership Structure. However an Intermediary should not treat a person as a Reportable Taxpayer where that Intermediary holds a certified or notarised copy of the most recent tax filing of the Reportable Taxpayer filed by the Reportable Taxpayer with the tax administration in all its jurisdictions of tax residence, showing that such Reportable Taxpayer is compliant with its tax obligations with respect to the interest held in, the income derived from, and the assets held through the CRS Avoidance Arrangement or

Offshore Structure.

5.4 “Service Provider” means any person who provides Relevant Services in respect of a CRS Avoidance Arrangement or Offshore Structure in circumstances where the person providing such services could reasonably be expected to know that the Arrangement is a CRS Avoidance Arrangement or an Offshore Structure.

Commentary

1.1 – “Intermediary”

53. The definition of “Intermediary” covers those persons who are responsible for the design or marketing of an Offshore Structure or a CRS Avoidance Arrangement (i.e. Promoters) as well as those that provide services in respect of the design, marketing, implementation or organisation of the structure or arrangement (i.e. Service Providers) in circumstances where that service provider can reasonably be expected to know that the arrangement was an Offshore Structure or CRS Avoidance Arrangement.

54. Unlike the definition in the Action 12 Report, the definition of Intermediary is not limited to persons involved in the “tax aspects” of the arrangement. While restricting the scope of the disclosure rules to tax advisors can be considered a sensible limitation in the context of rules targeting the promoters of tax avoidance arrangements it would be too restrictive for arrangements that are designed to avoid reporting under the CRS, where the defining feature of the arrangement is unlikely to be its tax consequences per se but rather the way the arrangement can be used to circumvent CRS reporting obligations and undermine a financial institution’s due diligence procedures. Restricting the definition of Intermediaries to tax advisors would have the effect of excluding a wide range of potential intermediaries (such as investment advisors and lawyers) who do not (and may not be authorised to) provide taxation services.

Promoters

55. A person is “responsible” for the design of a CRS Avoidance Arrangement when that person introduces features into the Arrangement which have or are expected to have the effect of circumventing the CRS. Similarly, a person will be treated as responsible for the design of an Offshore Structure, where that person includes features in the structure that result in the ownership structure being treated as opaque under the test set out in Chapter 2.

56. The “marketing” of an arrangement or structure means encouraging others to enter into that arrangement based on its CRS treatment or its ability to obscure the identity of the beneficial owner. A person can be considered to be marketing a CRS Avoidance Arrangement even if such arrangement was not originally designed as such. For example, a financial advisor that identifies an investment product and markets that product to a customer as a way of avoiding reporting under the CRS would be treated as an Intermediary in respect of CRS Avoidance Arrangement notwithstanding that the issuer may not have designed, marketed or intended the investment product to be used as a way of circumventing the CRS.

Service Providers in respect of CRS Avoidance Arrangements

57. The definition of Intermediary extends beyond promoters of CRS Avoidance Arrangements to cover persons that provide “Relevant Services” (i.e. advice or assistance in respect of the design, marketing, implementation or organisation of a CRS Avoidance Arrangement or Offshore Structure) to

the extent that such a person could reasonably be expected to know that the arrangement was subject to disclosure under the Model Rules . The fact that an Intermediary does not know whether any Reportable Taxpayer has actually used an arrangement to circumvent or undermine the operation of the CRS, will not prevent that intermediary from being required to disclose that arrangement as a CRS Avoidance Arrangement if a reasonable person in the same position as that service provider would conclude that the Arrangement had been designed or marketed as a CRS Avoidance Arrangement or that the Arrangement contains features that may be used to circumvent the CRS. The intention behind extending the reporting obligations to such Relevant Service providers is to ensure that the rules capture:

- de facto promoters (i.e. persons who play the main role in developing, implementing or organising a CRS Avoidance Arrangement although there are others that are responsible for its marketing and design); and
- those advisors and service providers that have a sufficient level of expertise and involvement with the design, marketing, organisation or implementation of the Arrangement that they can be expected to know the Arrangement is a CRS Avoidance Arrangement.

58. This second limb of the intermediary definition would, for example, capture a professional advisor who knowingly assists a Reportable Taxpayer to enter into a CRS Avoidance Arrangement marketed by a third party promoter, as well as a professional service provider that provides administration and compliance services in respect of an Offshore Structure, where that service provider can reasonably be expected to know that the offshore structure forms part of an arrangement that is designed to avoid CRS reporting.

59. A person that is not responsible for the design or marketing of the CRS Avoidance Arrangement should not be treated as an Intermediary in respect of that arrangement unless that person's knowledge of, and the nature and extent of their involvement with, the arrangement, means that they could reasonably be expected to know that the arrangement was subject to disclosure under the Model Rules. The definition of "Service Provider" is, therefore, not intended to capture those persons who provide only limited assistance in the implementation or organisation of the arrangement and who could not reasonably be expected to be aware of those elements of the arrangement that have the effect of circumventing the CRS. The definition would not, for example, capture a lawyer or corporate services provider who completed the necessary filing formalities for transferring shares in a foreign company unless that person had other information that would lead a reasonable person to conclude that the transfer was a one of the steps in the implementation of a broader arrangement that fell within the scope of the hallmarks in Chapter 1.

60. The definition of Intermediary would not capture a professional advisor who provides advice on whether an existing arrangement is subject to CRS reporting, unless that advice is in respect of the design, marketing, implementation or organisation of a CRS Avoidance Arrangement and, the advice is provided in the circumstances where the professional advisor can reasonably conclude that the arrangement has been designed or marketed as a CRS Avoidance Arrangement or that the circumvention of the CRS was one of the effects of that arrangement.

61. For example, a lawyer may advise a bank on the tax and regulatory treatment of a proposed offering of a retail product that is intended to help clients manage their exchange and interest rate exposure and the opinion may conclude that the product is properly considered a type of derivative contract that is outside the scope of the bank's CRS reporting obligations. There is nothing on these facts to indicate to the lawyer that the arrangement has the effect of circumventing CRS reporting and accordingly the lawyer will not be treated as an intermediary even if that product comes within the

description of the CRS Avoidance Arrangement hallmark in Section 1.1(a). The lawyer is not responsible for the design or marketing of the product (so will not fall within the first limb of the Intermediary definition) and although the lawyer can be considered to have provided advice on the design or implementation of the arrangement there is nothing on these base facts to indicate to the lawyer that the arrangement is to be used to circumvent CRS reporting. In this example, the lawyer's written opinion on the CRS treatment of the product would not, in isolation, be considered to be a statement marketing the CRS benefits of the arrangement. If the bank, however, used that opinion to sell the CRS benefits of the scheme to its customers, then the bank could be treated as having "marketed" a CRS Avoidance Arrangement to its own customers thus triggering a disclosure obligation.

Service Providers in respect of Offshore Structures

62. As for CRS Avoidance Arrangements the definition of Service Provider in respect of an Offshore Structure also covers persons that provide advice or assistance in respect of the design, marketing, implementation or organisation of structure to the extent that such a person could reasonably be expected to know that the structure falls within the hallmark or an Offshore Structure in Chapter 2 (i.e. one that has the effect of obscuring a natural persons beneficial ownership of a passive offshore vehicle or creating the appearance that such a person is not the beneficial owner).

2 – Intermediaries required to disclose CRS Avoidance Arrangements

63. Section 2 sets out the basic disclosure obligation imposed on intermediaries to disclose Offshore Structures and CRS Avoidance Arrangements.

64. In order to trigger a disclosure obligation the intermediary must be resident, incorporated or managed in the reporting jurisdiction (i.e. a local Intermediary). At the same time, given the global nature of international tax planning, the rules need to capture the activities of foreign Intermediaries that offer their services to domestic clients through a branch. The model rules therefore apply to a foreign Intermediary that makes the arrangement or structure available, or provides relevant services in respect of such an arrangement or structure, through a branch in the reporting jurisdiction.

3 – When information required to be disclosed

65. Because the disclosure obligation applies only to those persons that are Intermediaries in respect of the relevant Offshore Structure or CRS Avoidance Arrangement the model mandatory disclosure rules effectively only require a person to disclose that structure or arrangement in two situations:

- Where the person has designed the structure or arrangement and / or has begun marketing that it (i.e. making it available for implementation) to other potential Intermediaries or Reportable Taxpayers; and
- Where the Intermediary provides Relevant Services in respect of the structure or arrangement to a Client or Reportable Taxpayer in circumstances where the Intermediary can reasonably be expected to know that the structure is an Offshore Structure and one of the benefits of the arrangement is the circumvention of CRS reporting.

66. These two situations can arise at different times in respect of the same structure or arrangement. The initial disclosure obligations may provide the reporting jurisdiction with early information on the development of structures designed to hide the beneficial ownership of assets or income or strategies to circumvent the CRS. The focus of this disclosure obligation is on obtaining timely information on the

design of the structure or arrangement, and the disclosure may be made before the Intermediary has found any individual users for the scheme or arrangement. Subsequently the disclosure obligations may apply to an Intermediary who provides relevant services in respect of an Offshore Structure or CRS Avoidance Arrangement. At this point the focus of these disclosure obligations is on identifying the Reportable Taxpayers and other professionals involved in the supply or implementation of the Offshore Structure or CRS Avoidance Arrangement and the disclosure is intended to have the effect of deterring taxpayers from entering into such structure or arrangement.

67. This approach to disclosure follows the approach set out in the Action 12 Report in that it requires disclosure at different points in the supply chain. The rules in Chapter 4 protect the Intermediary from being required to disclose exactly the same information twice in respect of the same arrangement to the same tax authority.

68. The trigger for when an Intermediary must disclose under Section 3 differs slightly from that set out in the Action 12 Report. While the Action 12 Report refers to the point in time when the taxpayer first implements the arrangement, Section 3 ties the disclosure obligation back to the actual supply of Relevant Services by the Intermediary in respect of that Arrangement. This may result in a later date of disclosure in certain cases. However it also provides the Intermediary with a clearer deadline for complying with its disclosure obligations.

69. A CRS Avoidance Arrangement or Offshore Structure will be treated as having been “made available” for implementation at the time the material design elements of the arrangement or structure had been completed and communicated to a Client or Reportable Taxpayer. It is not necessary for all the material elements of the scheme to be in place before disclosure is required, rather it will be sufficient that the Intermediary has taken initial steps to market the arrangement.

70. The model text sets a time limit for disclosure that is fifteen (15) working days after the scheme has been made available or the relevant services are provided. The filing date should be as soon as is practicable after the obligation to disclose has been triggered and, for those countries that already have mandatory disclosure regimes for other types of arrangements should be consistent with the policy set by the filing requirements under those regimes.

71. The ordinary rules governing the timing of disclosure under Section 3 require a CRS Avoidance Arrangements to be disclosed by any person that provides Relevant Services in respect of that Arrangement where that person could reasonably be expected to know, at the time such services are provided, that the Arrangement was a CRS Avoidance Arrangement. Accordingly a CRS Avoidance Arrangement, which was in existence prior to the introduction of the mandatory disclosure rules, will be required to be disclosed within 15 working days of an Intermediary providing any relevant services in respect of that Arrangement. There is no element of retrospectivity to this obligation as it only applies after the date the mandatory disclosure rules come into effect and at a time when the Intermediary provides the relevant services.

4 – Disclosure of Arrangements entered into after 15 July 2014 but prior to the effective date of the rules

72. Section 4 further provides for a special rule in respect of CRS Avoidance Arrangements entered into prior to the effective date of the disclosure rules with respect to high-value accounts (i.e. financial accounts with an aggregate balance in excess of USD 1’000’000). Unlike the ordinary rules described above, this rule applies even where a Promoter does not provide Relevant Services in respect of the Arrangement after these rules have come into effect. The person that promoted that arrangement is required to disclose the arrangement to the tax authorities in the jurisdiction where it is resident,

incorporated, managed or maintains a branch, within 6 months (180 days) of the effective date of the model rules unless by the time such reporting is required the Promoter knows that there is no Reportable Taxpayer in respect of that Arrangement. A Promoter will not be required to treat a person as a Reportable Taxpayer provided it holds a certified or notarised copy of the most recent tax filing by that person with all its jurisdictions of tax residence as further described in the definition of “Reportable Taxpayer”.

5 – Other Definitions

5.2 – Relevant Services

73. The term “Relevant Services” covers any assistance or advice provided by a services provider in respect of the design, marketing, implementation or organisation of an Offshore Structure or CRS Avoidance Arrangement. The term would apply, for instance, to the advice provided by a lawyer, accountant or financial advisor as part of a professional services business as well as management or compliance services provided to an offshore entity by a corporate services provider that is used in an Offshore Structure or CRS Avoidance Arrangement.

5.3 – “Reportable Taxpayer”

74. An Intermediary that is required to disclose a CRS Avoidance Arrangement under these rules is required to identify any Reportable Taxpayer in respect of that arrangement. A Reportable Taxpayer is any actual or potential end user of the CRS Avoidance Arrangement. A Reportable Taxpayer can be distinguished from a client that instructs an Intermediary to provide services in respect of a CRS Avoidance Arrangement but is not the user or intended user of the Arrangement.

75. The definition of Reportable Taxpayer contains an exclusion in the context of Offshore Structures where the Intermediary holds certified or notarised copy of the most recent tax filing that shows that the Reportable Taxpayer is compliant with its tax obligations with respect to the interest held in, the income derived from, and the assets held through the Offshore Structure. This carve out is intended to avoid any disclosure in those cases where that Intermediary has independent verification (in the form of a certified or notarised copy of the most recent tax filing) that, in practice, the user of the Offshore Structure or CRS Avoidance Arrangement is complying with its tax payment and reporting obligations in its jurisdiction of residence.

CHAPTER 4

INFORMATION REPORTING

Model Rule

76. This Chapter sets out the information required to be disclosed by an Intermediary in respect of CRS Avoidance Arrangement or Offshore Structure and provides certain exclusions from the disclosure requirements where the information is protected by the obligations of professional secrecy or such information has previously been disclosed.

1 Information required to be disclosed by Intermediary

The information that an Intermediary is required to disclose under paragraph (1) above in respect of a CRS Avoidance Arrangement or Offshore Structure, must be in the form set out in Schedule 2 and shall include:

- 1.1 the name, address, contact details, jurisdictions of tax residence and TIN (if any) and, in the case of (b), the date of birth of the following persons:
 - (a) the person making the disclosure;
 - (b) any Reportable Taxpayer with respect to that Arrangement or structure;
 - (c) any Client or Intermediary with respect of that Arrangement or Offshore Structure.
- 1.2 the details of that Arrangement or Offshore Structure including:
 - (a) in respect of a CRS Avoidance Arrangement, a description of those features of the Arrangement or Offshore Structure for which it is reasonable to conclude that they are designed to, marketed as, or have the effect of, circumventing the CRS; and
 - (b) in respect of an Offshore Structure, a description of those features of the Arrangement or Offshore Structure for which it is reasonable to conclude that they are designed to, marketed as, or have the effect of obscuring the Reportable Taxpayer's Beneficial Ownership or creating the appearance that the Reportable Taxpayer is not a Beneficial Owner of the Passive Offshore Vehicle.

- 1.3 the jurisdiction or jurisdictions where the Arrangement or Offshore Structure has been made available for implementation.

to the extent such information is within the Intermediary's knowledge, possession or control

2 No obligation to disclose to the extent information is covered by professional secrecy

- 2.1 The Intermediary shall not be required to disclose any information set out under Section 1 above to the extent that the disclosure would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are produced for the purposes of seeking or providing legal advice or used in existing or contemplated legal proceedings and protected from disclosure under domestic law.

- 2.2 An Intermediary that is not required to disclose information under this Section 2 shall provide written notice to:

- (a) the [Country Name] tax authority that the Intermediary has information on a CRS Avoidance Arrangement or Offshore Structure that is not required to be disclosed under this Section 2;
- (b) any Reportable Taxpayer of its disclosure obligations under Section 4.

3 No obligation on Intermediary to disclose to the extent information has already been disclosed

- 3.1 The Intermediary is not required to disclose any information set out Section 1 above to the extent that:

- (a) such information has been disclosed to the [Country Name] tax authority by that Intermediary or another Intermediary; or
- (b) the information relates to Relevant Services supplied, or an Arrangement or Offshore Structure made available for implementation, through a branch maintained by that Intermediary in a Partner Jurisdiction and such information has been disclosed to the tax authority of that Partner Jurisdiction

4 Reportable Taxpayer required to disclose in certain circumstances

- 4.1 Any natural person that is resident in [Country Name] and that is an end user of a CRS Avoidance Arrangement or a Beneficial Owner under an Offshore Structure must disclose to the [Country Name] tax authority any information on the Arrangement or Offshore Structure that is not disclosed by an Intermediary because:

- (a) that Intermediary is not required to disclose the information pursuant to paragraph 2.1; or

(b) that Intermediary is not subject to any disclosure requirements under these rules.

provided that no disclosure shall be required to the extent it would infringe that person's privilege against self-incrimination under domestic law.

4.2 The Reportable Taxpayer is not required to disclose any information as required under Section 4.1(b) above to the extent that the Reportable Taxpayer has received written notification from the Intermediary that the information has been disclosed by that Intermediary to the tax authority of a Partner Jurisdiction where that Intermediary is resident, incorporated or has its place of management.

5 Other Definitions

5.1 "Client" means any person, other than a Reportable Taxpayer, who instructs an Intermediary to perform Relevant Services

5.2 "Partner Jurisdiction" means a jurisdiction:

- (a) that has introduced mandatory disclosure rules that are substantially similar to those set out in this legislation;
- (b) with which [Country Name] has an international exchange of information instrument in effect that permits the exchange of the information set out in Section 1; and
- (c) that has agreed to supply such information spontaneously in the form [to be agreed].

1 – Information required to be disclosed

77. The information required to be disclosed under the model rules includes all the steps and transactions that form part of the Arrangement including key details of the underlying investment, organisation and persons involved in the Offshore Structure or CRS Avoidance Arrangement and the relevant tax details of the Clients, Reportable Taxpayers and any other Intermediaries in respect of the same scheme. The liability to disclose attaches automatically to every person that is an Intermediary with respect to the arrangement or structure, although Intermediaries are only required to disclose information that is within their knowledge, possession or control and there are limited rules (set out below) that are designed to mitigate the compliance costs and administrative burden associated with duplicate disclosures. Information will be treated as within a person's control if it can be obtained by asking for it. An Intermediary would not, however, be expected to go beyond the requirements of the applicable professional standards and existing know-your-customer rules when collecting and reporting information under these rules.

78. The information requirements of the model rules are designed to keep the compliance burden on Intermediaries to a minimum while still capturing the information that is likely to be most relevant from a risk assessment perspective. The requirement to separately identify the jurisdictions where the scheme has been made available for implementation and to specify the tax details of all the

Intermediaries, Clients and Reportable Taxpayers in connection with that Arrangement is intended to make it relatively straightforward for a tax administration to determine the jurisdictions for whom the disclosed information will be most relevant for information exchange purposes.

1.1 – Tax Details of Clients, Intermediaries and Reportable Taxpayers

79. The Intermediaries, Reportable Taxpayers and Clients that are required to be identified under Section 2(4)(a) are not simply those persons who are in direct contact with the reporting Intermediary. The reporting Intermediary will also be required to disclose (to the extent such information is within that person's knowledge, possession or control):

- any other Intermediary in respect of the same Arrangement; and
- any Reportable Taxpayer that may use the Arrangement to avoid CRS reporting even if that person is not a direct recipient of any services supplied by the reporting Intermediary.

80. If, for example, an Intermediary was instructed by a lawyer to establish, as part a CRS Avoidance Arrangement, a trust for the benefit of an offshore settlor, the Intermediary would be required to disclose the identity of both the lawyer (i.e. as a Client or another Intermediary) as well as the offshore settlor, trustee and the beneficiaries of the trust (as a Reportable Taxpayer) who are the persons that might be expected to take advantage of the Arrangement to avoid reporting under the CRS. In those cases where the Intermediary has incomplete information, and no direct connection, with the Reportable Taxpayers the Intermediary would only need to disclose such information that is within his knowledge, possession or control. In this case it may be necessary for the tax administration to undertake further compliance activity to develop a complete picture of the arrangement.

81. The Intermediary is not required to disclose information in respect of a CRS Avoidance Arrangement unless that arrangement is one that is required to be disclosed by that Intermediary under Chapter 3. If, for example, an Intermediary operates through a branch in the reporting jurisdiction, it should only disclose the identity of those persons that are Clients, Reportable Taxpayers or Intermediaries in respect of Arrangements that have been made available through the branch or where the branch has supplied relevant services in respect of that Arrangement.

1.2 – Description of Arrangement

82. The description of the CRS Avoidance Arrangement or Offshore Structure should explain the overall objective of the arrangement or structure; identify the persons involved, and their role in, the arrangement or structure and provide an explanation of the entities, steps and transactions that make up the structure or arrangement including the underlying investment. The description may include references to marketing materials, structure diagrams, presentations and other documents that provide context or explain the structure or arrangement in further detail.

1.3 – Jurisdictions where Arrangement has been made Available

83. Section 1(c) further requires an Intermediary to disclose those jurisdictions where a CRS Avoidance Arrangement or Offshore Structure has been made available for implementation. The separate disclosure of these jurisdictions provides early warning of where a CRS Avoidance Arrangement is being marketed and before the Intermediary has provided any relevant services in respect of that Arrangement.

84. As noted above in the Commentary to Chapter 3, an Intermediary will be treated as having been made available a CRS Avoidance Arrangement to another person for implementation at the time the material details of that Arrangement have been communicated to that person. Similarly, the jurisdiction

where that Arrangement has been made available should be determined by looking to the location of that person (i.e. where that person was resident, incorporated or managed) at the time the communication was made.

2 – No disclosure required where contrary to the obligations of Professional Secrecy

85. Section 2 provides for rules that limit the disclosure of information that is protected by the rules of professional secrecy.

86. Mandatory disclosure rules do not generally require an attorney, solicitor or other legal representative to disclose any information that is protected by legal professional privilege or equivalent professional secrecy obligations. The same approach is reflected in Article 26 of the OECD Model Tax Convention and Article 21 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. As noted in the Action 12 Report, however, the type of confidentiality obligations that exist between legal representative and their clients are generally designed to protect a Reportable Taxpayer's or Client's ability to obtain confidential advice. The obligation to protect a Reportable Taxpayer's or Client's secrets would not typically be expected to include the information that is required to be disclosed under Section 2 to the extent it relates to actual or proposed transactions and the identity of the parties involved. Nevertheless it is possible that some of the information required to be disclosed under the model rules will be caught by the rules of legal professional privilege and it should therefore be excluded from the disclosure requirements to the extent that an information request for the same information could be denied. An Intermediary that is not required to disclose information on a CRS Avoidance Arrangement or Offshore Structure due to the obligations of legal professional privilege is required, however, to notify the tax administration of that fact and notify any Reportable Taxpayer of its disclosure obligations described further in Section 4 below.

3 – Avoidance of duplicate disclosure

87. In order to avoid duplicate disclosure in respect of the same arrangement in the same jurisdiction, the model mandatory disclosure rules provide that the Intermediary shall not be required to disclose any information on an Arrangement that has previously been disclosed to that tax authority by that Intermediary or another Intermediary. This exclusion from disclosure could apply where an Intermediary that is responsible for the design or marketing of a CRS Avoidance Arrangement has previously made a disclosure in respect of that arrangement and then subsequently makes the same arrangement available for implementation to another Reportable Taxpayer. In such a case the Intermediary would only be required to make an additional disclosure in respect of the identity of the additional Reportable Taxpayer (i.e. the information not previously disclosed). The exclusion could also apply where there are multiple intermediaries in respect of the same CRS Avoidance Arrangement so that only one disclosure needs be filed in respect of the same Arrangement.

88. In order to avoid duplicate disclosure in respect of the same arrangement in both the branch and head office jurisdiction, paragraph 3.1 (b) provides an Intermediary with an exemption from disclosure where that information has already been disclosed by the branch in a Partner Jurisdiction. As noted below, a Partner Jurisdiction is a jurisdiction that has implemented substantially similar mandatory disclosure rules and has the appropriate international exchange agreements in place that would allow the tax authorities in the Partner Jurisdiction to spontaneously exchange any foreseeably relevant information on the arrangement with the reporting jurisdiction.

4 – Reportable Taxpayer required to disclose in certain circumstances

89. The primary intention of these mandatory disclosure rules is to target Intermediaries that are responsible for the design, promotion or implementation of CRS avoidance arrangements and offshore

structures. However, consistent with the framework for MDR set out in the Action 12 Report, it is also necessary to consider the implications for the user of a CRS Avoidance Arrangement or Offshore Structure if there the Intermediary is not subject to disclosure obligations as well as those cases where the Intermediary is unable to comply with its disclosure obligations under these rules.

90. The model rules impose a direct disclosure obligation on Reportable Taxpayers in two cases:
- where the Intermediary is prevented from disclosing such information due to the obligations of professional legal privilege;
 - the Intermediary, which does not have any presence in the reporting jurisdiction, is not required to comply with equivalent reporting obligations.

91. The liability to disclose attaches automatically to the Reportable Taxpayer where the Intermediary does not provide full disclosure under the model rules in the circumstances described above. However, a Reportable Taxpayer can avoid being required to make any disclosure under this Section if the Intermediary has already made equivalent disclosure under the laws of a Partner Jurisdiction. Intermediaries would generally be expected to provide their clients with a copy of any disclosure that had been made in respect of a reportable arrangement so that the clients could establish that they had no further disclosure obligations under this section. The reason for imposing a secondary disclosure obligation on the taxpayer in these cases is to support the integrity of the disclosure rules. The disclosure obligation is imposed on the resident taxpayer in order to prevent that taxpayer from insulating itself from the effect of these rules by claiming legal privilege over information or by using the services of an offshore Intermediary that is not subject to equivalent disclosure obligations under foreign law.. Disclosure by a taxpayer is not required where disclosure would be limited by domestic protections against self-incrimination.

5 – Other Definitions

5.1 – “Client”

92. An Intermediary that files a disclosure in respect of a CRS Avoidance Arrangement or Offshore Structure is required under Section 1(a)(iii) to identify any person that is a Client or Intermediary in respect of that Arrangement. By requiring an Intermediary to disclose all the Clients and Intermediaries in respect of the same Arrangement, the mandatory disclosure rules provide the reporting jurisdiction with a complete list of those persons involved in the supply chain for the design, marketing, implementation or operation of the CRS Avoidance Arrangement.

93. The term “Client” means any person (other than the intended end-user of the Arrangement) that instructs an Intermediary to provide relevant services in respect of a CRS Avoidance Arrangement. The term would cover a person that acts as a representative or agent of a Reportable Taxpayer or that obtains assistance or advice from an Intermediary on the design, marketing, implementation or organisation of a CRS Avoidance Arrangement with the intention of subsequently promoting that Arrangement to third parties. A person who is a Client in respect of a CRS Avoidance Arrangement can, therefore, also be an Intermediary in respect of the same Arrangement or another CRS Avoidance Arrangement. Where a person is a Client and an Intermediary in respect of the same arrangement, the identity of that person only needs to be disclosed once.

94. For example, in relation to a lawyer who is instructed by a bank to design a financial product that falls within the specific hallmark described in Chapter 1, the lawyer will be the Intermediary (as the person responsible for the design of a CRS Avoidance Arrangement) and the bank will be a Client of that

Intermediary. The bank will not, on these facts, be a Reportable Taxpayer because the bank is not, and not intended to be, the user of the CRS Avoidance Arrangement. If the bank subsequently offers the CRS Avoidance Arrangement as a product to its own customers then the bank will then become an Intermediary in respect of a new CRS Avoidance Arrangement with its customer, and that customer would be treated as the Reportable Taxpayer in respect of that Arrangement.

5.2 – “*Partner Jurisdiction*”

95. The term Partner Jurisdiction is used to identify those circumstances where the Intermediary, which provides Relevant Services or makes a CRS Avoidance Arrangement or Offshore Structure available through a branch, can avoid the need to make duplicate disclosures of the same arrangement in different jurisdictions. The term is also used to limit disclosure that would otherwise be required by a Reportable Taxpayer when that taxpayer uses an offshore Intermediary that is subject to similar reporting obligations under the laws of its own jurisdiction. The term Partner Jurisdiction ensures that an Intermediary or Reportable Taxpayer can only rely on information disclosed under the laws of another jurisdiction in those cases where the tax authority in the reporting jurisdiction can be expected to obtain that information from that tax authority under the exchange of information procedures. A Partner Jurisdiction is limited to those jurisdictions that have introduced mandatory disclosure rules that have the substantially similar hallmarks and disclosure requirements and that have agreed to spontaneous exchange of information in the agreed form under the appropriate international exchange agreements.

CHAPTER 5

PENALTIES

96. Mandatory disclosure regimes will not be effective unless both Intermediaries and taxpayers have incentives to ensure compliance with the rules. As noted in the Action 12 Report, mandatory disclosure regimes should include clear sanctions to encourage disclosure and to penalise those who do not fulfil their obligations while, at the same time, providing the flexibility to ensure that the structure and amount of the penalty can be varied depending on the nature of the CRS Avoidance Arrangement or Offshore Scheme and the Intermediary's role in that arrangement.

97. The question of what penalties should apply for non-disclosure should generally be determined by each country in light of its particular circumstances. However this Commentary includes an illustration of a possible approach to penalties that is designed to balance the need to ensure fairness while incentivising compliant behaviour.

Penalties on Intermediary

98. In considering an appropriate penalty to be imposed on Intermediaries for a failure to comply with its disclosure obligations, countries may consider setting the penalty at a fixed rate or (if greater) at a percentage of the fees paid to the Intermediary for the services provided in respect of the CRS Avoidance Arrangement or Offshore Scheme, with the percentage set at rate that removes any economic incentive for the Intermediary to avoid disclosure.

99. Countries could also consider the use of a daily penalty similar to the one used in the United Kingdom and Ireland under their mandatory disclosure rules. As described in the Action 12 Report, daily penalties put an emphasis on timely disclosure and they can be used in conjunction with minimum penalties.

Penalties on Reportable Taxpayer

100. The primary intention of these rules is to target Intermediaries. However, consistent with the framework for MDR set out in the Action 12 Report, it is also necessary to consider the implications for a scheme user if the Intermediary does not comply with its disclosure obligations under these rules.

101. For example, where a Reportable Taxpayer is already liable for an existing penalty for failure to comply with an existing domestic tax reporting or payment obligation, then such Reportable Taxpayer could be subject to an increased or additional penalty where that payment or filing obligation arises in respect of a transaction that forms part of an undisclosed CRS Avoidance Arrangement or Offshore Scheme. In this way the Reportable Taxpayer can avoid any risk of exposure to additional penalties by using Intermediaries that have fully complied with their mandatory disclosure obligations.

Publication of Names

102. While name publication may not be an appropriate tool in the context of tax avoidance schemes, it is frequently used by tax administrations in the area of tax evasion and fraud. Publication of names of non-compliant Reportable Taxpayers and Intermediaries has the additional benefit of allowing tax administrations to disrupt the promotion of such schemes by high-risk Intermediaries and warn taxpayers of promoter behaviour that raises a systemic risk for the tax system. Publication may only be appropriate where the Reportable Taxpayer or Intermediary used the Arrangement or Offshore Scheme to intentionally evade taxation and may not be appropriate where the failure to comply was inadvertent, or reasonable steps had been taken by the Reportable Taxpayer or Intermediary to ensure that disclosure was made

Extension of time limits

103. Another consequence that can attach to a failure to disclose is to extend the time of assessment where any tax is collected in connection with an undisclosed Offshore Scheme or CRS Avoidance Arrangement. The rationale for extending the time limit for disclosure is that where the arrangement is not disclosed the tax authority will need, and should have, more time to identify any non-compliance and correct it.

ANNEX

CONSOLIDATED DRAFT MODEL RULES

This Annex sets out a consolidated version of the model rules that combines the hallmarks for CRS Avoidance Arrangements and Offshore Schemes with the provisions that regulate the nature, timing and content of the disclosure obligations imposed on Intermediaries. The text of this Consolidated Draft is the same as that set out in Part 3 – Chapters 1 to 4 of the paper, however the hallmarks and definitions have been consolidated into a single section separate from the operative provisions.

1. DEFINITIONS

1. Definition of a CRS Avoidance Arrangement

1.1 A “CRS Avoidance Arrangement” is any Arrangement for which it is reasonable to conclude that it is designed to, marketed as or has the effect of, circumventing CRS Legislation or exploiting an absence thereof. In any case a CRS Avoidance Arrangement includes, but is not limited to:

- (a) the use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;
- (b) an Arrangement to:
 - (i) transfer a Financial Account, or the monies and/or Financial Assets held in a Financial Account to a Financial Institution that is not a Reporting Financial Institution;
 - (ii) convert or transfer a Financial Account, or the monies and/or Financial Assets held in a Financial Account, to a Financial Account that is not a Reportable Account; or
 - (iii) convert a Financial Institution into a Financial Institution that is not a Reporting Financial Institution;

where it is reasonable to conclude that such conversion or transfer is designed to, marketed as or has the effect of circumventing CRS Legislation or exploiting an absence thereof;

- (c) an Arrangement for which it is reasonable to conclude that it is designed to, marketed as, or has the effect of undermining, or exploiting weaknesses in, the due diligence procedures used by Financial Institutions to correctly identify:
 - (i) an Account Holder and/or Controlling Person; or
 - (ii) all the jurisdictions of tax residence of an Account Holder and/or Controlling Person;
- (d) an Arrangement for which it is reasonable to conclude that it is designed to, marketed as, or has the effect of allowing:
 - (i) an Entity to qualify as an Active NFE;
 - (ii) an investment to be made through an Entity without triggering a reporting obligation under the CRS; or
 - (iii) a person to avoid being treated as a Controlling Person; and
- (e) an Arrangement for which it is reasonable to conclude that it is designed to, marketed as, or has the effect of classifying or disguising a payment made for the benefit of an Account Holder or Controlling Person as a payment that is not reportable under CRS Legislation.

1.2 Definition of Offshore Structure

- (a) An Offshore Structure means a Passive Offshore Vehicle that is held through an Opaque Ownership Structure.
- (b) Subject to paragraph (c) below, a “Passive Offshore Vehicle” means an offshore Legal Person or Legal Arrangement that does not carry on a substantive economic activity supported by staff, equipment, assets and premises.

A Legal Person or Legal Arrangement will be treated as “offshore” for the purposes of this paragraph if it is incorporated, resident, managed, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the Beneficial Owners and an “offshore jurisdiction” is any jurisdiction where such Legal Person or Legal Arrangement is incorporated, resident, managed and controlled or established (as applicable).

- (c) A Passive Offshore Vehicle does not include a Legal Person or Legal Arrangement that is an Institutional Investor or that is wholly owned by one or more Institutional Investor.

- (d) An Opaque Ownership Structure is an Ownership Structure for which it is reasonable to conclude that it is designed to have, marketed as having, or has the effect of allowing a natural person to be a Beneficial Owner of a Passive Offshore Vehicle while obscuring such person's beneficial ownership or creating the appearance that such person is not a Beneficial Owner. An Opaque Ownership Structure includes, but is not limited to, a structure that has one or more of the following features:
- (i) the use of nominee shareholders with undisclosed nominators;
 - (ii) the use of means of indirect control beyond formal ownership;
 - (iii) the use of arrangements that provide a Reportable Taxpayer with access to assets held by, or income derived from the Ownership Structure without being identified as a Beneficial Owner of such structure;
 - (iv) the use of Legal Persons in a jurisdiction where there is:
 - no requirement and/or mechanism to keep Basic Information and Beneficial Owner information on such Legal Persons accurate and up to date;
 - no obligation on shareholders or members to disclose the names of persons on whose behalf shares are held; or
 - no obligation/mechanism on shareholders or members of such Legal Persons to notify the Legal Person of any changes in ownership or control.
 - (v) the use of Legal Arrangements organised under the laws of a jurisdiction that do not require the trustees (or in case of a Legal Arrangement other than a trust, the persons in equivalent or similar positions as the trustee of a trust) to obtain and hold adequate, accurate and current beneficial ownership information regarding the Legal Arrangement.

1.3 Other Definitions

The following capitalised terms shall have the meanings set out below:

- (a) "Arrangement" means an agreement, scheme, plan or understanding, whether or not legally enforceable, and includes all the steps and transactions that bring that Arrangement into effect.
- (b) "Basic information" on a Legal Person includes, at a minimum, information about the legal ownership and control structure of the Legal Person. This would include information about the status and powers of the Legal Person, its shareholders or members and its directors

- (c) “Beneficial Owner” shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations and shall include any natural person who exercises control over a Legal Person or Legal Arrangement. In the case of a trust, such term means any settlor, trustee, protector (if any), beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust, and in the case of a Legal Arrangement other than a trust, such term means persons in equivalent or similar positions.
- (d) “Client” means any person, other than a Reportable Taxpayer, who instructs an Intermediary to perform Relevant Services.
- (e) “CRS Legislation” means the Standard for Automatic Exchange of Financial Account Information in Tax Matters as implemented in the domestic laws of the jurisdiction where the relevant account is maintained and includes any international legal instrument for the exchange of information collected pursuant to such laws that is in force and effect for that jurisdiction.
- (f) “Intermediary” means a Promoter or Service Provider.
- (g) “Institutional Investor” means a Legal Person or Legal Arrangement:
- (i) that is regulated as a bank (including a depository or custodial institution), insurance company, collective investment vehicle or pension fund;
 - (ii) the shares or interests of which are regularly traded on an established securities market; or
 - (iii) that is a government entity, central bank, international or supranational organisation or a Legal Person or Legal Arrangement wholly owned by one or more of the foregoing.
- (h) “Legal Arrangement” means an express trust or other similar legal arrangement, such as fiducie, treuhand and fideicomiso.
- (i) “Legal Person” means any entity, including a company, body corporate, foundation, anstalt, partnership, association and other relevantly similar entity, but does not include a natural person.
- (j) “Ownership Structure” means an Arrangement concerning the direct or indirect ownership or control of a person or asset.
- (k) “Partner Jurisdiction” means a jurisdiction:
- (i) that has introduced mandatory disclosure rules that are substantially similar to those set out in this legislation;
 - (ii) with which [Country Name] has an international exchange of information instrument in effect that permits the exchange of the information set out in Section 2.4; and
 - (iii) that has agreed to supply such information spontaneously in the form set out in Annex 1.
- (l) “Promoter” means any person who is responsible for the design or marketing of a CRS Avoidance Arrangement or Offshore Structure.

- (m) “Relevant Services” in respect of a CRS Avoidance Arrangement or Offshore Structure, means providing assistance or advice with respect to the design, marketing, implementation or organisation of that Arrangement or Offshore Structure.
- (n) “Reportable Taxpayer” means, in respect of a CRS Avoidance Arrangement, any actual or potential end user of that Arrangement and, in respect of an Offshore Structure, a natural person whose identity as a Beneficial Owner is obscured by the Opaque Ownership Structure. However an Intermediary should not treat a person as a Reportable Taxpayer where that Intermediary holds a certified or notarised copy of the most recent tax filing of the Reportable Taxpayer filed by the Reportable Taxpayer with the tax administration in all its jurisdictions of tax residence, showing that such Reportable Taxpayer is compliant with its tax obligations with respect to the interest held in, the income derived from, and the assets held through the CRS Avoidance Arrangement or Offshore Structure.
- (o) “Service Provider” means any person who provides Relevant Services in respect of a CRS Avoidance Arrangement or Offshore Structure in circumstances where the person providing such services could reasonably be expected to know that the Arrangement is a CRS Avoidance Arrangement or an Offshore Structure.

Capitalised terms that are not otherwise defined shall have the meanings given to them under the CRS Legislation.

2 REQUIREMENT TO DISCLOSE CRS AVOIDANCE ARRANGEMENTS AND OFFSHORE STRUCTURES

2.1 Obligation on Intermediary to disclose CRS Avoidance Arrangements

Any person that is an Intermediary with respect to a CRS Avoidance Arrangement or Offshore Structure must disclose that Arrangement or Offshore Structure to the tax authorities in [Country Name] if that person:

- (a) is resident, incorporated or has its place of management in [Country Name]; or
- (b) makes that Arrangement or Offshore Structure available for implementation, or provides Relevant Services in respect of that Arrangement or Offshore Structure through a branch located in [Country Name].

2.2 When information is required to be disclosed

The disclosure required under paragraph (1) shall be made fifteen working days after the Intermediary:

- (a) makes the CRS Avoidance Arrangement or Offshore Structure available for implementation; or
- (b) supplies Relevant Services in respect of the CRS Avoidance Arrangement or Offshore Structure.

2.3 Disclosure of Arrangements entered into after 15 July 2014 and before the effective date of these rules

(1) A Promoter shall disclose a CRS Avoidance Arrangement within 180 days of the effective date of these rules where:

(a) that Arrangement was implemented on or after 15 July 2014 but before the effective date of these Rules; and

(b) that person was a Promoter in respect of that Arrangement

irrespective of whether that person provides Relevant Services in respect of that Arrangement after the effective date.

(2) No disclosure shall be required under paragraph (1) where the Intermediary knows that:

(a) the aggregate balance or value of the Financial Account subject to the CRS Avoidance Arrangement immediately prior to its implementation was less than [USD 1'000'000]; or

- (b) there is no Reportable Taxpayer in respect of that Arrangement at the time disclosure is required in accordance with this rule.

2.4 Information required to be disclosed by Intermediary

The information that an Intermediary is required to disclose under Section 2.1 above in respect of a CRS Avoidance Arrangement or Offshore Structure, must be in the form set out in Schedule 2 and shall include:

- (a) the name, address, contact details, jurisdictions of tax residence and TIN (if any) and, in the case of (ii), the date of birth of the following persons:
- (i) the person making the disclosure;
 - (ii) any Reportable Taxpayer with respect to that Arrangement or structure;
 - (iii) any Client or Intermediary with respect of that Arrangement or Offshore Structure.
- (b) the details of that Arrangement or Offshore Structure including;
- (i) in respect of a CRS Avoidance Arrangement, a description of those features of the Arrangement or Offshore Structure for which it is reasonable to conclude that they are designed to, marketed as, or have the effect of, circumventing the CRS; and
 - (ii) in respect of an Offshore Structure, a description of those features of the Arrangement or Offshore Structure for which it is reasonable to conclude that they are designed to, marketed as, or have the effect of obscuring the Reportable Taxpayer's Beneficial Ownership or creating the appearance that the Reportable Taxpayer is not a Beneficial Owner of the Passive Offshore Vehicle.
- (c) the jurisdiction or jurisdictions where the Arrangement or Offshore Structure has been made available for implementation.

to the extent such information is within the Intermediary's knowledge, possession or control.

2.5 No obligation to disclose to the extent information is covered by professional secrecy

- (a) The Intermediary shall not be required to disclose any information set out under Section 2.4 above to the extent that the disclosure would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are produced for the purposes of seeking or providing legal advice or used in existing or contemplated legal proceedings and protected from disclosure under domestic law.
- (b) An Intermediary that is not required to disclose information under this Section 2.5 shall provide written notice to:
- (i) the [Country Name] tax authority that the Intermediary has information on a CRS Avoidance Arrangement or Offshore Structure that is not required to be disclosed under this Section 2.5;
 - (ii) any Reportable Taxpayer of its disclosure obligations under Section 2.7.

2.6 No obligation on Intermediary to disclose to the extent information has already been disclosed

- (a) The Intermediary is not required to disclose any information set out Section 2.4 above to the extent that:
- (i) such information has been disclosed to the [Country Name] tax authority by that Intermediary or another Intermediary; or
 - (ii) the information relates to Relevant Services supplied, or an Arrangement or Offshore Structure made available for implementation, through a branch maintained by that Intermediary in a Partner Jurisdiction and such information has been disclosed to the tax authority of that Partner Jurisdiction.

2.7 Reportable Taxpayer required to disclose in certain circumstances

- (a) Any natural person that is resident in [Country Name] and that is an end user of a CRS Avoidance Arrangement or a Beneficial Owner under an Offshore Structure must disclose to the [Country Name] tax authority any information on the Arrangement or Offshore Structure that is not disclosed by an Intermediary because:
- (i) that Intermediary is not required to disclose the information pursuant to paragraph 2.5(a); or
 - (ii) that Intermediary is not subject to any disclosure requirements under these rules.
- provided that no disclosure shall be required to the extent it would infringe that person's privilege against self-incrimination under domestic law.
- (b) The Reportable Taxpayer is not required to disclose any information as required under Section 2.7(a)(ii) above to the extent that the Reportable Taxpayer has received written notification from the Intermediary that the information has been disclosed by that Intermediary to the tax authority of a Partner Jurisdiction where that Intermediary is resident, incorporated or has its place of management.