

Interplay between AEOI and AML requirements. Selected issues

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Agenda

- Introduction
- Overview of CDD under AML Framework
- CDD under CRS and AML and their Interplays
- Beneficial Owner vs. Controlling Person
- Case Study
- Impact on Financial Institutions



Introduction

- Need to look for synergies within and across the customer reporting frameworks
- Strong reliance on AML/KYC procedures in CRS framework
- Role of financial institutions under AML and CRS frameworks
 - Strict implementation and attention to detail is crucial for CRS framework as compared to “risk based approach”

Overview of CDD Procedures under AML Framework

- Customer Due Diligence (CDD) obligations
 - Know your Customer (KYC) - Identification and verification of ALL customers (natural/legal person or legal arrangements)
 - Obtaining information on purpose and intended nature of the business relationship
 - Ongoing monitoring of business relationship and related transactions, continuous consistency checks and update of gathered information
- Risk Based Approach
 - Determine simplified vs. enhanced measures considering specific factors of potentially lower/higher risk situations

KYC under AML Framework

Who?	When?	How?
<ul style="list-style-type: none"> ▪ Customer per se <ul style="list-style-type: none"> ▪ Natural Person(s) ▪ Legal Entity(s) ▪ Other Legal Arrangement(s). ▪ Beneficial owner(s) ▪ Authorized representative(s) ▪ Trustor(s) 	<ul style="list-style-type: none"> ▪ <u>Before</u> establishing a permanent business relationship ▪ <u>Before</u> carrying out an occasional transactions EUR 15,000 and more <ul style="list-style-type: none"> ▪ trading goods: EUR 10,000 and more ▪ gambling exceeding: EUR 2,000 and more ▪ Suspicion of ML or TF activity ▪ Deposits into / withdrawals from savings accounts that exceed EUR 15,000 ▪ Doubts regarding the identity data obtained 	<ul style="list-style-type: none"> ▪ Collecting identity data/information <ul style="list-style-type: none"> ▪ Ascertaining the identity (personal meeting, KYC form, additional research) ▪ Verifying the information on identity obtained (documents and information from reliable and independent sources) ▪ Verifying the authenticity of proof of identity ▪ Risk-oriented measures to identify the BOs of a legal entity (<u>New</u>: BO register) ▪ Record and store identity data/information adequately

Required Information under AML Framework

	Natural Person	Legal Person/Arrangements
Required Information	<ul style="list-style-type: none"> ▪ Full name ▪ Date of birth ▪ Gender <p><i>In case of BO, additionally:</i></p> <ul style="list-style-type: none"> ▪ Nationality ▪ Country of residence ▪ Interests held 	<ul style="list-style-type: none"> ▪ Company name ▪ Legal form ▪ Country of registration / registration authority / registration number ▪ Place of incorporation ▪ Purpose of business ▪ Identification of managing bodies and other persons authorized to represent the company
Additional Information (risk based)	<ul style="list-style-type: none"> ▪ Signature ▪ Nationality ▪ Place of birth ▪ Correct permanent address ▪ Telephone number, e-mail address ▪ Occupation, position held ▪ Personal identity number 	<ul style="list-style-type: none"> ▪ Postal address ▪ Telephone number ▪ E-Mail address ▪ Website ▪ VAT ID number ▪ Group structure

Ongoing Monitoring under AML Framework

- Risk based approach to define extent of monitoring activities & method
- Continuous consistency checks and update of gathered KYC information
- Ongoing monitoring of transactions
- In case of money laundering suspicion → Suspicious transaction report to the FIU required (internal & external reporting procedures)
- In case of identification failure → No business relationship/transaction may be established/conducted

Interplays between CDD under CRS & AML Frameworks

- **Reviewing procedures** for pre-existing customer accounts
 - Existing KYC information and CRM databases:
 - address available in the records – tax residence address
 - Self-certifications are required in limited cases:
 - Individual accounts: more than one indicium is found/ only indicium "hold-mail" or "in-care-of" address is found.
 - Controlling persons of passive NFE accounts: value exceeds USD 1mln.
- **On Boarding procedures** for new customer accounts
 - Existing AML/KYC procedures can be applied as a basis
 - New: submission of self-certification by customer (tax residence, TIN)
- **Reasonableness** check of self-certifications
- **Concept of beneficial** owner under AML and **controlling person** under CRS

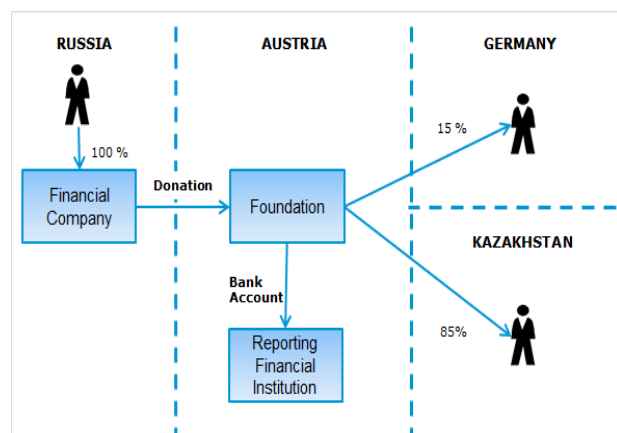
Beneficial Owner vs. Controlling Person

- OECD CRS Commentary on Section VIII, para. 132 provides that the term "controlling person":
 - *"corresponds to the term "beneficial owner" as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012)".*
- However: NOT ALL BENEFICIAL OWNERS ARE CONTROLLING AND REPORTABLE PERSONS
 - For **active NFEs** controlling persons do not need to be determined;
 - For a **passive NFE** without controlling persons by virtue of ownership or other means, a natural person who holds a position of senior managing official should be deemed to be a controlling person;
 - For **trusts**(and similar legal arrangements) and legal persons(e.g. **foundations**) functionally similar to trusts the following (or individuals in similar positions) are all controlling persons:
 - settlor(s),
 - the trustee(s),
 - the protector(s) (if any),
 - the beneficiary(ies) or class(es) of beneficiaries, and
 - any other natural person(s) exercising ultimate effective control over the trust.



Case Study

- **Russian individual** decides to establish an **Austrian foundation** for his family members in Russia
- **Donation** to the foundation is made by a financial company based in Russia
- **2 Beneficiaries** of the foundation:
 - Individual resident in **Kazakhstan** (85%)
 - Individual resident in **Germany** (15%)
- **Trustee board** of a foundation is constituted of the individuals resident in Austria
- It is intended to open a bank account for the foundation with an **Austrian Financial Institution**.



Case Study – AML View

Person/ Entity	CDD Information required (exemplary)
Grantor RU	<ul style="list-style-type: none"> Enhanced CDD rules due to high risk jurisdiction Identity data: e.g. name and surname, gender, date of birth, signature, nationality, address, telephone number, e-mail, profession, PEP status; Information on the source of funds
Russian Financial Company	<ul style="list-style-type: none"> Identification data: e.g. company name, legal form, country of registration / registration authority / registration number, place of incorporation, postal address, website, group structure, purpose of business Verify identity data: documents of incorporation, excerpt from registry, good standing certificate or equivalent, financial statements, look through company structure
Beneficiary KZ (85 %)	<ul style="list-style-type: none"> Enhanced CDD rules due to high risk jurisdiction Identity data: same as for grantor
Beneficiary GER (15%)	<ul style="list-style-type: none"> Not a beneficial owner under AML (Individual is under 25% threshold and do not exercise control by other means) => No additional information on identity required
Austrian Trustees	<ul style="list-style-type: none"> Identity data: name and surname, gender, date of birth Proof that trustees can represent the foundation
Austrian Foundation	<ul style="list-style-type: none"> Identify and verify foundation data using the following documents e. g. register excerpt, foundation deed Information on nature and number of transactions

Case Study – CRS View

Person/ Entity	CDD Information required (exemplary)
Grantor RU	<ul style="list-style-type: none"> Name, residence address, date and place of birth based on documentary evidence Tax residence jurisdiction and TIN based on self-certification, which has to pass reasonableness test
Russian Financial Company	<ul style="list-style-type: none"> „Look through“ and identify controlling person(s)
Beneficiary KZ (85 %)	<ul style="list-style-type: none"> At the moment no additional information required, but if Kazakhstan would commit to OECD CRS, then same as for grantor.
Beneficiary GER (15%)	<ul style="list-style-type: none"> Name, residence address, date and place of birth based on documentary evidence Tax residence jurisdiction and TIN based on self-certification, which has to pass reasonableness test
Austrian Trustees	<ul style="list-style-type: none"> Not a reportable person for the purposes of CRS, because tax resident in Austria
Austrian Foundation	<ul style="list-style-type: none"> Not a reportable person for the purposes of CRS, because tax resident in Austria

Case Study Conclusions

- The **beneficial owners** identified for the purposes of AML/KYC regulations will frequently coincide with the **controlling persons**.
- **Not all beneficial owners** are reportable persons under CRS – a separate process is necessary to identify the reportable persons.
- The documentation and data collected for AML/KYC purposes will usually be sufficient to satisfy CDD requirements under CRS. **Self-certifications will usually be the only additional document** to be requested from a new customer.
- Additional efforts are necessary when **checking reasonableness of self-certification**, because that AML/KYC data may not always contain sufficient information to verify whether individual is resident in the country that he/she declares as a tax residence jurisdiction.



Challenges for Financial Institutions

- Re-design existing customer onboarding procedures and create reviewing procedures for pre-existing accounts
- Introduce controls to track changes in the status of the accounts under CRS
- Update IT systems in use or invest in more flexible systems
- Enhance corporate governance model to use synergies and to avoid duplications and inefficiencies
- Train employees
- Educate clients
- Manage relationships with competent authorities
- Manage additional requests from reportable jurisdictions





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