

# Corporations as Passive NFEs

Although we often associate CRS with banks or complex structures such as trusts and foundations, corporations can also be directly subject to CRS. If we fail to classify them correctly, we may inadvertently expose the client to unnecessary risk.

In practice, there are Panamanian corporations that are not financial institutions. They do not manage financial assets as their primary activity, do not accept deposits, do not lend money, and do not offer investment services. Therefore, by exclusion, they often fall into the category of NFE, or non-financial entity. Among NFEs, there are two types: active and passive. And that distinction is crucial.

An active NFE is one that has real operations: it sells, provides services, produces, has a payroll, and generates income from economic activities. However, when a corporation holds only passive investments such as shares, bonds, accounts, and rental properties and does not have a real or substantial operation, it will most likely qualify as a passive NFE.

The implication of being a passive NFE is that the financial institution must identify the controlling persons of the entity and, if they are tax residents in other CRS jurisdictions, report that information to the corresponding authority.

This leads to confusion because it is not enough for the corporation to be up to date with its single annual fee payments or accounting obligations. One must consider the company's assets as well as its operations, even commercial inactivity can result in it being classified as a passive entity. If the person controlling it resides outside Panama and in a jurisdiction that implements the CRS, that information will be transmitted to their country.

Moreover, corporations that are passive NFEs must provide their financial institution with a CRS self-certification detailing who the controlling persons are. This is not just another form on the contrary, it is a declaration with legal and tax consequences. If information is omitted or incorrectly presented, the financial institution may reject the relationship or even close the account.

We must also mention the “controlling person.” This is not just the shareholder with more than 25 percent



although that is the most commonly used legal threshold for “know your client” purposes but also anyone who, directly or indirectly, exercises control over the company. This could be achieved through agreements, powers of attorney, or by being the sole decision-maker. Here, the analysis is not just formal but also substantive.

Of course, this does not mean that corporations should be avoided. They remain an effective, legitimate, and valuable tool. Today, any corporation that maintains a financial account or generates passive income must be carefully reviewed, properly classified, and correctly documented.

Ultimately, CRS has transformed the way we perceive simple structures. What used to be “a company to hold investments” can now have an international dimension that cannot be taken lightly. Understanding it, anticipating it, and explaining it clearly is part of our responsibility as advisors.



*María Krienert*  
Attorney in Alcogal