



13th Annual International Estate Planning  
Conference

New York, 23 March 2017

Hot Topics in CRS (and BO Registers)

Presented by: Peter Cotorceanu

[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

**On tap today . . .**

---



- Hot Topics in CRS
- A Few Words on BO Registers



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)



 **G&TCA**  
GATCA & Trusts Compliance Associates LLC

---

## Hot Topics in CRS

[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Hot Topics in CRS

---

- Legal Effect of OECD Implementation Handbook and FAQ (v. CRS and Commentaries)
  - Specific Issues:
    - Protectors
    - Looking through entity equity-interest holders in trusts
  - “Managed By” test as applied to Trusts with settlor reserved investment powers

## Global FATCA (GATCA or CRS)

---

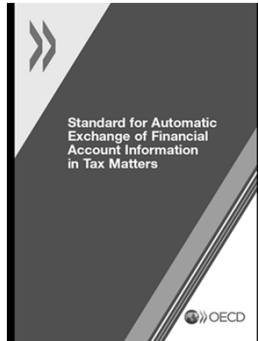


[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## The “Common Reporting Standard” (CRS)??

---

- <http://www.oecd.org/tax/exchange-of-tax-information/automaticexchange.htm>



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## The four main parts of GATCA

---

- Introduction (approx. 10 pages)
- **Model Competent Authority Agreement (MCAA) (bilateral) (approx. 10 pages)**
- **Common Reporting Standard (CRS) (approx. 30 pages)**
- **Commentaries on both of above (approx. 140 pages)**
- **Appendices (approx. 100 pages), incl. :**
  - Multilateral MCAA
  - Non-Reciprocal MCAA
  - “Wider Approach”



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## OECD GATCA—Implementation Handbook

---

<http://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm>



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

# OECD GATCA—FAQs

- <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf>



## CRS-related Frequently Asked Questions

(June 2016)

SECTION I: GENERAL REPORTING REQUIREMENTS
<b>1. Reporting balance or value</b>
<p><b>What balance or value of an Equity Interest should be reported where the value is not otherwise frequently determined by the Financial Institution (for example it is not routinely recalculated to report to the customer)?</b></p> <p>The Standard defines the account balance or value in the case of an Equity interest as the value calculated by the Financial Institution for the purpose that requires the most frequent determination of value (Commentary to Section I, A(4)). What this value is will depend on the particular facts. Depending on the circumstances it could, for example, be the value of the interest upon acquisition if the Financial Institution has not otherwise recalculated the balance or value</p>



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

# The OECD is *not* a legislature



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## What is binding?

---



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## What about ... ?

---



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## ***Isle of Man CRS Regulations***

---

“**the CRS**” means the standard for automatic exchange of financial account information developed by the . . . the OECD<sup>2</sup>;

<sup>2</sup> The CRS is available on the OECD website at <http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm>



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## ***Isle of Man CRS Guidance Notes***

---

- This booklet is intended only as a general guide and must be read in conjunction with the appropriate legislation. It does not have any binding force and does not affect a person’s right of appeal on points concerning their own liability to income tax.



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Isle of Man CRS Guidance Notes

---

In addition, guidance on practical aspects and the operation of the CRS can also be found in the OECD's CRS Implementation Handbook.

...

A Financial Institution *must* apply the Isle of Man Regulations in force at the time with reference to the CRS itself, the OECD's guidance and lastly this, the Isle of Man's own published guidance.



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Cayman Islands CRS Regulations

---

- 5. (1) For the purposes of these Regulations the Common Reporting Standard commentary, which is any explanatory material made and published by the [OECD] for the purpose of assisting with the interpretation of the Common Reporting Standard, is an integral part of the Common Reporting Standard and accordingly applies for the purposes of the automatic exchange of financial account information under a relevant scheduled Agreement.



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)



## **Cayman Islands CRS *Guidance Notes***

---

The standard consists of the following core elements that are relevant for Financial Institutions:

- The Common Reporting Standard . . .
- The Commentary on the CRS, which is an integral part of the CRS and is intended to illustrate or interpret its provisions

. . .

Financial Institutions should consult the following resources which have been issued by the OECD as aids to applying the CRS:

- CRS Implementation Handbook
- CRS-related FAQs



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## **Is delegating power to the OECD to make local “law” . . . ?**

---



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

**Constitutionality aside, is it . . . ?**

---



Or



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

**Protectors**

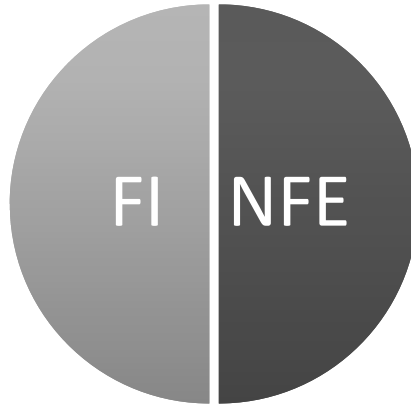
---



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Background

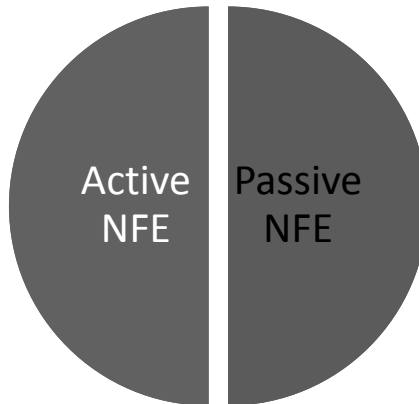
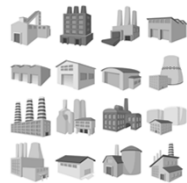
---



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Background

---



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

**Background**

---

- FIs: Account Holders
  
- Passive NFEs: Controlling Persons



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

**Contrast**

---

Controlling Person of Passive NFE Trust	Account Holder (“Equity Interest Holder”) in IE FI Trust
settlor, <b>trustees</b>  the <b>protector</b> (if any), the beneficiaries or class of beneficiaries -and- <b>any other natural person            exercising ultimate effective            control over the trust</b>	a settlor . . . . . . beneficiary of all or a portion of the trust or  <b>any other natural person            exercising ultimate effective            control over the trust</b>



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## The Question . . .

---

### 5. Protectors of a trust that is a Reporting Financial Institution

**Are protectors of a trust that is a Reporting Financial Institution considered to be Account Holders of the trust in all instances or only in circumstances where their powers are such that they could be regarded as exercising control over the trust?**



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## And the *brilliant* answer

---



The protector must be treated as an Account Holder *irrespective of whether it has effective control over the trust.*



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## What are they smoking?

---



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Comply!

---



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

**But . . .**

---



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

### **Looking through entity “account holders” in FI trusts**

---

- General rule: Look through Passive NFEs only
- No look through otherwise
- And yet, the CRS Implementation Handbook says *in relation to trusts and only trusts*:

If a settlor, beneficiary or other person exercising ultimate effective control over the trust is itself an Entity, that Entity must be looked through, and the ultimate natural controlling person(s) behind that Entity must be treated as the Equity interest holder.



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Managed IE FIs and Trusts

---

- General Rule: A trust will be an FI if it is “Managed By” an FI (and gets most income from financial assets)
- Under FATCA, generally accepted that a trust with a Commercial Trust Company (which will be an FI) as Trustee is “Managed By” an FI for this purposes
- Other way to meet “Managed By” test is to have investments managed by an FI (e.g., by a bank in a discretionary mandate)



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Managed IE FIs and Trusts

---

- CRS Commentary:

However, an Entity does not manage another Entity if it does not have discretionary authority to manage the Entity’s assets (in whole or part).

- Some therefore believe that if a deed trust reserves investment powers to the settlor and the assets are not otherwise invested by an FI, the trust is not an FI.



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)



## Managed IE FIs and Trusts

---

- The result in most cases would be that the trust will be a Passive NFE with no CRS reporting obligations
- Credible argument—though not the only one
- Be careful what you wish for—banks will then control the reporting. Unless . . . Assets are moved to the U.S.!



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Managed IE FIs and Trusts

---

- Singapore leads the way!
- Singapore CRS FAQ B.5—see next page



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Managed IE FIs and Trusts

---

### Reserved Investment Power Trusts

**Would a reserved investment power trust, where investment powers over the trust’s assets are reserved solely to an individual who is not the trustee, be considered to be an Investment Entity as defined under paragraph A(6)(b) of Section VIII of the CRS?**

No. Such a reserved investment power trust would not be an Investment Entity as defined under paragraph A(6)(b) of Section VIII of the CRS, given that the individual who has discretionary authority to manage the assets of the trust is not a Financial Institution. However, the trust may still be an Investment Entity as defined under paragraph A(6)(a) of Section VIII of the CRS if it primarily conducts as a business, one or more of the relevant activities or operations for or on behalf of a customer and fulfils the gross income test.



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)



---

### BO Registers

[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## FATCA, then CRS, and now BO Registers

---

### Three-Dimensional Chess



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

### For example . . . .

---



EU 4<sup>th</sup> AML Directive



UK PSC Register



French Trust Register



NZ Trust Register



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

## Questions

---



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)



# G&TCA

GATCA & Trusts Compliance Associates LLC



**Peter Cotorceanu** LL.B.(Hons), J.D., LL.M. (Tax), TEP

Attorney-at-Law (U.S.A.)

Barrister and Solicitor (New Zealand)

Founder & CEO

+41 (0) 79 701 8305

[peter.cotorceanu@gatcaandtrusts.com](mailto:peter.cotorceanu@gatcaandtrusts.com)

[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

---

[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

**Disclaimer**

---

This Presentation is intended solely for information purposes. The views contained in this Presentation may be altered at any time. Although GATCA & Trusts Compliance Associates LLC (G&TCA) have taken all reasonable care to ensure that the information contained in this presentation is accurate at the time of publication, the details in this presentation do not represent decision-making aids for legal, tax, or other matters. Before taking any action, you should consider the suitability of the action to your particular circumstances and discuss with your professional advisers as necessary the specific risks as well as the tax, legal, regulatory, and other implications.



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)

**Copyright**

---

© 2017 GATCA & Trusts Compliance Associates LLC  
(G&TCA)  
All rights reserved.



[www.gatcaandtrusts.com](http://www.gatcaandtrusts.com)