

**CRS, FATCA, AML, BEPS AND TAX HAVEN BLACK LIST:  
THE MAZE OF 21<sup>ST</sup> CENTURY  
HOW MORAL SUASION TRIES TO OVERCOME  
LEGISLATION AND GOOD SENSE  
SOME PRACTICAL ISSUES TO FIND THE WAY OUT**

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*Centre for International Fiscal Studies*

**KYC KICK YOUR CLIENT !**

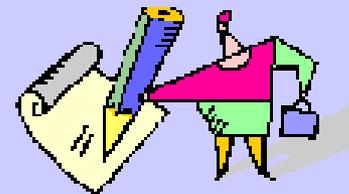


**KYB KILL YOUR BUSINESS !**

**AML ATTENTION! MONEY'S LEAK !**

**BEPS BEST EMPTY POCKET SYSTEM**

**CRS COMMON RACKET SYSTEM**



TYPICAL COMPLIANCE OFFICER



BETTER DEAD THAN ALIVE



COMPLIANCE  
OFFICER



FIU AML  
OFFICER



ECB OFFICER



TAX OFFICER



CUSTOMS  
OFFICER



RISK  
OFFICER

COMPLIANCE



CRS

AML

FATCA

BEPS

BLACK LISTS

**THE 26 OECD COMMON REPORTING STANDARD LOOPHOLES  
SUGGESTION IMPROVEMENTS AND REFINEMENTS**

<b>I</b>	<b>Actual loophole</b>	<b>Description</b>	<b>Serious</b>
A1	Residence-by-investment schemes	Non-fiscal residency certificate.	ⓂⓂⓂⓂ
A2	Untaxed foreign investment entity managed in same jurisdiction as Equity Interest maintaining offshore account	No reporting as FI and B.O. in same country	ⓂⓂⓂⓂ
B1	Passive NFE maintain account in Non-Participating Jurisdiction	No reporting by Passive NFE if account in USA or Taiwan	Ⓜ
B2	Investment manager on assets maintained in Non-Participating Jurisdiction	Investment manager manages account maintained with US Custodian Institution	ⓂⓂⓂⓂ
B3	FI shift client account to related FI in Non-Participating Jurisdiction	FIs advise clients to close accounts and set up account in related FI, invariably in USA	ⓂⓂⓂⓂ
C1	25% entity threshold for Controlling Person	Easy to split shareholding amongst four family members	Ⓜ
C2	No AML on pre-existing accounts	No identification required if pre-existing AML, did not id beneficial owner	Ⓜ
D1	Non-cash value insurance	Investment linked policies payable only upon death are out of scope	ⓂⓂ
D2	Insurance policies prohibited from being sold	Existing policies that were not allowed to be sold are out of scope	ⓂⓂ
D3	Gold	Out of scope substitute for financial assets	Ⓜ
D4	Property (Real estate)	Out of scope substitute for financial assets	Ⓜ
D5	Distributions by trusts as non-reportable loans	Trustees make loans instead of distributions	Ⓜ
D6	\$250,000 de minimis	Allows tax evaders to withdraw from Non-Participating jurisdiction	Ⓜ
E1	Embed investments in untaxed Active NFE	Embed investments in untaxed Active NFE	ⓂⓂ
E2	New company	New company every 2 years out of scope	Ⓜ
E3	Trusts as holding NFE	A trust holding subsidiaries that also has investment portfolio is out of scope	Ⓜ
F1	Bilateral late adopter shopping	Switzerland, Bahamas, UAE starting AEOI with major countries in 2019 or later	ⓂⓂⓂⓂ
F2	Late adopter delay DD on low value account	Late adopters are abusing an extra year for due diligence on smaller accounts	Ⓜ
G1	Hong Kong Occupational Retirement Scheme	Sham pensions for non-residents	ⓂⓂⓂⓂ

II.	Perceived loophole caused by ambiguity	Description	Serious
C3	Converting Equity Interest into Debt Interest	Common plan involves donation of assets to fund, but can receive shares back with forward agreement or OTC	
C4	Nominees	Russians still using 90's style nominees to disguise ownership	
D7	Private untaxed pensions as excluded account	Andorran FIs mistakenly believe untaxed pension plans are tax favoured plans	
D8	Credit cards	Credit cards allow tax evaders to spend money held in Non-Participating Jurisdictions	
E4	Settlers of irrevocable trusts	Many practitioners mistakenly believe settlers of irrevocable trusts do not have Equity Interest because they do not have Equitable Interest	
F3	Confidentiality assessment by jurisdiction	Switzerland, Bahamas, Singapore, etc. continue to mistakenly believe that they can self-assess confidentiality and data security of partner jurisdictions.	
F4	Unrelated Pre-conditions for a CAA	Switzerland believes it can demand amnesties or access to for its FIs to partner financial markets before agreeing to a CAA.	
G2	Govt and international entity accepting deposits	Dubai FIs believe they can get client to first deposit with govt entity who will place deposit with the FI	

## MODEL MANDATORY DISCLOSURE RULES FOR CRS AVOIDANCE ARRANGEMENTS AND OPAQUE OFFSHORE STRUCTURES

The rules require any person that is an Intermediary in respect of an arrangement, which has the hallmarks of a CRS Avoidance Arrangement or Opaque Offshore Structure, to disclose certain information on that arrangement or structure to the tax authorities.

Intermediaries are those persons responsible for the design or marketing of the arrangement or structure (“Promoters”) as well as certain persons that provide assistance or advice with respect to the design, marketing, implementation or organisation of that arrangement or structure (“Service Providers”).

**Opaque Offshore Structures** are structures that involve the use of a passive entity in a jurisdiction other than the jurisdiction of tax residence of one or more of the beneficial owners and that are designed to, marketed as or have the effect of disguising the identity of the beneficial owner(s).

Amongst others, this may include the use of nominee shareholders, the exercise of indirect control over entities or the use of jurisdictions with weak rules for the identification of beneficial owners.

**A Promoter must disclose the CRS Avoidance Arrangement or the Opaque Offshore Structure within thirty days from the moment it makes the arrangement or structure available for implementation to either other Intermediaries or taxpayers, i.e. when the Promoter has completed material design elements of the arrangement or structure and has communicated these elements to its client and/or taxpayer.**

**A Service Provider must disclose the arrangement or structure within thirty days once it provides Relevant Services with respect to the arrangement or structure, but only where the Service Provider knows or can reasonably be expected to know that the arrangement or structure is a CRS Avoidance Arrangement or an Opaque Offshore Structure.**

**In addition, Promoters are required to disclose CRS Avoidance Arrangements entered into prior to the effective date of the rules, but after 29 October 2014, but only when the value or balance of the relevant Financial Account equals or exceeds USD 1,000,000. In these instances, the Promoter is required to disclose the arrangement within 6 months (of the effective date of the rules.**

(6a) in Article 18, paragraph 2 is replaced by the following:

**“2. Member States shall require obliged entities to examine, as far as reasonably possible, the background and purpose of all transactions that fulfill at least one of the following conditions:**

- (i) they are complex transactions;**
- (ii) they are unusually large transactions;**
- (iii) they are conducted in an unusual pattern;**
- (iv) they do not have an apparent economic or lawful purpose.**

**In particular, obliged entities shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious.”;**

Responding to public and media pressure brought on by the so-called Panama and Paradise papers exposés, the European Union has been compiling, tweaking and talking for months about its “blacklist” of “non-compliant” jurisdictions.

On 5 December, it published a working list of some 17 jurisdictions, which by 13 March, amid much public discussion and media comment, it had reduced to a final nine (while stressing that this list would be updated at least once a year, if not more often if necessary).

THE OBVIOUS QUESTION IS:

*“non-compliant with what?”*

Latvia's banking sector is smoldering due to a long-running money laundering problem – and the nation's regulators are scrambling to ban the thousands of shell company accounts at the heart of the problem before it ignites into an uncontrollable fire.

The depth of Latvia's money laundering crisis became clear at the end of February when the nation's third-largest bank, ABLV, collapsed after the United States accused it of funneling billions of illicit dollars through shell companies. The United States also accused the bank of obstructing Latvian anti-money-laundering and anti-terrorism financing rules. ABLV is the first bank to go down, but it isn't the only one tied to this activity.

# **Is this the death of Shell Companies and Uncomfortable Banks?**

## ARTICLE 4 RESIDENT

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof as well as a recognised pension fund of that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

**2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:**

**a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);**

**b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;**

**c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;**

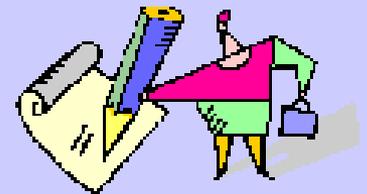
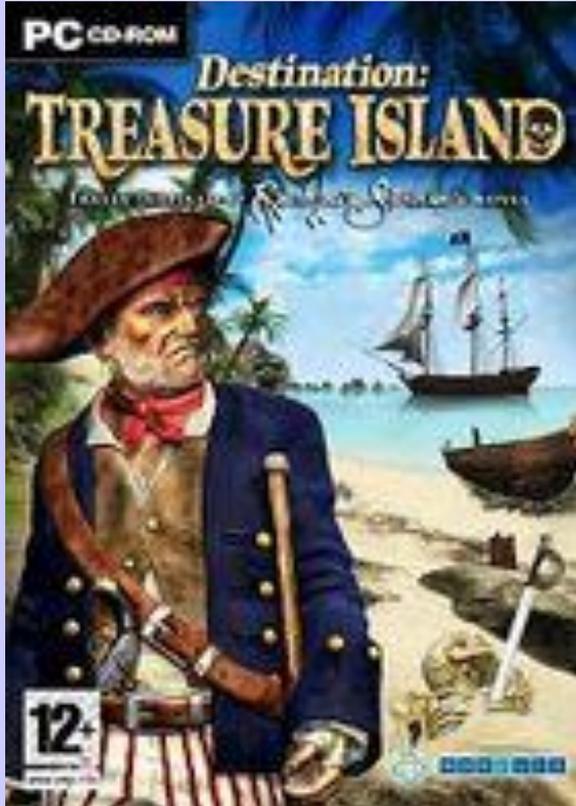
**d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.**

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

# CONCLUSION: FIND NEW LOCATIONS AND ALTERNATIVES

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SOME SUGGESTIONS: TO COME BACK TO GRANDFATHERS' METHODS..



**GOLD**

**(KEEP UNDERGROUND AS PINOCCHIO)**

**DIAMONDS**

**TRUST COMPANIES**

**INSURANCES**

**INVESTMENTS FUNDS (SIF, ETC..)**

**CREDIBLE NOMINEES**

**ONLY «BIG AND STRUCTURED» CLIENTS WITH A  
HABITUAL ABODE IN THE JURISDICTION OF CHOICE  
OR A PLACE OF EFFECTIVE MANAGEMENT IN THE  
TARGET COUNTRY**



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**GIANCARLO CERVINO THANKS YOU FOR YOUR  
ATTENTION AND IS READY FOR Q&A!**