Standard for Automatic Exchange of Financial Information in Tax Matters

IMPLEMENTATION HANDBOOK

Second edition

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BETTER POLICIES FOR BETTER LIVES

Standard for Automatic Exchange of Financial Information in Tax Matters

Implementation Handbook

SECOND EDITION

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BETTER POLICIES FOR BETTER LIVES

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BACKGROUND AND INTRODUCTION

Background and Introduction

The purpose of the CRS Handbook

The purpose of the CRS Handbook is to assist government officials in the implementation of the *Standard for the Automatic Exchange of Financial Account Information in Tax Matters* ("Standard") and to provide a practical overview of the Standard to both the financial sector and the public at-large.

The Handbook provides a guide on the necessary steps to take in order to implement the Standard. Against that background, the Handbook is drafted in plain language, with a view of making the content of the Standard as accessible as possible to readers. The Handbook provides an overview of the legislative, technical and operational issues and a more detailed discussion of the key definitions and procedures contained in the Standard. This second edition of the Handbook is intended to be a living document and will be further updated and completed over time.

Changes reflected in the second edition of the Handbook provide additional and more up-to-date guidance on certain areas related to the effective implementation of the Standard. This includes revisions to sections pertinent to the legal framework for implementation of the AEOI, data protection, IT and administrative infrastructures as well as compliance measures. More clarity has been provided in the trust section of the Handbook relation to the identification of Controlling Persons.

The objective of the Handbook is to assist stakeholders in the understanding and implementation of the Standard and should not be seen as supplementing or expanding on the Standard itself. Cross references to the Standard and its Commentary are therefore included throughout the document. The page numbers refer to the pages in the consolidated second edition of the Standard.

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Background to the creation of the Standard for Automatic Exchange

1. In 2014, the OECD together with G20 countries and in close cooperation with the EU as well as other stakeholders developed the Standard for Automatic Exchange of Financial Account Information in Tax Matters, or the Standard. This was in response to the call of the G20 leaders on international community to facilitate cross-border tax transparency on financial accounts held abroad. The Standard intends to equip tax authorities with an effective tool to tackle offshore tax evasion by providing a greater level of information on their residents' wealth held abroad. In order to maximise efficiency and minimise costs the Standard builds on the automated and standardised solutions that jurisdictions previously developed for the purposes of the intergovernmental operationalisation of the US laws commonly known as FATCA.

2. The Standard has now moved from the design to implementation and application phase with the first exchanges having taken place in September 2017. There are over 100 jurisdictions representing all the major international financial centres that have committed to commence automatic exchange of information in 2017 or 2018. Within that group there is a small group of jurisdictions that have yet to pass domestic legislation to impose reporting obligations on their financial institutions. Many jurisdictions have also made significant progress in adopting the necessary international legal frameworks enabling cross-border exchanges.

3. The commitment process is monitored by the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum") whose role is to ensure timely and effective implementation of the Standard based on a level playing field. In parallel, the OECD continues its work on the practicalities of the Standard by seeking stakeholder input and clarifying its application through the regular publication of Frequently Asked Questions (FAQs) on the AEOI Portal as well as updates to this Handbook.

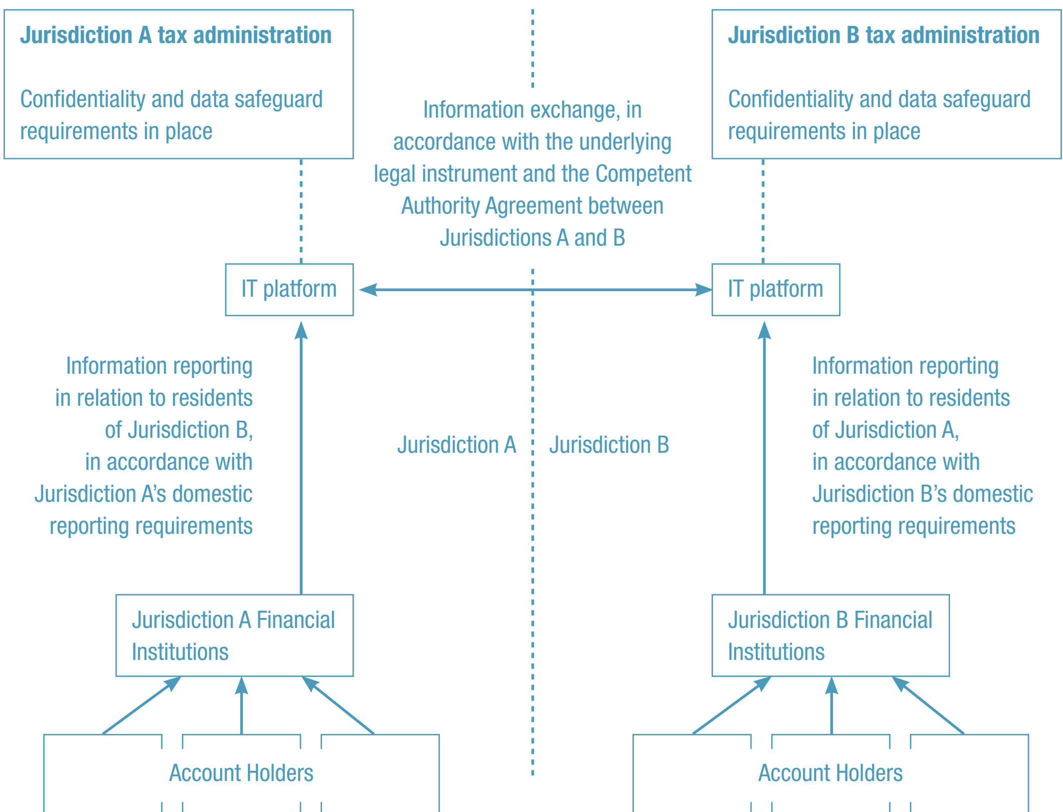
The automatic information exchange framework

4. Figure 1 depicts the automatic exchange framework for reciprocal information exchange under the Standard. In broad terms, financial

institutions report information to the tax administration in the jurisdiction in which they are located. The information consists of details of financial assets they hold on behalf of non-resident taxpayers and the income derived therefrom. The tax administrations then exchange that information with the jurisdiction(s) of residence of the taxpayer.

5. This process requires: rules on the collection and reporting of information by financial institutions; IT and administrative capabilities in order to receive and exchange the information; a legal instrument providing for information exchange between the jurisdictions; and measures to ensure the highest standards of confidentiality and data safeguards.

Figure 1: The reciprocal automatic exchange framework



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The Standard for Automatic Exchange

6. The Standard consists of the following elements:

1. The Common Reporting Standard (“CRS”) that contains the due diligence rules for financial institutions to follow to collect and report the information for the automatic exchange of financial information;
2. The Model Competent Authority Agreement (“CAA”) that specifies the financial information to be exchanged and links the CRS to the legal basis for exchange;
3. The Commentaries that illustrate and interpret the CRS and the CAA; and
4. Guidance on technical solutions, including an XML schema to be used for exchanging the information and standards in relation to data safeguards and confidentiality, transmission and encryption.

This Handbook

7. In order to implement the Standard a jurisdiction will need to take several steps to ensure financial institutions collect and report the necessary information and that their tax administration has the capacity to properly receive such information from the financial institutions, hold it and exchange it. This Handbook aims to provide a practical guide to these steps. It is structured as follows:

- Part I provides an overview of the steps required for a government to implement the Standard and the key conceptual considerations in this process. The steps are: translating the reporting and due diligence rules into domestic law; selecting a legal basis for the automatic exchange of information; putting in place the necessary administrative and IT infrastructure; and protecting confidentiality and safeguarding data.

- Part II contains a more detailed discussion on the conceptual framework contained in the Standard, including the key definitions and procedures it contains. A separate Chapter 6 provides more detail on the treatment of trusts under the CRS. This chapter includes background on trusts, how to determine the CRS status of a trust as

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either a Financial Institution or NFE, and explains the due diligence and reporting requirements of a trust that is a Reporting Financial Institution and the due diligence and reporting requirements of a Reporting Financial Institution with respect to a trust that is an NFE.

- Part III highlights differences between the FATCA Intergovernmental Agreement ("IGA") and the Standard and indicates whether a single approach could be adopted by governments for both systems of reporting.

- Annex I contains Frequently Asked Questions (FAQs) on the application of the CRS. These FAQs were received from business and government delegates and subsequently approved by relevant OECD bodies. The answers to such questions clarify the Standard further and provide additional assistance to enhance consistency in implementation and reduce the number of queries that governments are receiving. An up-to-date list of FAQs is published at regular intervals on the AEOI Portal.

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PART I: AN OVERVIEW OF THE STEPS TO IMPLEMENT THE STANDARD

Part I: An Overview of the Steps to Implement the Standard

8. There are four core requirements to implement the Standard (as shown in Figure 2). They can be put in place sequentially, in any order, or in parallel. Each step is set out in further detail in this part of the Handbook. Cross references to the Standard, including its Commentary, are included in the column on the side of each page, with "CAA" referring to the Model Competent Authority Agreement, "CRS" referring to the Common Reporting Standard and "Com" referring to the Commentary. The page numbers refer to the pages in the consolidated Standard, as published in its second edition in 2017 (that includes the Model Competent Authority Agreement and the Common Reporting Standard, and the Commentaries thereon – accessible online using the link in the footnote below)[1].

Figure 2: The four core requirements to implement the Standard

Requirement 1: Translating the reporting and due diligence rules into domestic law, including rules to ensure their effective implementation	**Requirement 2:** Selecting a legal basis for the automatic exchange of information
Requirement 3: Putting in place IT and administrative infrastructure and resources	**Requirement 4:** Protecting confidentiality and safeguarding data

1 OECD (2017), Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition, OECD Publishing, Paris. Accessible at: http://dx.doi.org/10.1787/9789264267992-en.

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Requirement 1: Translating the reporting and due diligence rules into domestic law, including rules to ensure their effective implementation

9. The first core requirement for exchanging information automatically under the Standard is to require financial institutions to collect and report the specified information to the tax administration in the jurisdiction in which they are located. The tax administrations are then able to exchange that information with their automatic exchange partners.

10. The Standard provides a standardised set of detailed due diligence and reporting rules for financial institutions to apply to ensure consistency in the scope and quality of information exchanged. These due diligence and reporting rules are the Common Reporting Standard, or CRS. The definitions and procedures contained in the CRS are set out in Part II of this Handbook. Essentially, the requirements specify: the financial institutions that need to report; the accounts they need to report on; the due diligence procedures to determine which accounts they need to report; and the information to be reported.

Key points to consider when translating the CRS into domestic law

11. The level of detail included and the drafting approach taken when developing the due diligence and reporting requirements contained in the CRS and the Commentary was designed to provide as useful a tool as possible to assist in the translation of the requirements into domestic rules. This detailed approach is also intended to help ensure consistency among jurisdictions implementing the Standard. Based on the implementation experiences to date, there are a number of issues which jurisdictions need to consider when implementing the Standard domestically.

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The use of primary legislation, secondary legislation and guidance

12. To ensure financial institutions carry out the due diligence and reporting rules jurisdictions need to pass new legislation, which in some cases may have to be accompanied with a more detailed guidance. The majority of those jurisdictions that already implemented the requirements for the CRS adopted an approach whereby a significant level of detail is contained in subsidiary legislation/regulations with additional explanations following in guidance or a domestic set of FAQs. This is to both ensure the implementation process is as efficient as possible and to ensure greater flexibility when making any subsequent amendments.

13. In broad terms the primary legislation tends to include the high-level collection and reporting requirements arising from the Standard, such as those pertaining to their scope, the application of enforcement provisions on financial institutions for non-compliance with the reporting obligations and provisions to enable the subsequent introduction of the more detailed reporting requirements. As noted above, the more detailed aspects of the CRS are then outlined in secondary legislation/regulations. The remaining areas of the Commentary are usually included in official guidance or a set of domestic FAQs. In some cases, the Commentary is introduced by way of a reference made in the law or its accompanying guidance specifying its legal or interpretative nature.

14. In fact, there are numerous jurisdictions that decided to introduce not only the Commentary but even the CRS by means of a legal reference to the Standard. This is an equally workable solution as long as the relevant CRS provisions are adapted to reflect the jurisdiction-specific circumstances (such as, for example, the definition of the Reportable Financial Institution) and specify the dates that are largely left blank in the model text of the CRS.

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15. As far as the Commentary is concerned, jurisdictions should specifically consider how to incorporate the areas of the Commentary that either provide optional due diligence procedures for Financial Institutions to follow or that contain additional substantive detail, rather than pure clarifications. These are addressed in further detail below.

Optional provisions

16. There are areas where the Standard provides optional approaches for jurisdictions to adopt the one most suited to their circumstances. These optional provisions are set out below. Most of the optional approaches (in particular options 5 to 14) are intended to provide greater flexibility for Financial Institutions and therefore reduce their costs. Consequently, when implementing the Standard in domestic law some jurisdictions decided to allow for these optional approaches. Whether jurisdictions make use of the other optional provisions depends on the specific domestic context in which the CRS is implemented.

Reporting Requirements (Section I to the CRS)	
1. Alternative approach to calculating account balances. A jurisdiction that already requires Financial Institutions to report the average balance or value of the account may provide for the reporting of average balance or value instead of the reporting of the account balance or value as of the end of the calendar year or other reporting period.	Com p. 98
2. Use of other reporting period. A jurisdiction that already requires Financial Institutions to report information based on a designated reporting period other than the calendar year may wish to provide for the reporting based on such reporting period.	Com p. 99
3. Phasing in the requirement to report gross proceeds. The idea behind the option to report gross proceeds in a later year was introduced to allow Reporting Financial Institutions to have additional time to implement systems and procedures to capture gross proceeds for the sale or redemption of Financial Assets.	Com p. 105

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	4. Filing of nil returns. A jurisdiction may require the filing of a nil return by a Reporting Financial Institution to indicate that it did not maintain any Reportable Accounts during the calendar year or other reporting period. Requiring financial institutions to file nil returns will help jurisdictions in ensuring that all Reporting Financial Institutions are identified and comply with the CRS due diligence and reporting requirements.
	Due Diligence (Section II-VII of the CRS)
CRS p. 31, Com p. 108	**5. Allowing third party service providers to fulfil the obligations on behalf of the financial institutions.** A jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil the Reporting Financial Institution's reporting and due diligence obligations. The Reporting Financial Institution remains responsible for fulfilling these requirements and the actions of the service provider are imputed to the Reporting Financial Institution.
CRS p. 31, Com p. 108	**6. Allowing the due diligence procedures for New Accounts to be used for Preexisting Accounts.** A jurisdiction may allow a Financial Institution to apply the due diligence procedures for New Accounts to Preexisting Accounts. This means, for example, a Financial Institution may elect to obtain a self-certification for all Preexisting Accounts held by individuals consistent with the due diligence procedures for New Individual Accounts. If a jurisdiction allows a Financial Institution to apply the due diligence procedures for New Accounts to Preexisting Accounts, a jurisdiction may allow a Reporting Financial Institution to make an election to apply such exclusion with respect to (1) all Preexisting Accounts; or (2) with respect to any clearly identified group of such accounts (such as by line of business or location where the account is maintained).
CRS p. 31, Com p. 108	**7. Allowing the due diligence procedures for High Value Accounts to be used for Lower Value Accounts.** A jurisdiction may allow a Financial Institution to apply the due diligence procedures for High Value Accounts to Lower Value Accounts. A Financial Institution may wish to make such election because otherwise they must apply the due diligence procedure for Lower Value Accounts and then at the end of a subsequent calendar year when the account balance of value exceeds $1 million, apply the due diligence procedures for High Value Accounts.
CRS p. 32, Com p. 111	**8. Residence address test for Lower Value Accounts.** A jurisdiction may allow Financial Institutions to determine an Account Holder's residence based on the residence address provided by the Account Holder so long as the address is current and based on Documentary Evidence. The residence address test may apply to Preexisting Lower Value Accounts (less than $1 million) held by Individual Account Holders. This test is an alternative to the electronic indicia search for establishing residence and if the residence address test cannot be applied, because, for example, the only address on file is an "in-care-of" address, the Financial Institution must perform the electronic indicia search.

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9.	**Optional exclusion from Due Diligence for Preexisting Entity Accounts of less than $250,000.** A jurisdiction may allow Financial Institutions to exclude from its due diligence procedures Preexisting Entity Accounts with an aggregate account balance or value of $250,000 or less as of a specified date. If, at the end of a subsequent calendar year, the aggregate account balance or value exceeds $250,000, the Financial Institution must apply the due diligence procedures to identify whether the account is a Reportable Account. If this option is not adopted, a Financial Institution must apply the due diligence procedures to all Preexisting Entity Accounts.	CRS p. 38, Com p. 135
10.	**Alternative documentation procedure for certain employer-sponsored Group Insurance Contracts or Annuity Contracts.** With respect to a Group Cash Value Insurance Contract or Annuity Contract that is issued to an employer and individual employees, a jurisdiction may allow a Reporting Financial Institution to treat such contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to an employee/certificate holder or beneficiary provided that certain conditions are met. These conditions are: (1) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers twenty-five or more employees/certificate holders; (2) the employees/certificate holders are entitled to receive any contract value related to their interest and to name beneficiaries for the benefit payable upon the employee's death; and (3) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed $1 million. This provision is provided because the Financial Institution does not have a direct relationship with the employee/certificate holder at inception of the contract and thus may not be able to obtain documentation regarding their residence.	CRS p. 42, Com p. 153
11.	**Allowing Financial Institutions to make greater use of existing standardised industry coding systems for the due diligence process.** A jurisdiction may define documentary evidence to include any classification in the Reporting Financial Institution's records based on a standard industry coding system provided that certain conditions are met. With respect to a Preexisting Entity Account, when a Financial Institution is applying its due diligence procedures and accordingly required to maintain a record of documentary evidence, this option would permit the Financial Institution to rely on the standard industry code contained in its records.	Com p. 203

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CRS p. 43,
Com p. 156

12. Currency translation. All amounts in the Standard are stated in US dollars and the Standard provides for the use of equivalent amounts in other currencies as provided by domestic law. For example, a Lower Value Account is an account with an aggregate account balance or value of less than $1 million. The Standard permits jurisdictions to include amounts that are equivalent (or approximately equivalent) in their currency to the US dollars amounts as part of their domestic legislation. Further, a jurisdiction may allow a Financial Institution to apply the US dollar amount or the equivalent amounts.

Definitions (Section VIII of the CRS)

Com p. 181

13. Expanded definition of Preexisting Account. A jurisdiction may, by modifying the definition of Preexisting Account, allow a Financial Institution to treat certain New Accounts held by preexisting customers as a Preexisting Account for due diligence purposes. A customer is treated as preexisting if it holds a Financial Account with the Reporting Financial Institution or a Related Entity. Thus, if a preexisting customer opens a New Account, the Financial Institution may rely on the due diligence procedures it (or its Related Entity) applied to the customer's Preexisting Account to determine whether the account is a Reportable Account. A requirement for applying this rule is that the Reporting Financial Institution must be permitted to satisfy its AML/KYC procedures for such account by relying on the AML/KYC performed for the Preexisting Account and that the opening of the account does not require new, additional, or amended customer information.

Com p. 183

14. Expanded definition of Related Entity. Related Entities are generally defined as one Entity that controls another Entity or two or more Entities that are under common control. Control is defined to include direct or indirect ownership of more than 50 percent of the vote and value in an Entity. As provided in the Commentary, most funds will likely not qualify as a Related Entity of another fund, and thus will not be able to apply the rules described above for treating certain New Accounts as Preexisting Accounts or apply the account aggregation rules to Financial Accounts maintained by Related Entities. A jurisdiction may modify the definition of Related Entity so that a fund will qualify as a Related Entity of another fund by providing that control includes, with respect to Investment Entities described in subparagraph (A)(6)(b), two entities under common management, and such management fulfils the due diligence obligations of such Investment Entities.

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15. **Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle.** With respect to an Exempt Collective Investment Vehicle, a jurisdiction may provide a grandfathering rule if the jurisdiction previously allowed collective investment vehicles to issue bearer shares. The Standard provides that a collective investment vehicle that has issued physical shares in bearer form will not fail to qualify as an Exempt Collective Investment Vehicle provided that: (1) it has not issued and does not issue any physical shares in bearer form after the date provided by the jurisdiction; (2) it retires all such shares upon surrender; (3) it performs the due diligence procedures and reports with respect to such shares when presented for redemption or payment; and (4) it has in place policies and procedures to ensure the shares are redeemed or immobilised as soon as possible and in any event prior to the date provided by the jurisdiction.

CRS p. 50

16. **Controlling Persons of a trust.** With respect to trusts that are Passive NFEs, a jurisdiction may allow Reporting Financial Institutions to align the scope of the beneficiary(ies) of a trust treated as Controlling Person(s) of the trust with the scope of the beneficiary(ies) of a trust treated as Reportable Persons of a trust that is a Financial Institution. In such case the Reporting Financial Institutions would only need to report discretionary beneficiaries in the year they receive a distribution from the trust. Jurisdictions allowing their Financial Institutions to make use of this option must ensure that such Financial Institutions have appropriate safeguards and procedures in place to identify whether a distribution is made by their trust Account Holders in a given year.

Com p. 198

Substantive additional detail

17. There are also areas of the Commentary that contain substantive additional detail that supplements the rules contained in the CRS. When considering how to implement the Commentary into domestic law and whether it is appropriate to include particular requirements into primary legislation, secondary legislation or regulations, or guidance, jurisdictions should specifically consider how to incorporate the areas of the Commentary that either provide optional due diligence procedures for Financial Institutions to follow or that contain additional substantive detail, rather than pure clarifications. Independent of the approach chosen by the jurisdiction it should be ensured that the substantive additional details

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from the Commentary are effectively applied in practice. In fact, depending on the local legislative framework, these may need to be included in binding legislation to be effective. The effective incorporation of these areas into the domestic laws is reviewed by the Global Forum within its mandate to ensure a level playing field implementation of the Standard.

18. The areas of the Commentary that contain the substantive additional detail, inter alia, include the following:

Com p. 102 - 104

- Requiring the reporting of place of birth[2] and date of birth and the collection of Taxpayer Identification Numbers (TINs);

Com p. 111, 112 and 113

- Where the residence address test is allowed for (see the optional provisions above), the provisions relating to dormant accounts, the Documentary Evidence that can be relied on and the treatment of accounts opened at a time prior to AML/KYC requirements;

Com p. 115 (para 13)

- Applying the change of circumstances provisions to the residence address test (these provisions are explicitly provided for in the electronic records test, but the CRS does not apply them directly to the residence address test);

Com p. 148

- Ensuring that Financial Institutions must rely only on a self-certification from either the Account Holder or the Controlling Person to determine whether a Controlling Person of a Passive NFE is a Reportable Person;

Com p. 158 and p. 159

- The definition of the residence of a Financial Institution;

Com p. 104

2 The place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.

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- The approach taken when considering whether a Financial Institution maintains an account; Com p. 176

- The treatment of trusts that are Non-Financial Entities (NFEs); Com p. 192

- The procedure when reporting information in relation to jointly held accounts; Com p. 200

- Definition of the term "change in circumstances"; Com p. 116 (para 17)

- Imposing sanctions for providing false self-certifications; Com p. 208

- Explicitly requiring that the status of the New Entity Account is to be re-determined in cases of a change in circumstances that causes the Financial Institution to have reason to know that the self-certification or other documentation associated with the account is incorrect or unreliable; and Com p. 148

- Ensuring that the records of the steps undertaken and any evidence relied upon for the purposes of the due diligence provisions are available for a period of at least 5 years after the end of the relevant reporting date. Com p. 209

19. The definition of Controlling Persons is an important additional detail provided in the Commentary that supplements the CRS. It must be construed in such a manner to correspond to the definition of the term "beneficial owner" as described in the Financial Action Task Force ("FATF") Recommendation 10 and the accompanying Interpretative Note as adopted in February 2012. Com p. 198, 199; CRS p. 57

20. The Commentary further clarifies that the AML/KYC process adopted to determine the Controlling Persons of an Account Holder of a New Entity Account must be in line

with both FATF 2012 Recommendations 10 and 25 and their Interpretative Notes. Accordingly, the Controlling Persons are the natural persons who are in control of the Account Holders of the New Entity Accounts (including through a chain of ownership or control).

Com p. 198, 199

21. In order to provide sufficient and concrete guidance to the Reporting Financial Institutions on the identification of Controlling Persons, jurisdictions need to assess their AML/KYC regulations and determine whether they are aligned with the FATF Recommendations, as set out in the Commentary.

22. Below is an example on how a jurisdiction can provide Financial Institutions with guidance on determining Controlling Persons in compliance with the CRS and FATF Recommendations.

In legislation implementing the CRS, jurisdiction C has defined that in respect of an entity Controlling Persons are the natural persons who exercise control over the entity (interpreted in a manner consistent with FATF Recommendations (as amended)) and includes (a) in the case of a trust: (i) its settlors, (ii) its trustees, (iii) its protectors (if any), (iv) its beneficiaries, (regardless of whether or not any of them exercises control over the trust) and (v) any other natural persons exercising ultimate effective control over the trust; and (b) in the case of a legal arrangement other than a trust, persons in equivalent or similar positions to those described above.

In the explanatory guide to the CRS, jurisdiction C clarified that with respect to New Accounts the definition of Controlling Persons is intended to correspond to the term "beneficial owner" as described in Recommendation 10 and the Interpretative Note to Recommendation 10 of the FATF 2012 Recommendations.

For jurisdictions that have similar legal arrangements to trusts more guidance on identification of involved parties can be provided together with description on how to identify Controlling Persons in compliance with the CRS and FATF Recommendations.

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Wider approach to implementing the Standard

Annex 5 p. 298,
CRS p. 57,
Com p. 193 - 194

23. The default due diligence procedures in the CRS (in particular the indicia search procedures) are designed to identify accounts which are held by residents of jurisdictions that feature on the domestic lists of Reportable Jurisdictions at the moment the due diligence procedures are performed. However, a large majority of implementing jurisdictions decided to go beyond the requirements of the Standard, and chose to implement the wider approach by extending the due diligence procedures to cover all non-residents or residents of jurisdictions with which they have an exchange of information instrument in place.

24. There are good reasons why jurisdictions may wish to choose the wider approach and apply the due diligence procedures beyond the current list of Reportable Jurisdictions. It is beneficial for both the implementing jurisdictions and the Financial Institutions to separate the due diligence procedures from the often lengthy and fluid process of establishing the underlying exchange relationships. In general, imposing a due diligence procedure that is independent from the dynamic list of Reportable Jurisdictions allows the jurisdictions additional time to set in place all the pending or intended exchange relationships. In that sense it provides for a faster or more efficient implementation of the Standard. Similarly, efficiencies are to be gained at the level of the Financial Institutions. In general, the fewer times a Financial Institution needs to complete the processes required under the Standard, the less costly it is for the Financial Institution to comply with the Standard.

25. In relation to New Accounts, the Financial Institutions are generally required to ask the person opening the account to certify their residence for tax purposes. If the person is resident in a jurisdiction with which the implementing jurisdiction

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automatically exchanges information, the details of the account need to be reported as set out in the Standard. But the Standard does not specify what the Financial Institution should do with the tax residency information of accounts that do not need to be reported (aside from for audit purposes).

26. Similarly for Preexisting Accounts, the general requirement is for Financial Institutions to use the information they have on file to establish whether information about the Account Holder needs to be reported. Again, the Standard does not impose rules on what to do with the results of the searches where the information does not need to be reported (aside from for audit purposes).

27. It would not be efficient for Financial Institutions to later have to re-establish whether an account is reportable each time new automatic exchange relationships are entered into. To minimise these costs a majority of implementing jurisdictions required (or made it possible as an option) that:

1. Financial Institutions collect and retain the information, ready to report, in relation to all non-residents rather than just residents of those jurisdictions with which the implementing jurisdiction has the CRS MCAA, a bilateral CAA or an exchange basis under EU law in place.

2. Financial Institutions collect information and maintain a record, ready to report, in relation to all residents of those jurisdictions with which the implementing jurisdiction has an underlying legal exchange relationship that permits for automatic exchange (e.g. a DTC or other signatories of the Convention on Mutual Administrative Assistance in Tax Matters (the "Convention"), including where a CAA has not been concluded.

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3. Moreover, in some cases the financial institutions were also able to report all the information held to the tax authority, rather than only the information currently required to be exchanged, which would again require less sorting of information by the financial institution and would render due diligence processes more efficient. This can be referred to as the "widest approach".

28. The mentioned wider approaches (and other possible options) could significantly reduce costs for Financial Institutions (and possibly tax administrations), because they would not need to perform additional due diligence procedures to identify their Account Holders each time a jurisdiction enters into a new automatic exchange relationship.

29. There could also be other benefits from adopting a wider approach, such as improving the quality of the information collected in relation to reportable accounts and therefore the overall effectiveness of the system in tackling tax evasion. For example, if a jurisdiction does adopt a wider approach a question arises as to whether Financial Institutions should also be required to collect a TIN for all New Account Holders, to the extent a TIN has been issued to the Account Holder by its jurisdiction of residence. Obtaining and retaining the TIN would not only ensure the information is immediately available when new automatic exchange relationships are entered but would also help ensure the accuracy of all the information collected by the Financial Institution. Although not required by the Standard, this potential increase in effectiveness could be further enhanced if the TINs were validated, even in high-level ways, by Financial Institutions or the tax administration to cross-check the residency information provided by the customer.

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30. This links to whether the information in relation to jurisdictions with which the implementing jurisdiction does not currently exchange information should also be reported to the tax authority for the information to be cross-checked against information the tax administration holds, further enhancing the compliance benefits (e.g. cross-checking the accuracy of the exchanged information as well as using the information for the tax authority's own compliance benefits).

Transitional challenge resulting from staggered adoption of CRS

CRS p. 58,
Com p. 195

31. The CRS contains a so-called "look through" provision pursuant to which Reporting Financial Institutions must treat an Account Holder that is an Investment Entity described in Section VIII, subparagraph (A)(6)(b) (or branch thereof) that is not a Participating Jurisdiction Financial Institution as a Passive Non-Financial Entity (NFE) and report the Controlling Persons of such Entity that are Reportable Persons. For the purposes of this provision, a Participating Jurisdiction is a jurisdiction with which an agreement is in place pursuant to which there is an obligation to automatically exchange information on Reportable Accounts and is identified on a published list.

32. Almost all of the 102 jurisdictions that committed to implement the Standard in time for the first exchanges to take place in 2017 or 2018 now have their domestic reporting laws in force. In parallel, jurisdictions are establishing the necessary international exchange relationships, primarily by activating bilateral exchange relationships under the CRS MCAA. At present, about 25 of the 2018 committed jurisdictions are still to activate their relationships under the Convention and the CRS MCAA. In light of the above, it is expected that the dynamic period for operationalising these commitments and putting in place exchange agreements may still continue until the beginning of 2018.

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33. This presents operational challenges to Financial Institutions, because they will need to manage Entity Account classifications jurisdiction by jurisdiction as well as changes in entity classifications and the associated on-boarding requirements as agreements come in place. These difficulties may not be balanced by significant compliance benefits on the assumption that committed jurisdictions will deliver on their commitments.

34. Therefore, the first edition of this Handbook provided for a more relaxed transitory approach that was set to expire on 1 July 2017. This transitory period has now expired.

35. However, taking into account that, as set out above, a group of about 25 jurisdictions committed to a 2018 timeline are still in the process of putting the international and/or domestic legal framework for CRS exchanges in place, including the upcoming activation of bilateral exchange relationships under the CRS MCAA or other appropriate legal instruments, it would be reasonable to continue to provide transitory relief with respect to the "look-through" for certain Investment Entities located in Non-Participating Jurisdictions by considering a jurisdiction a Participating Jurisdiction, provided that it is reasonable to assume, based on the actual progress made, that the exchange relationship with the jurisdiction will be activated in time, and the jurisdiction has the legal and operational framework in place, to allow the exchange of the required CRS information for 2017 to take place in 2018.

36. As a result, Reporting Financial Institutions would not be required to apply the due diligence procedure for determining the Controlling Persons of such Investment Entities or for determining whether such Controlling Persons are Reportable Persons. This of course should be revisited in the event commitments are not delivered on. A jurisdiction adopting this approach should make a statement that its list of Participating

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Jurisdictions will be re-assessed and updated in due course, based on whether the listed Participating Jurisdictions have actually delivered on their commitment vis-à-vis the jurisdiction and in light of the criteria set out above. A removal of a jurisdiction from the list of Participating Jurisdictions would then trigger an obligation on Reporting Financial Institutions to apply the due diligence procedures for determining whether the Controlling Persons of Investment Entities as described in Section VIII, subparagraph (A)(6)(b) in such jurisdictions are Reportable Persons. To reduce burdens for Reporting Financial Institutions, a jurisdiction may also consider allowing their Reporting Financial Institutions to apply to such accounts due diligence procedures for Preexisting Accounts, even if such accounts were opened after 1 January 2016.

Jurisdiction-specific low risk institutions and accounts

37. Given the standardised approach taken in the CRS, there may be jurisdiction-specific Financial Institutions and Financial Accounts that present a low risk of being used for tax evasion but which the CRS does not specifically identify as such. The CRS therefore provides for jurisdictions to identify these as Non-Reporting Financial Institutions or Excluded Accounts (i.e. non-reportable accounts) in their domestic law. This is a key area for jurisdictions to consider during the legislative process.

38. Jurisdictions will then need to consider whether the institutions and accounts that have been identified as potentially being low risk meet the terms of the Standard. The Standard requires that either the institution or account meets the conditions required by the categories of low risk institutions or accounts contained in the CRS, or they must be similar to the specified categories and have equivalent conditions to any particular requirements they do not meet. Finally, their inclusion as low risk must not frustrate the purposes of the Standard.

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39. It is expected that each jurisdiction has a single list of low risk financial institutions and a single list of low risk financial accounts (or excluded accounts) with respect to the Standard and that these lists are published. The Global Forum is charged with assessing the jurisdiction-specific lists to ensure the conditions of the Standard have been met, make recommendation as to the removal of financial institutions and accounts that do not meet the condition and, in doing so, provide for a level playing field.

Differences to FATCA

40. An explicit objective when designing the Standard was to build on FATCA, and more specifically the FATCA IGA, as by maximising consistency with the FATCA IGA governments and financial institutions could leverage on the investments they have already made for FATCA. This was to ensure that a new international standard could be created, which would deliver the most effective tool to tackle cross-border tax evasion, while minimising costs for governments and financial institutions.

41. While a large proportion of the Standard precisely mirrors the FATCA IGA, there are also areas of difference. These differences are due to: the removal of US specificities (such as the use of citizenship as an indicia of tax residence and the references to US domestic law found in the FATCA IGA); or where certain approaches are less suited to the multilateral context of the Standard, as opposed to the bilateral context of the FATCA IGA.

42. Many of these differences do not in fact require jurisdictions to take a different approach when implementing the two systems, further facilitated by the possibility in the Model 1 FATCA IGA for jurisdictions to allow financial institutions to apply the rules contained in the US FATCA Regulations as an alternative. This is because the Standard often incorporates

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definitions and processes contained in the current US FATCA Regulations. It is therefore open to jurisdictions to adopt a single approach to these areas, both in relation to implementing the Standard and the FATCA IGA. Certain of these areas, as well as those where a unified approach is not possible, are highlighted in Part III of the Handbook[3].

Effective implementation

43. Implementing the Standard effectively not only requires the reporting obligations to be translated into domestic law but the introduction of a framework to enforce compliance with those obligations. The Standard therefore specifically requires jurisdictions to ensure that the CRS is effectively implemented and applied by financial institutions, including the introduction of provisions that:

1. prevent circumvention of the CRS (anti-abuse provisions, such as for example domestic mandatory disclosure rules for arrangements that aim at circumventing the CRS and an active strategy to detect areas of risk of non-compliance and trends in the market that could compromise the overall integrity of the CRS – for further detail, see also the OECD CRS Loophole Strategy on the AEOI Portal);

2. require Reporting Financial Institutions to keep records of the steps undertaken to comply with the CRS (record-keeping requirements); and

3. permit the effective enforcement of the obligations in the CRS (including penalties for non-compliance).

3 It should be noted that the comparisons reflect analysis by the OECD Secretariat to assist officials in their deliberations on implementation of the Standard alongside the Model 1 FATCA IGA. The interpretation and application of the FATCA IGAs remains a matter for the Parties to the Agreements.

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44. Jurisdictions therefore need to assess the compliance framework they have and determine whether it meets the requirements of the Standard and that it is applicable in relation to a failure to meet the obligations of the domestic rules implementing the Standard. Where there are gaps, new provisions will need to be introduced. The means to promote and review compliance by the Reporting Financial Institutions are addressed further in the following section.

Promoting and reviewing compliance by Reporting Financial Institution

45. In conjunction with implementation of the Standard, jurisdictions need to consider means by which they can facilitate and monitor compliance by Financial Institutions (FIs) with the Standard. For the Standard to be effectively implemented globally, each jurisdiction will need to rely on every other jurisdiction in terms of promoting and monitoring compliance by its domestic FIs with the Standard.

46. In this respect, jurisdictions may in the first place wish to focus their efforts on promoting compliance through effective communication with Reporting FIs, and preventing non-compliance through risk assessment of policies, procedures and systems of FIs, with early intervention to prevent problems developing. Good communications and risk assessments will reduce the need for resource-intensive compliance audits.

47. Jurisdictions will also need to consider whether existing regulatory or tax audit programs can be adapted to monitor compliance with the Standard or whether a new review methodology should be employed. Since the CRS relies in many aspects on AML/KYC procedures, compliance with relevant AML/KYC obligations is a prerequisite for the proper functioning of the CRS and should therefore be an integral part of the compliance review procedure.

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48. For example, in many cases FIs' compliance with AML/KYC obligations is monitored and enforced by a different regulatory body from the tax authority; this section does not intend to suggest that the authority responsible for monitoring or enforcing compliance with the Standard duplicate or re-evaluate the efforts of the body responsible for monitoring or enforcing AML/KYC compliance.

This section:

- Explores ways to promote compliance;
- Suggests risk-based criteria to monitor compliance;
- Discusses implementing a compliance review either through existing procedures or by creating a new compliance review program.

49. This section is to be understood as a guide that could be used by implementing jurisdictions when setting the framework for ensuring compliance by FIs. It does not intend to set a standard for compliance procedures in the context of the Standard. The tax administrations and regulatory bodies of jurisdictions are different in a number of important ways, including with respect to their institutional legacies, the tax systems they administer, and the broader context they are part of. Some of the implementing jurisdictions do not have a tax administration at all. As a result, there is no "one method fits all" for achieving and enforcing compliance and jurisdictions will need to choose the methods that are most adequate and appropriate for them.

Raising awareness and promoting compliance

50. In the first few years of implementation, FIs and their advisors may need assistance in understanding the rules and requirements of the Standard. A jurisdiction may consider ways in which it can assist Reporting FIs in understanding

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their obligations, with a view to enhancing the quality of the information being reported and reducing the number of reporting errors. Non-Financial Entities will also need to understand the rules of the Standard, as to allow them to properly identify and classify themselves, and when necessary, their Controlling Persons, to Reporting FIs. This could for instance be achieved through publishing guidance notes that explain the jurisdiction's implementing legislation in plain language. A jurisdiction could consider whether to provide general guidance or provide industry- or case-specific explanations of its legislation.

51. A jurisdiction could also consider putting in place a regular meeting cycle with the financial sector to discuss implementation issues. These discussions may prevent misunderstandings, help identifying areas in which additional national or OECD guidance is needed and provides insight to government officials on how the requirements of the Standard are actually implemented by FIs at the operational level.

52. A jurisdiction may also want to consider how it may reach Reporting FIs that do not have established relationships with government officials. This could for instance be accomplished by hosting webcasts to explain the requirements of the Standard or by having government officials organise and participate in a wide range of conferences that are attended by different industries.

Monitoring compliance

Identifying Reporting Financial Institutions

53. An important aspect to ensuring compliance with the Standard is to ensure that all Reporting FIs are identified by the responsible government agency and fulfil their due diligence and reporting obligations under the Standard.

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54. One possible method for jurisdictions to confirm that Entities have identified themselves as Reporting FIs and are complying with the due diligence and reporting requirements is to establish a list of Reporting FIs. The list could be created by requiring Reporting FIs to register for the purposes of the Standard. In compiling the list, jurisdictions could also rely on the IRS FATCA FFI list as a starting point, bearing in mind, however, that the scope of financial institutions with reporting obligations under both regimes is not exactly the same.

55. In addition to putting those FIs on the list that were already registered for FATCA purposes or that have come forward by own initiative, the more difficult and crucial task is to identify those Entities that are FIs, but have not made themselves known. In that respect, a jurisdiction could consider what means it has available to create a list of Entities resident in (or have a branch located in) the jurisdiction that may meet the definition of a Reporting FI. For example, some jurisdictions require Entities to indicate their type of business on their annual tax return or they may have been assigned standard industry codes by a government agency (e.g. by the Chamber of Commerce or regulatory supervisors). Jurisdictions could also use data from regulatory bodies, such as the regulators of the insurance, banking or the investment fund sector.

56. This information would allow the tax authority to accumulate a list of Entities that may be Reporting Financial Institutions and cross-check such a list against a list of Reporting Financial Institutions that have filed CRS information reporting returns during the calendar year (or other appropriate reporting period). The tax authority could then follow up with any Entities present on the first mentioned list and not present on the list of Reporting Financial Institutions that have filed CRS information reporting returns during the calendar year (or other appropriate reporting period) in order to investigate whether such Entities are in fact Reporting Financial Institutions

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that maintain Financial Accounts that should be reported for CRS purposes. In this regard, providing for nil returns would facilitate the reconciliation between the external sources identifying potential Reporting Financial Institutions and the actual Financial Institutions that file CRS reports.

Identifying Risk of Non-Compliance

57. Jurisdictions will need to consider how they will monitor ongoing compliance with the Standard and identify potential compliance risks and failures. The primary resource available upon which jurisdictions can make a risk assessment will be the CRS information reported by domestic FIs. Some factors related to reporting that may, for instance, indicate the need for further compliance review include:

- Reporting of a significant number of undocumented accounts;
- Reporting of a significant number of account closures;
- Inquiries or information indicating underreporting or inaccurate reporting from the Competent Authority of another Participating Jurisdiction;
- Absence of reporting;
- Drastic changes in the volume of reporting between calendar years or other appropriate reporting periods; and
- Reporting of TINs for significantly fewer accounts in comparison with other Reporting FIs.

58. Jurisdictions may also monitor external resources for information regarding an FI's compliance, such as an investigation or a sanction imposed by a regulator or other government agency with oversight over the FI's compliance with AML/KYC procedures.

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59. Jurisdictions may want to consider how they can efficiently share information with other jurisdictions. For instance, if a jurisdiction has discovered compliance failures in the branch operations of an FI located in their jurisdiction, these failures may be systemic and affect the reporting filed with other jurisdictions in which the FI has a branch. Jurisdictions will have an interest in ensuring that the FI corrects any systemic failures and remediates past failures. Therefore, it would be helpful for jurisdictions to consider whether and how they can best share such information with one another.

60. In addition to identifying FIs with potential compliance risks, authorities could also further adopt a risk based approach by focussing their reviews on key risk areas of the CRS or by focussing on those aspects of the CRS which, from past experience, or based on intelligence gathered as part of the CRS loophole strategy, have demonstrated to present most compliance problems.

61. Once a tax administration identifies the presence of factors indicating potential compliance risks, it will need to decide how best to proceed. This could for instance be done through sending inquiries to the FI requesting responses that explain discrepancies or by conducting a compliance review.

Implementing a compliance review process

62. A CRS compliance review may be included as a part of the tax authority's normal tax payer review cycle of Entities doing business in the jurisdiction and/or be conducted in response to the presence of one or more indicators of potential non-compliance with the Standard. This section provides considerations for a jurisdiction when implementing a compliance review process.

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Review Methodologies

63. A jurisdiction has many options when designing and implementing a compliance review procedure. A logical starting point for any compliance review would be to review the internal control framework maintained by the FIs to comply with their obligations under the Standard as discussed below. Another approach could be to review a sample of accounts.

64. These methodologies can also be combined to design a multi-phase compliance review using the risk-based approach discussed above. The methodologies discussed in this section are only a few of the possible approaches to a compliance review procedure and thus are not intended to serve as a recommendation or standard for a compliance review process.

Documentation of Internal Controls as a common starting point

65. As a common starting point to a compliance review, jurisdictions could require that FIs maintain internal controls that are documented by the FI and that such documentation is made available to the tax authority upon request. The process of establishing and documenting internal controls will be familiar to most FIs that are required to do so for regulatory purposes.

66. The detail and content of an FI's internal controls should be proportional to the business-specific risk and number of accounts maintained by the FI.

67. The benefit of requiring FIs to document internal controls is that it requires FIs to establish a compliance program in which they establish all the necessary components in place to comply with the due diligence and reporting requirements of the CRS and review such components to ensure their adequacy.

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68. Internal controls may include:

- Oversight of the due diligence and reporting requirements. The FI could appoint an individual or individuals to manage the FI's compliance with requirements of the Standard and be responsible for managing communications with the jurisdiction's relevant authorities regarding the Standard.
- Written policies and procedures. The FI could document its policies and procedures for complying with its due diligence and reporting requirements (including compliance with applicable AML/KYC requirements). FIs could also have a procedure for updating internal controls based on changes to its business or changes to local law.
- Adequate training and monitoring of compliance with such policies and procedures by its employees. This could include, for example, ensuring that there is adequate supervision of employees that are responsible for due diligence and reporting under the Standard. This could also include training for employees to be aware of their particular responsibilities and how to report any suspicious activities.
- Maintenance of sufficient systems for due diligence, record keeping and reporting. The FI could periodically conduct business-specific risk assessments, taking into consideration products, services, customers, and controls in order to evaluate the adequacy of its systems and ensure that the FI's systems are employed with respect to all relevant business segments.
- Periodic, independent, risk-based testing of controls, the results of which are documented. Where considered appropriate, the FI could appoint an independent reviewer to periodically test the Reporting FI's internal controls and compliance with its due diligence and reporting requirements. The process for conducting the review and results of the testing could be documented by

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the FI and/or the independent reviewer. With respect to any deficiencies documented in the review, the FI could also include a description of the actions taken to correct the deficiency.

Review by Testing a Sample of Accounts

69. A review conducted by testing a sample of accounts is a spot check of the FI's compliance with each of the due diligence and reporting requirements of the Standard. The numerical results of the review could be documented by the auditor and include an explanation of the results. Based on the numerical results of the sample tested, a conclusion can be reached as to whether any non-compliance was isolated and infrequent or systemic. For example, the auditor could test a sample of accounts to evaluate whether the FI is obtaining, reviewing, and maintaining documentation in accordance with the requirements of the Standard. The auditor could also examine account statements and other schedules used by the FI for account reporting purposes and review such forms along with copies of original and amended reports filed with the tax authority in order to determine that the amounts and other information reported on those forms are accurate.

70. The benefit of this approach is that it provides objective information to the tax authority for evaluating the FI's compliance. It also provides a tax authority with numerical results for the imposition of penalties. This methodology may impose significant costs on the FI if the review is conducted by an internal or external auditor, and it may impose significant costs on the jurisdiction. However, these costs may be mitigated by, for example, requiring this type of review only if risk-based factors are present. Alternatively, and if the tax authority requires FIs to document its internal controls, a jurisdiction could only require a sample testing of accounts if the documentation provided indicates weaknesses of internal controls. Lastly, a jurisdiction

could permit FIs with a relatively small number of accounts or average account balances to request a waiver from testing and demonstrate their compliance through other means, such as making a certification of compliance.

Resources available to conduct a Compliance Review

71. Typically a compliance review would be conducted directly by the tax authority of the implementing jurisdiction. Certain jurisdictions may not have any tax authority or not have sufficient resources available in the tax authority with the expertise to conduct CRS compliance reviews.

72. Such jurisdictions may consider giving this responsibility to a regulator or other governmental agency that regularly conducts internal control reviews of compliance with all applicable legal obligations of FIs (e.g. financial regulators).

73. Another option would be to allow FIs to use an external or internal reviewer to conduct the compliance review. The jurisdiction could condition this allowance on requiring the results of the review to be available to the tax authority (or other governmental authority) on request or to be submitted to such authority. A jurisdiction should also be cautious not to limit its ability to make independent inquiries. If a jurisdiction selects this option, it could consider drafting competency and independence requirements to ensure that the person designed by the FI to conduct the compliance review has the necessary skill set and can report findings that reflect the independent judgment of the reviewer.

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Requirement 2: Selecting a legal basis for the automatic exchange of information

The legal instrument

74. A key component of effective implementation of the Standard is the adoption of an international framework that enables automatic exchange of information between the jurisdictions.

75. Given that there are over 100 jurisdictions[4] that have now committed to exchanging information under the Standard by 2018, a multilateral approach has proven to be the preferred and most practical manner for putting in place an international automatic exchange framework with all interested appropriate partners. Exchange relationships for CRS information between jurisdictions are typically based on Article 6 of the multilateral Convention on Mutual Administrative Assistance in Tax Matters that provides for automatic exchange of information as one of the envisaged forms of assistance between the respective tax administrations of the over 110 jurisdictions currently participating in the Convention.

76. The more detailed procedures regulating the modalities of the exchange are then set out in the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information ("MCAA"), which was specifically drafted for the purposes of enabling the automatic exchange of information pursuant to the Standard within the framework of the Convention and is based on the Model CAA contained in the Standard. The MCAA is addressed in further detail below.

77. Other alternative legal instruments that can provide legal basis for information exchange under the Standard include Double Tax Treaties ("DTTs") or Tax Information Exchange

4 www.oecd.org/tax/transparency/AEOI-commitments.pdf

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Agreements ("TIEAs") as long as these allow the automatic exchange of information. For instance, it should be noted that automatic exchange goes beyond the OECD standard model TIEA, so it would need to be specifically included to allow for the TIEA to be used for exchanges under the Standard that may be achieved by inserting the language of Article 5A of the OECD Model Protocol. Further examples include the amended EU Directive on Administrative Cooperation ("DAC2"), agreements between the EU and third countries as well as other bilateral agreements, such as the UK-CDOT agreements that regulate exchanges between the UK and its crown dependencies and overseas territories.

CAA p. 21

78. In addition to the international legal instrument for exchanges of tax information, automatic exchange relationships typically require an additional administrative agreement between Competent Authorities that further sets out the details of the information to be exchanged, as well as the timing and the operational modalities for the automatic exchanges. The Standard therefore contains a Model CAA with three options developed to suit the different exchange relationship scenarios. The first Model CAA is a bilateral and reciprocal model. It is designed to be used in conjunction with Article 26 of the OECD Model Tax Convention. The second Model CAA is a non-reciprocal model provided for use where appropriate (e.g., where a jurisdiction does not have an income tax). The third Model CAA is designed as an umbrella agreement intended to operationalise a multilateral legal instrument such as the Convention. The third approach, i.e. a multilateral agreement between Competent Authorities, which has taken shape in form of the MCAA mentioned above, is by far the most popular as it significantly reduced the time and resources necessary to negotiate multiple bilateral agreements. If only a bilateral approach were available for the implementation of the international legal framework for CRS exchanges, this would have required over 5000 bilateral negotiations between

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the current 102 committed jurisdictions, whereas under the multilateral approach each committed jurisdiction would only sign one agreement.

The Multilateral Competent Authority Agreement (MCAA)

79. On 29 October 2014, the first 51 jurisdictions signed the MCAA[5] to implement the Standard. Over the last two years, many more have followed suit, bringing the total number of signatories to 98 as of 1 March 2018[6]. It is expected that further jurisdictions will join the MCAA in the near future.

80. The MCAA is concluded under Article 6 of the Convention and therefore provides the most efficient route to widespread exchange. This multilateral route saves the time and resources that would need to be invested in bilateral negotiations with each single intended exchange partner, while at the same time preserving the bilateral nature of the exchange relationships.

81. Although the MCAA is a multilateral agreement, exchange relationships under the Standard require that both jurisdictions provide a subsequent notification stating that they wish to exchange with each other. This is necessary since the MCAA is a framework agreement, and it does not become operational until domestic legislation is in place and the requirements on confidentiality and data protection are met. Therefore, the notifications to the Co-ordinating Body Secretariat (the OECD) under section 7 of the MCAA have to include:

1. a confirmation that domestic legislation is in place to implement the CRS;

5 www.oecd.org/tax/exchange-of-tax-information/multilateral-competent-authority-agreement.htm

6 www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/MCAA-Signatories.pdf

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2. a confirmation whether the jurisdiction shall be listed as a non-reciprocal jurisdiction;

3. a specification of the transmission and encryption methods;

4. a specification of the data protection requirements to be met in relation to information exchanged by the jurisdiction;

5. a confirmation that the jurisdiction has appropriate confidentiality and data safeguards in place; and

6. a list of its intended exchange partner jurisdictions under the MCAA, including a confirmation that the listing jurisdiction will comply with the data protection requirements stipulated by its potential exchange partners in their notifications under section 7(1)(d).

82. Therefore, a particular bilateral relationship under the MCAA becomes effective only if both jurisdictions have the Convention in effect, have filed the above notifications and have listed each other. The Co-ordinating Body Secretariat regularly carries out activation rounds to collect notifications from jurisdictions and activate bilateral exchange relationships under the MCAA. The full list of the over 2700 automatic exchange relationships that are currently activated is available online on the AEOI Portal.[7]

83. The substantive provisions of the MCAA set out the details necessary to administer the exchange relationships between the respective Competent Authorities. In particular, the MCAA specifies the following information:

7 www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/

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1. the underlying legal instrument under which the information will be exchanged;

2. the precise information to be exchanged and the time and manner of that exchange;

3. the format and transmission methods, and provisions on confidentiality and data safeguards;

4. details on collaboration on compliance and enforcement; and

5. details of entry into force, amendments to, suspension and cancellation of the MCAA.

Requirement 3: Putting in place IT and administrative infrastructure and resources

84. The legal framework for the collection and exchange of information is only part of the framework when it comes to implementing the Standard. Tax administrations also require technical and administrative capacity to properly manage the information (whether sending or receiving data). It is important to consider these requirements early in the implementation process to ensure adequate resources are put in place by the time of exchange. Figure 3 depicts the key areas of the automatic exchange framework that rely on administrative and IT capacity. These are explained in greater detail below.

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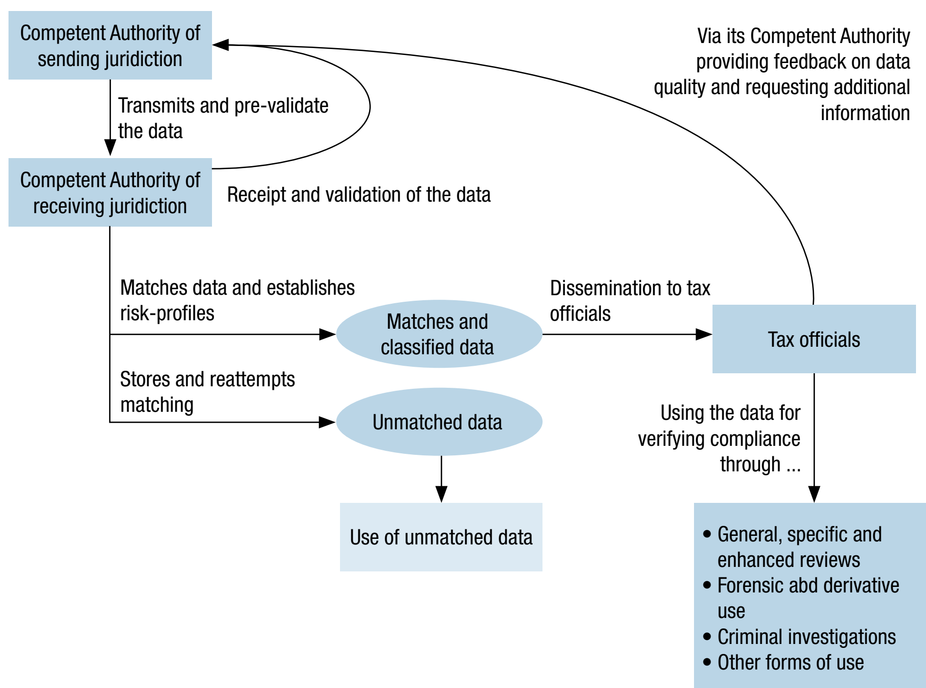
Figure 3: IT and administrative infrastructure: areas to consider



1. Collecting and reporting the information

85. The first element to the IT and administrative infrastructure is the reporting that takes place by Financial Institutions to the tax administration (or the authority responsible for the exchange of tax information in jurisdictions that do not have a tax administration).

CAA p. 25

86. Consideration will need to be given to the deadlines for Financial Institutions to report the information. It will need to be after the end of the calendar year and before the end of September of the following year, which is the deadline contained in the MCAA for Competent Authorities to exchange the information. Jurisdictions will need to build in time in that 9 month window both for Financial Institutions to prepare the

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data to report and for the tax authority to validate and sort the information before exchanging it (see below). Consideration should also be given to the interaction between the reporting date in relation to the Standard and the other tax reporting requirements the Financial Institutions have, whether domestic or international.

87. Jurisdictions will also need to decide the format in which they require Financial Institutions to report the information. While the Standard does not prescribe an approach, jurisdictions may wish to use the same format in which the Standard requires the information to be exchanged (the CRS Schema) so as to remove the need for the tax administration to reformat the data for exchange (which must take place in accordance with the CRS Schema). It is likely that consultation with Financial Institutions will be required to establish the format. In considering the format to use consideration may be given to ensuring as much consistency as possible to other reporting requirements (whether domestic or in relation to non-residents) to ensure maximum efficiency.

Annex 3 p. 230

88. There will also need to be a filing process for Financial Institutions to report the information, such as through a government portal. This will require secure transmission channels and protocols, through encryption or physical measures or a combination of both. The Standard provides minimum standards in this area (rather than mandating a single solution). The transmission and encryption methods will therefore need to meet appropriate minimum standards in relation to the confidentiality and integrity of the data to ensure the information is not disclosed to unauthorised persons and that the data has not been altered in an unauthorised manner.

Com p. 74

89. It should be noted that the Standard may well require reporting to the tax authority by Financial Institutions that may not currently be required to report tax information (for

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example the fund industry, trust and service providers and insurance companies). An assessment should be made early on of the financial institutions that will be impacted and the jurisdiction should then actively reach out to them, through their representative bodies for example, in order to discuss what the requirements are and how best to implement them. The institutions may include very small institutions, a very low number of a particular type of institution or institutions with very few accounts. In these cases simplified arrangements could be appropriate. In certain cases this could, for example, include an interface where the information is inputted manually.

2. Receiving the information to send

Com p. 76

90. In advance of the tax authority receiving the information from the Financial Institutions they will need to ensure they have the appropriate operational security to hold the data. This means having good managerial, organisational and operational procedures, as well as technical measures including hardware and software tools. Ideally security should be managed in a manner that is consistent with best practice standards, such as the latest ISO 27000 series Information Security standards. In this respect, the Global Forum is carrying out confidentiality assessments in all committed jurisdictions to ensure that the required confidentiality standards are in place with tax administrations prior to starting the automatic exchange of CRS information.

91. Validation of the data will also need to be undertaken to check the format of the data (i.e. that it has been entered correctly, with the mandatory information included) and that it will have relevance to the receiving jurisdiction, a common data protection requirement (i.e. the correct data package is being sent to the correct jurisdiction). This validation should also be part of the process to ensure Financial Institutions have effectively implemented the Standard. The validations

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to be carried out should comprise both the validation of the information against the CRS XML Schema, as well as the additional agreed file and correction-related record validations, as set out in the CRS Status Message User Guide.[8]

92. Depending on the jurisdiction's tax system and other data they have on file, the information on non-residents received from Financial Institutions for forward transmission could also potentially be used for compliance purposes.

93. Information in relation to undocumented accounts should also be identified and investigated, including whether it results from a failure to comply with AML/KYC requirements.

3. Transmitting and receiving information

94. In order to ensure an efficient, secure and timely implementation of automatic exchange of information, the Forum on Tax Administration ("FTA") designed and built the Common Transition System ("CTS").

95. The CTS is a secure and encrypted "pipe", complying with the latest IT-security standards, through which Competent Authorities can send and/or received information both over a server-to-server link-up (SFTP) and in a browser-based manner (HTTPS). This transmission system is (initially) available for the exchange of information between Competent Authorities pursuant to the CRS, Country-by-Country Reporting and the Exchange on Tax Rulings.

96. The CRS information to be transmitted through the CTS is structured in a common schema in extensible mark-up language (XML) that allows the reporting of information under the CRS in an IT-based and standardised manner. In general

8 www.oecd.org/tax/exchange-of-tax-information/common-reporting-standard-status-message-xml-schema-user-guide-for-tax-administrations.pdf

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terms, for Competent Authority to be able to send Financial Account information using CRS XML Schema through the CTS, the data must be encrypted by the sending Competent Authority, transmitted through the CTS and then subsequently decrypted by the receiving Competent Authority. To assist with the technical implementation of the CRS the Common Reporting Standard User Guide and Schema ("CRS User Guide")[9] and the User Guide on the Preparation and Encryption of Files for the CTS have been developed for use by Competent Authorities.

CRS XML Schema and data validation

97. In order to send the CRS information to the identified exchange partners, data collected from Reporting Financial Institutions needs to be available in the format of the CRS XML Schema. This can either already be done by Reporting Financial Institutions or, in case of a diverging domestic reporting format, by the sending tax authority. In any case, the sending tax authority will need to ensure that the CRS information to be received by a particular jurisdiction is compiled in a single CRS XML Schema file and is properly sorted.

98. As the information to be provided through the CRS XML Schema may contain errors, the CRS Status Message XML Schema has been developed by the OECD to inform the sending exchange partner of any errors encountered by the receiving Competent Authority.[10] The CRS Status Message XML Schema allows Competent Authorities that have received CRS information through the CRS XML Schema to report back to the sending Competent Authority, whether the file received contained any errors caused by either incorrect file preparation or by incomplete or inaccurate information in individual records.

9 www.oecd.org/tax/automatic-exchange/common-reporting-standard/schema-and-user-guide/

10 www.oecd.org/tax/exchange-of-tax-information/common-reporting-standard-status-message-xml-schema-user-guide-for-tax-administrations.pdf

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99. In case file errors are discovered, this will generally result in the receiving Competent Authority not being able to open and use the file. As such, where file errors are of a fundamental nature and therefore it is expected that a CRS Status Message is sent to the sending Competent Authority in these instances, with a view to timely receiving a new file (without the file error) with the CRS information contained in the initial erroneous file sent. In addition, the CRS Status Message XML Schema allows the receiving tax authority to report back on record errors encountered, with a view to having such erroneous records corrected by the sending tax authority and/or the Reporting Financial Institution, therewith improving data quality for future exchanges.

100. This approach also reflects the requirements set out in Article 4 of the CRS MCAA in relation to the notification and remediation of errors that prevent the exchange relationship from operating efficiently.

101. The CRS Status Message XML Schema may, in addition to communications between Competent Authorities, also be used by a Competent Authority to provide a status message to its domestic Financial Institutions.

102. While the CRS Status Message XML Schema provides structured information to the sender of the initial CRS message on any file and/or record errors, the schema does not accommodate substantive follow-up requests or qualitative feedback on the overall exchange relationship. For this type of input, Competent Authorities should rely on the usual bilateral communication methods.

Preparation and encryption of files

103. Sending Competent Authorities need to take all the necessary steps in order to properly prepare and encrypt the

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data in order to transmit it through the CTS. A User Guide on the Preparation and Encryption of Files for the CTS outlines the steps for the Competent Authority to follow to be able to adequately prepare data for transmission.

104. As an example of initial preparation steps, CTS files will have to have a specific file name including the Country Code to identify the Sending Competent Authority, the reporting year and the regime under which the information is sent. Prior to starting the file preparation process, the Competent Authority must ensure that certain prerequisites are in place. Some of these prerequisites include: a digital certificate from an approved Certificate Authority; a valid enrolment in the CTS; ensuring the file does not contain any file validation errors (XML validation, virus, threats, etc.); ensuring the file does not contain any record validation errors and ensuring the file meets the agreed file size limitations. Furthermore, the files containing the tax information will need to be encrypted in accordance with the commonly agreed encryption standards.

Requirement 4: Protect confidentiality and safeguard data

Com p. 79

105. The confidentiality of taxpayer information is a fundamental cornerstone to all exchanges of tax information. In order to ensure the successful implementation of the automatic exchange of information under the CRS it is crucial for committed jurisdictions to have the necessary upfront confidence and comfort to send financial information to their exchange partners on an annual and automatic basis.

106. Confidentiality and safeguarding data is a matter of both the legal framework and systems and procedures to ensure the legal framework is respected in operational practice. Monitoring ongoing compliance and ensuring sanctions to address breaches of confidentiality are and will remain important for ensuring an efficient, reliable and secure exchange of CRS information.

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107. The legal framework includes both domestic law and the international exchange instrument. Together these will need to limit the use of the data to the purposes specified in the exchange instrument and include penalties for the improper disclosure of the data.

Com p. 82

108. The systems and procedures should include appropriate policies in relation to employees (such as background checks and training), restricting access to sensitive documents, systems to protect the data (such as identifying those with access and having audit trails to monitor access), restrictions on transmitting the data and appropriate information disposal policies. Regular risk assessments should also be completed and confidentiality policies updated as necessary. Policing of unauthorised access and disclosure should also be carried out, with appropriate penalties imposed. Monitoring compliance with an acceptable information security framework alone is not sufficient to protect tax data. In addition, domestic law must impose penalties or sanctions for improper disclosure or use of taxpayer information.

Assessing confidentiality and data safeguards of information exchange partners

109. Before sending the information jurisdictions need to ensure their information exchange partners meet the required confidentiality and data safeguard standards. In this respect, the Standard includes a questionnaire that may be used to assess prospective information exchange partners' confidentiality and data safeguard standards.

Annex 4, p. 291

110. As part of the AEOI implementation mandate of the Global Forum, preliminary confidentiality and data exchange assessments are carried out to facilitate each jurisdiction's decision on partners with whom to exchange CRS information automatically and to ensure that all committed jurisdictions

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meet the required confidentiality and data safeguards prior to receiving CRS information.

111. In cases where the Global Forum confidentiality assessment process identifies weaknesses, specific recommendations are made to the assessed jurisdictions to addresses the remaining issues. Assessed jurisdictions are then asked to develop an action plan including steps they will take to resolve the remaining issues with respect to full compliance with the required confidentiality and data safeguards standards. Upon implementation of the action plan, the Global Forum will reassess the improved confidentiality and data safeguard measures.

112. In order to ensure that jurisdictions implementing an action plan meet their commitment to automatically exchange information, such jurisdictions will send information on a temporary non-reciprocal basis to all exchange partner jurisdictions, until their confidentiality and data safeguards meet the required standard.

Breaches of confidentiality

CAA p. 26, Com p. 81

113. The MCAA includes a provision that requires a Competent Authority to immediately notify the other Competent Authority of a breach or failure of the confidentiality requirements. Furthermore, it is explicitly stated that non-compliance with the confidentiality and data safeguard provisions would be a justification for the immediate suspension of the MCAA, until such time where the breach is investigated, resolved and policies have been put in place to avoid similar breaches from happening in the future.

Com p. 87

114. The Standard also outlines the required domestic framework in relation to breaches of confidentiality, including penalties or sanctions for improper disclosure and investigatory procedures to be triggered if a breach takes place.

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PART II: OVERVIEW OF THE COMMON REPORTING STANDARD AND DUE DILIGENCE RULES

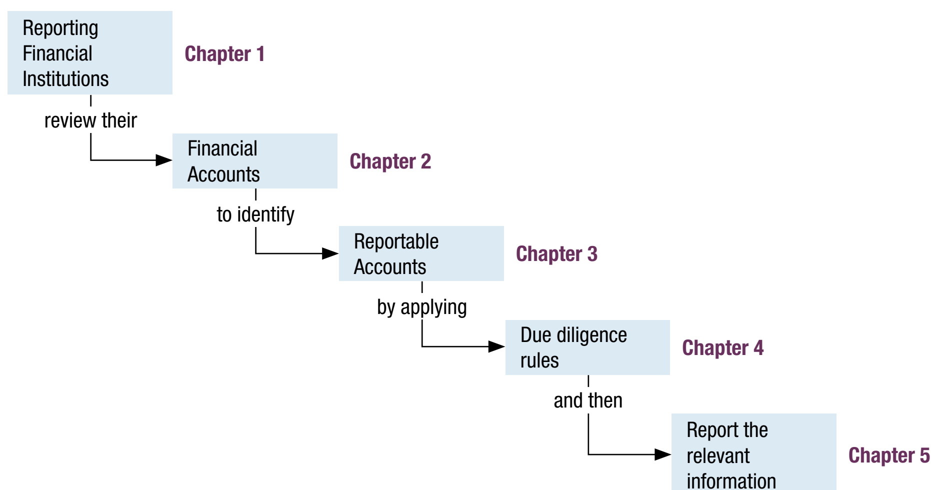
Part II: Overview of the Common Reporting Standard and due diligence rules

An overview of the Common Reporting Standard

CRS p. 29

115. The central part to the Standard is the CRS, which contains the detailed rules and procedures that financial institutions must follow in order to ensure the relevant information is collected and reported. It is these rules that must be incorporated into domestic law to ensure the due diligence and reporting is performed correctly. Conceptually, the CRS can be broken down into a number of steps, each of which is analysed in turn throughout the remainder of the Handbook. The steps are depicted in Figure 4, which also shows the Chapters that contain the discussion on each step.

Figure 4: An overview of the Common Reporting Standard



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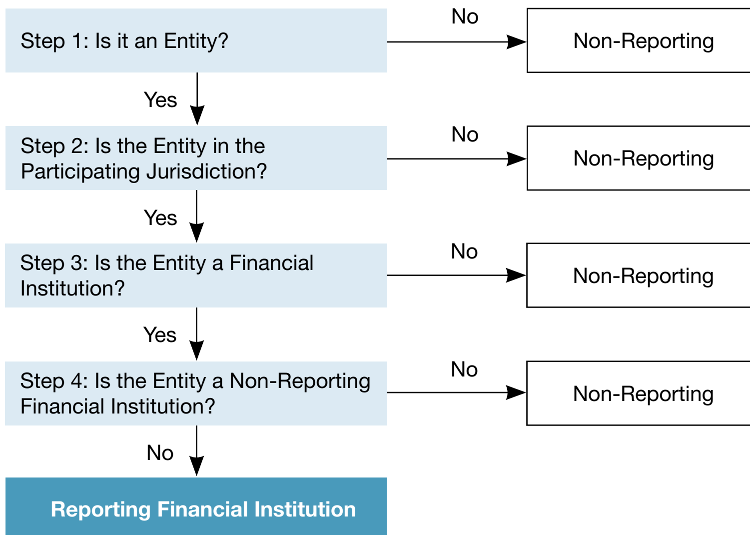
Chapter 1: Reporting Financial Institutions

116. A key aspect to implementing the reporting requirements is to ensure the correct scope of financial institutions that are required to collect and report the information. These are defined in the Standard as Reporting Financial Institutions. The CRS contains detailed rules defining Reporting Financial Institutions which are built around a four step test, as shown in Figure 5.

CRS p. 43, Com p. 159

Figure 5: The steps to identify a Reporting Financial Institution



Step 1: Is it an Entity?

117. Only Entities can be Reporting Financial Institutions. The definition of Entity is broad and consists of legal persons and legal arrangements, such as corporations, partnerships, trusts, and foundations. Individuals, including sole proprietorships, are therefore excluded from the definition of Reporting Financial Institutions.

CRS p. 60

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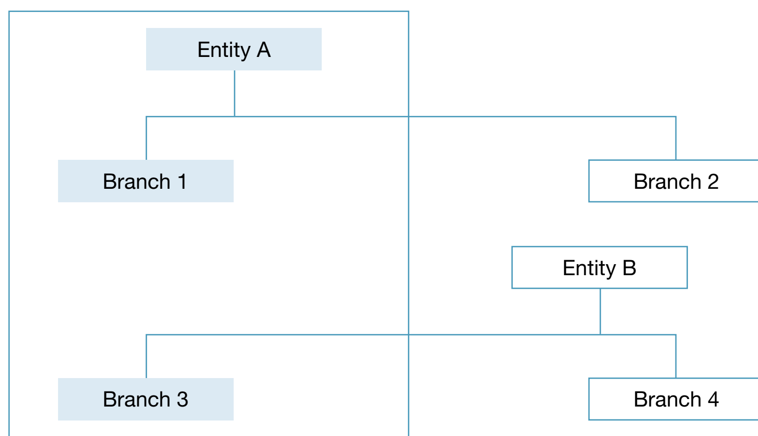
Step 2: Is the Entity in the Participating Jurisdiction?

118. The Standard targets Entities within a Participating Jurisdiction as those that can be most effectively compelled to report the necessary information by that jurisdiction. This is the reporting nexus.

CRS p. 44,
Com p. 158

119. The general rule is that Entities resident in a jurisdiction, their branches located in that jurisdiction and branches of foreign Entities that are located in that jurisdiction are included within that jurisdiction's reporting nexus, while foreign Entities, their foreign branches and foreign branches of domestic Entities are not. This is depicted in Figure 6 where, assuming all the Entities and branches are Reporting Financial Institutions, Participating Jurisdiction A will need to require Entity A, Branch 1 and Branch 3 to report information to its tax authority.

Figure 6: Reporting nexus under the CRS



120. The Standard provides specific rules to determine the residence of entities that are financial institutions for purposes of carrying out the due diligence and reporting requirements pursuant to the CRS. These are shown in Table 1.

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Table 1: Determining where an Entity is located under the Standard

Entity	Location under the Standard
Tax resident Entities	Residence for tax purposes
Non-tax resident Entities, except trusts	Place where it is incorporated under the laws of, place of management or where it is subject to financial supervision
Multiple resident Entities, except trusts	Place where the accounts are maintained
Trusts	Where one or more trustees are resident, unless the required information is being reported elsewhere because the trust is treated as tax resident there

121. As shown in Table 1, under the Standard an Entity's residence is generally where it is resident for tax purposes. There are special rules where an Entity (other than a trust) does not have a residence for tax purposes (e.g. because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax). In these cases the Entity is treated as resident in the jurisdiction in which it is incorporated, has its place of management, or where it is subject to financial supervision. Where an Entity, other than a trust, is resident in two or more Participating Jurisdictions, it is required to report the Financial Account(s) it maintains to the tax authorities in each of the jurisdiction(s) in which it maintains them. If the Entity is resident in a jurisdiction that has not implemented the CRS, the rules of the jurisdiction in which the account is maintained determine such Entity's status as a Financial Institution or NFE.

122. In the case of a **trust**, it is considered to be resident for reporting purposes in the Participating Jurisdiction where one or more of its trustees are resident, unless all the information required to be reported in relation to the trust is reported to another Participating Jurisdiction's tax authority because it is treated as resident for tax purposes there.

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Step 3: Is the Entity a Financial Institution?

CRS p. 44

123. The CRS defines the term Financial Institution, before breaking down the definition into various categories. The definition of the term Financial Institution and the various categories is shown in Figure 7.

Step 4: Is the Entity a Non-Reporting Financial Institution?

CRS p. 45,
Com p. 166

124. Categories of Financial Institutions are then specifically excluded from being required to report information due to posing a low risk of being used to evade tax. These are Non-Reporting Financial Institutions. These are also shown in Figure 7.

CRS p. 46,
Com p. 170

125. One of the categories of Non-Reporting Financial Institution is a general category of "Other Low-risk Non-Reporting Financial Institutions". This is a list of jurisdiction-specific Financial Institutions that are excluded from reporting provided they meet certain conditions, including that their categorisation as such does not frustrate the purposes of the Standard. These jurisdiction-specific Financial Institutions can be considered as posing a low risk for tax evasion and they have substantially similar characteristics to the categories of Non-Reporting Financial Institutions contained in the CRS. The Global Forum is reviewing the lists jurisdictions have established in this respect, with a view to ascertaining that all Non-Reporting Financial Institutions listed meet the requirements of the CRS, as summarised above. In general, it is expected that each Jurisdiction would have only one list of domestically-defined Non-Reporting Financial Institutions (as opposed to different lists for different Participating Jurisdictions) and that it would make such a list publicly available.

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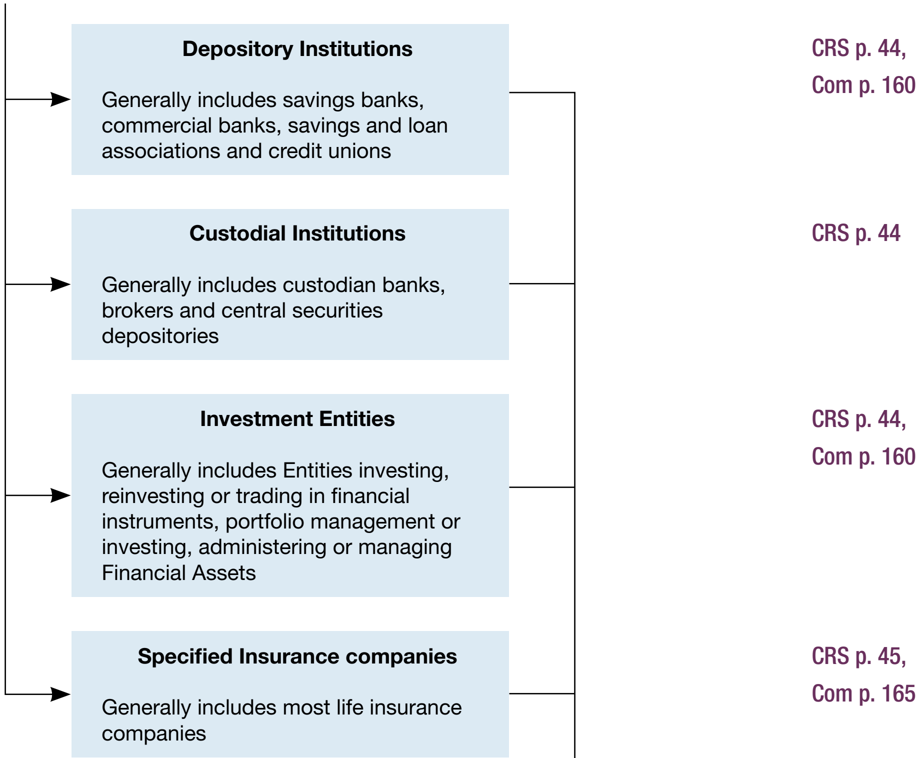
Figure 7: Financial Institutions that need to report



Chapter 2: Accounts which are Financial Accounts and therefore need to be reviewed

126. Reporting Financial Institutions are required to review the Financial Accounts they maintain to identify whether any of them need to be reported to the tax authority. There is a general rule to identify a Financial Account and the CRS then specifies certain types of Financial Accounts which are low risk of being used to evade tax and are therefore excluded from needing to be reviewed or reported (an Excluded Account).

The general rule and the more specific categories

CRS p. 50,
Com p. 175

127. The general rule is that a Financial Account is an account maintained by a Financial Institution. The CRS then further clarifies the definition to state that the term includes specific categories of accounts (Depository Accounts, Custodial Accounts, Equity and debt interests, Cash Value Insurance Contracts and Annuity Contracts). Figure 8 sets out the categories of Financial

Com p. 176

Table 2: Who maintains the Financial Accounts

Accounts	Which Financial Institution is generally considered to maintain them
Depository Accounts	The Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution).
Custodial Accounts	The Financial Institution that holds custody over the assets in the account.
Equity and debt interest in certain Investment Entities	The equity or debt interest in a Financial Institution is maintained by that Financial Institution.
Cash Value Insurance Contracts	The Financial Institution that is obligated to make payments with respect to the contract.
Annuity Contracts	The Financial Institution that is obligated to make payments with respect to the contract.

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Accounts. Table 2 shows which Financial Institution is considered to maintain each type of Financial Account.

128. While Table 2 sets out the general rules, jurisdictions have different financial systems with diverse legal, administrative and operational frameworks so the meaning of maintaining an account may vary between jurisdictions. In some cases, a Reporting Financial Institution may not possess all the information to be reported with respect to an account they would generally be treated as maintaining. The Standard contains examples of such scenarios and how they might be dealt with.

Com p. 176

Excluded Accounts

129. Certain Financial Accounts are seen to be low risk of being used to evade tax and are therefore specifically excluded from needing to be reviewed. These are called Excluded Accounts. These categories are also shown in Figure 8.

CRS p. 53,
Com p. 184

130. In order to accommodate jurisdiction-specific Financial Accounts which also present a low risk of being used to evade tax, the CRS provides for Participating Jurisdictions to define in their domestic law other Financial Accounts as Excluded Accounts. This is subject to certain conditions, including that the categorisation as such does not frustrate the purposes of the Standard The Excluded Account can be considered as posing a low risk for tax evasion and that it has substantially similar characteristics to the categories of Excluded Accounts contained in the CRS. The Global Forum is reviewing the lists jurisdictions have established in this respect, with a view to ascertaining that all Excluded Accounts listed meet the requirements of the CRS, as summarised above. In general, it is expected that each jurisdiction would have only one list of domestically-defined Excluded Accounts (as opposed to different lists for different Participating Jurisdictions) and that it would make such a list publicly available.

CRS p. 56,
Com p. 187

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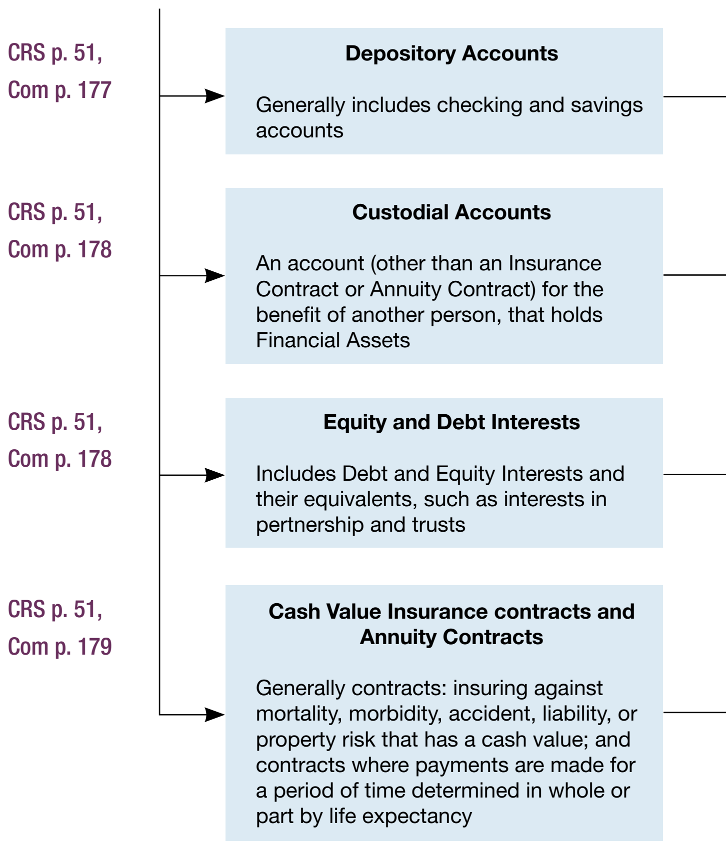
Figure 8: Accounts which are Financial Accounts



CRS p. 53,
Com p. 184

Non-Reporting Accounts

1. Retirement and pension accounts
2. Non-retirement tax-favoured accounts
3. Term Life Insurance Contracts
4. Estate accounts
5. Escrow accounts
6. Depositary Accounts due to not-returned overpayments
7. Other Low-risk excluded accounts

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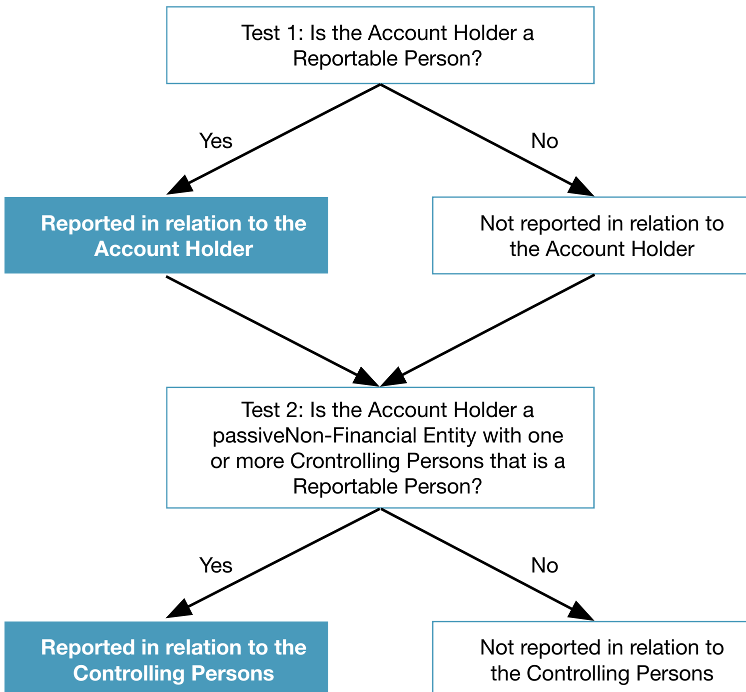
Chapter 3: Financial Accounts which are Reportable Accounts

CRS p. 57, Com p. 191

131. Once a Reporting Financial Institution has identified the Financial Accounts they maintain they are required to review those accounts to identify whether any of them are Reportable Accounts as defined in the CRS. Where they are found to be Reportable Accounts information in relation to those accounts must be reported to the tax authority.

132. A Reportable Account is defined as an account held by one or more Reportable Persons or by a Passive Non-Financial Entity with one or more Controlling Persons that is a Reportable Person. Establishing this requires two tests, as set out in Figure 9.

Figure 9: Two tests to determine a Reportable Account

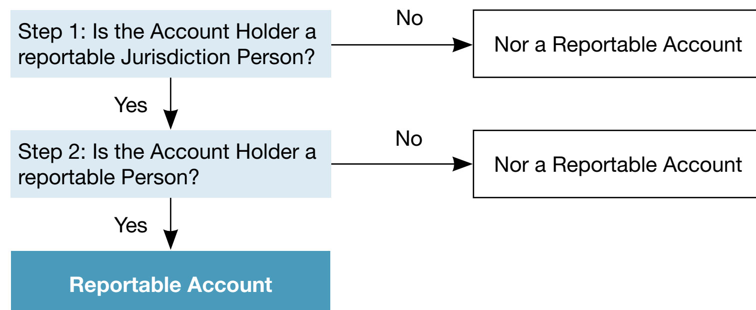


133. The first test is in relation to the Account Holder and the second is in relation to Controlling Persons of certain Entity Account Holders.

Reportable Accounts by virtue of the Account Holder

134. The first test establishes whether a Financial Account is a Reportable Account by virtue of the Account Holder. This test can be broken down into two further steps, as shown in Figure 10.

Figure 10: Reportable account by virtue of the Account Holder



Step 1: Is the Account Holder a Reportable Jurisdiction Person?

CRS p. 57, Com p. 191

135. A Reportable Jurisdiction Person is an Individual or Entity resident in a Reportable Jurisdiction for tax purposes under the laws of that jurisdiction (or where their effective management is if they do not have a tax residence). A Reportable Jurisdiction is a jurisdiction with which an agreement is in place, pursuant to the automatic exchange of information under the Standard (although it should be noted that the list could go wider as set out in the discussion on the wider approach). Each jurisdiction must publish a list of these reportable Jurisdictions. Therefore, in the first instance, a Financial Institution must check whether a Financial Account they maintain is held by a person who is resident in a jurisdiction on the published list, as may be

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updated from time to time, in particular when the jurisdiction follows the narrow approach.

136. Chapter 4 of this Handbook sets out the detailed due diligence rules that the Standard requires Financial Institutions to follow in order to establish where the Account Holder is resident, including specific rules for Accounts held by individuals and for Accounts held by Entities. In general, for Preexisting Accounts, Financial Institutions must determine the residency of the Account Holder based on the information it has on file, whereas for New Accounts a self-certification is required from the Account Holder.

Step 2: Is the Account Holder a Reportable Person?

137. The Reportable Jurisdiction Person will then be a Reportable Person unless specifically excluded from being such. In general, the specific exclusions are: a corporation the stock of which is regularly traded on one or more established securities markets and a Related Entity of theirs; a Governmental Entity; an International Organisation; a Central Bank; or a Financial Institution (which will itself be subject to the rules and obligations contained in the Standard).

CRS p. 57, Com p. 192

Reportable Accounts by virtue of the Account Holder's Controlling Persons

138. Regardless of whether the Financial Account is a Reportable Account by virtue of the Account Holder, there is then a second test in relation to the Controlling Persons of certain Entity Account Holders. This may mean that additional information is required to be reported in relation to an already Reportable Account or that a previously Non-Reportable Account becomes a Reportable Account by virtue of the Controlling Persons.

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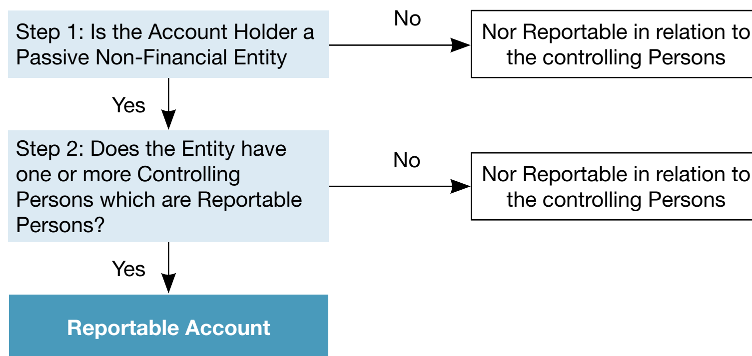
139. This second test can also be broken down into two steps, as shown in Figure 11. Explanations of each step are provided below.

Figure 11: Reportable account by virtue of the Controlling Persons[11]



Step 1: Is the Account Holder a Passive Non-Financial Entity?

CRS p. 57,
Com p. 195

140. The CRS refers to Non-Financial Entities by their acronym, NFEs. It is essentially any Entity that is not a Financial Institution. NFEs are then split into Passive NFEs or Active NFEs with additional procedures required in relation to Passive NFEs (reflecting the greater tax evasion risks they pose).

CRS p. 57,
Com p. 198

141. The general rule is that a Passive NFE is an NFE that is not an Active NFE. The definition of Active NFE essentially excludes Entities that primarily receive passive income or primarily hold assets that produce passive income (such as dividends, interest, capital gains, rents etc.), and includes Entities that are publicly traded (or related to a publicly traded Entity), Governmental Entities, International Organisations, Central Banks, or a holding NFEs of nonfinancial groups. Exception to this is category (b) Investment Entities that are not Participating

11 Please note that Step 1 and Step 2 depicted in Figure 10 may also be taken in reverse order.

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Jurisdiction Financial Institutions, which are always treated as Passive NFEs.

142. Chapter 4 of this Handbook outlines the detailed due diligence rules a Financial Institution must follow to determine whether the Entity Account Holder is a Passive NFE, setting out the procedures both for Preexisting Accounts and New Accounts.

Step 2: Does the Entity have one or more Controlling Persons which are Reportable Persons?

143. If the Entity Account Holder is a Passive NFE then the Financial Institution must "look-through" the Entity to identify its Controlling Persons. If the Controlling Persons are Reportable Persons then information in relation to the Financial Account must be reported, including details of the Account Holder and each reportable Controlling Person.

CRS p. 57, Com p. 198 - 199

144. The term Controlling Persons corresponds to the term "beneficial owner" as described in the Financial Action Task Force Recommendations (FATF), in Recommendation 10 and the corresponding Interpretive Guidance.

145. For an Entity that is a legal person, the term Controlling Persons means the natural person(s) who exercises control over the Entity, generally natural person(s) with a controlling ownership interest in the Entity. Determining a controlling ownership interest will depend on the ownership structure of the Entity. The control over the Entity may be exercised by direct ownership (or shareholding) or through indirect ownership (or shareholding) of one or more intermediate Entities and it may be based on a threshold (e.g. any person owning more than a certain percentage of the company (e.g. 25%)). For example, Controlling Persons may include any natural person that holds directly or indirectly (e.g. through a chain of entities) more

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than 25 percent of the shares or voting rights of an Entity as a beneficial owner. To the extent there is doubt that the person with the controlling ownership interest is the beneficial owner or where no natural person that exerts control through ownership interests can be identified, the Controlling Person of the Entity is the natural person (if any) that is exercising control of the Entity through other means.

146. Where no Controlling Persons can be identified by applying the two steps above, the Financial Institution should identify the natural person(s) who holds the position of senior managing official in the Entity as the Controlling Person.

147. As an example, an Individual A may own 20 percent interest in Entity B and, although held in the name of Individual C, pursuant to a contractual agreement, Individual A also controls 10 percent of the voting shares in Entity B. In such instance, Individual A should meet the definition of Controlling Person.

148. In practical terms, the test to determine the Controlling Persons of an Entity needs to be carried out at the level of each Entity in the chain of ownership, in accordance with the rules applicable under FATF. FATF Recommendations do not require the determination of beneficial ownership if an Entity is (or is a majority owned subsidiary of) a company that is listed on a stock exchange and is subject to market regulation and to disclosure requirements (either by stock exchange rules or through law or enforceable means) to ensure adequate transparency of beneficial ownership. Further, FATF Recommendations do not require determination of beneficial ownership of a controlling interest that is held by an Entity described in the preceding sentence. Thus, in such cases, it is accepted that a Reporting Financial Institution will not be able to determine the Controlling Persons for CRS purposes.

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149. In the case of a partnership and similar arrangements, Controlling Person means, consistent with "beneficial owner" as described in the FATF Recommendations, any natural person who exercises control through direct or indirect ownership of the capital or profits of the partnership, voting rights in the partnership, or who otherwise exercise control over the management of the partnership or similar arrangement.

150. In the case of a trust (and Entities equivalent to trusts), the term Controlling Persons is explicitly defined in the Standard to mean the 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. If the settlor, trustee, protector, or beneficiary is an Entity, the Reporting Financial Institution must identify the Controlling Persons of such Entity in accordance with FATF Recommendations. Further specific guidance in relation to the application of the due diligence and reporting requirements for trusts is provided in Chapter 6 below.

151. With a view to achieve appropriate levels of reporting in relation to legal persons that are functionally similar to trusts (for example functionally similar foundations), Controlling Persons should be identified through similar customer due diligence procedures as those required for trusts. It is thus irrelevant whether or not any of the Controlling Persons exercise control over the legal person.

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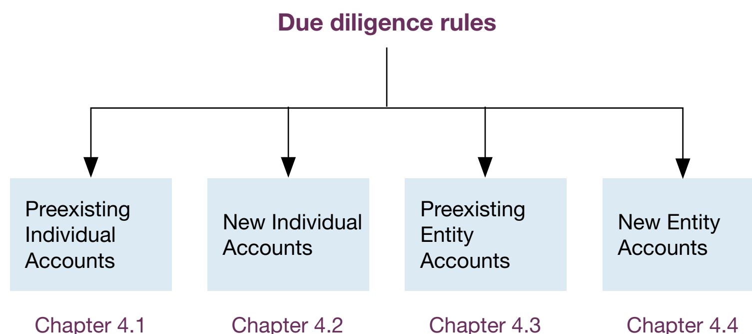
Chapter 4:
Due diligence procedures

152. As referred to in Chapter 3, the Standard prescribes detailed rules for Financial Institutions to follow to establish whether a Financial Account is held by a Reportable Person and is therefore a Reportable Account. This standardised approach ensures a consistent quality of information is reported and exchanged. The rules also leverage on existing processes. This is particularly the case for Preexisting Accounts where it is more challenging and costly for Financial Institutions to obtain new information from the Account Holder. Jurisdictions must reflect the due diligence requirements in domestic law.

153. There are different rules for accounts held by Individuals and Entities as well as for Preexisting and New Accounts, reflecting the differing characteristics between the different types of accounts. These categories are shown in Figure 12, along with a reference to the subsections of this Chapter that set out the processes in further detail.

Figure 12: The different due diligence procedures that apply



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The split between Preexisting Accounts and New Accounts

154. One of the key decisions for implementing jurisdictions is the date from which the New Account procedures will apply. This is the date from which persons that open New Accounts will generally be required to provide additional information for Financial Institutions to determine where they are tax resident. For accounts opened prior to this date, Financial Institutions will generally be allowed to rely on the information they hold on file.

155. The choice of date will typically be driven by the amount of time it will take to put in place the legislative requirements and for Financial Institutions to put in place the new procedures in relation to New Accounts.

156. In general, jurisdictions set a single cut-off date with respect to New and Preexisting Accounts, as an example, those jurisdictions that have committed to be early adopters of the Standard have selected 1 January 2016 as the date from which the Financial Institutions in their jurisdiction will apply the New Account procedures (with any account open at 31 December 2015 being subject to the procedures in relation to Preexisting Accounts). Certain jurisdictions, in particular those that did not adopt the wider approach with respect to the due diligence procedures and reporting obligations, may have different cut-off dates depending on the date at which they establish exchange relationships with other jurisdictions. Even in those jurisdictions, Financial Institutions will be required to collect self-certifications for all accounts opened after the first cut-off date to determine the tax residence of each Account Holder and the reporting obligations resulting therefrom.

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Chapter 4.1: Due Diligence for Preexisting Individual Accounts

CRS p. 31,
Com p. 110

157. Figure 13 depicts the due diligence rules for Preexisting Individual Accounts from the perspective of the Financial Institution. This section then describes each aspect of the procedures in more detail.

Is the Financial Account a Cash Value Insurance Contract/Annuity Contract effectively prevented by law from being sold to residents of the Reportable Jurisdictions?

CRS p. 31,
Com p. 110

158. This category of Financial Account is exempt from being a Reportable Account. The category includes cases where certain conditions need to be fulfilled prior to being able to sell such contracts to residents of the Reportable Jurisdiction (such as obtaining a license or registering the contracts).

Is the account balance or value (after aggregation) $1m or less? (Lower Value Account)

CRS p. 32,
Com p. 111

159. A balance or value of $1m or less at the point of review (starting on 31 December in the year that defines Preexisting Accounts, which is the day before the start date for the procedures for New Accounts, and each year thereafter) means that the account is a Lower Value Account. The due diligence procedures for Lower Value Accounts are less stringent and a greater flexibility in approach is provided.

Does the Financial Institution hold Documentary Evidence and wish to apply the Residence Address Test? (Where permitted)

CRS p. 32,
Com p. 111

160. For Lower Value Accounts jurisdictions have the option to allow for or compel Reporting Financial Institutions to apply the residence address test rather than the electronic record search.

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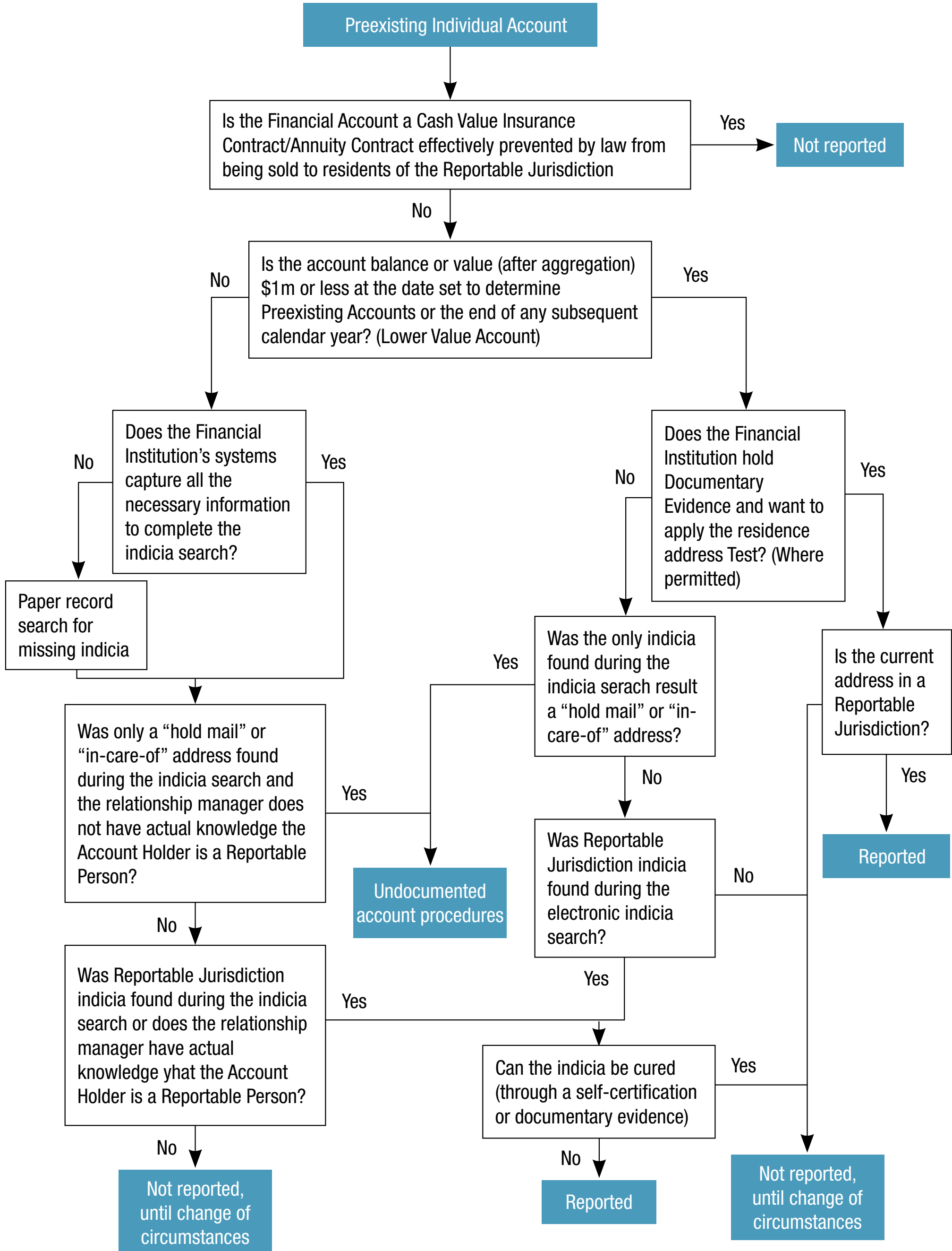
Figure 13: Due diligence procedure for Preexisting Individual Accounts



Com p.149, Com p. 202

161. The residence address test provides a simplified approach to the due diligence procedure and builds on the approach used in the EU Savings Directive. Essentially, where the Reporting Financial Institution has on its records a current residence address for the Account Holder based on Documentary Evidence (largely consisting of government issued documentation), the Account Holder may be treated as resident in the jurisdiction where the address is. If any of the requirements of the residence test are not satisfied, then the Financial Institution must perform the electronic record search.

Com p. 112

162. The Commentary provides for a relaxation in the requirement for the address to be current in the case of dormant accounts, as defined in the Standard, so the residence address test can still be used in this case.

Com p. 113

163. The Commentary also provides that an address can be seen to be based on Documentary Evidence where the Documentary Evidence is government-issued but does not include the Account Holder's address. The Financial Institution's policies and procedures must still, however, establish that the Account Holder's address is in the same jurisdiction as identified in the government-issued Documentary Evidence.

Com p. 113

164. Finally, while likely to be rare in practice, where accounts were opened prior to AML/KYC requirements being in place and Documentary Evidence has not been obtained at the time of or since the opening of the account, provided the Financial Institution's policies and procedures provide sufficient comfort that the address on file is current, as set out in the Standard, then the Documentary Evidence condition can still be satisfied.

Com p. 149, Com p. 115

165. If the Financial Institution knows or has reason to know that the Documentary Evidence is unreliable, including as a result of a change in circumstances, then that Documentary Evidence cannot be relied upon. Therefore, either the residence

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address test cannot be used in the first place or, if it is as a result of a change in circumstances, the Financial Institution has until the later of the last day of the reporting period or 90 days to obtain a self-certification and new Documentary Evidence. If this is not obtained then the electronic indicia search must be completed (see below).

Was the only indicia found during the indicia search a "hold mail" or "in-care-of" address?

166. Where the indicia search is completed (see below) and the only indicia found is a "hold mail" or "in-care-of" address in a reportable jurisdiction and no other address is found, then special procedures apply (the undocumented account procedures). In the order most appropriate, the Reporting Financial Institution must: complete a paper record search; or obtain Documentary Evidence or a self-certification from the Account Holder. If neither of these procedures successfully establishes the Account Holder's residence for tax purposes then the Reporting Financial Institution must report the account to its tax authority as an undocumented account.

CRS p. 33, Com p. 117

Was Reportable Jurisdiction indicia found during the electronic indicia search?

167. Where the conditions are not met for the residence address test, or where the jurisdiction does not allow for its use, then the electronic search must be carried out. Under the electronic record search, the Reporting Financial Institution must review its electronically searchable data for any of the following indicia (these are a series of factors that indicate where an Account Holder is resident):

CRS p. 32, Com p. 116 - 117

1. identification of the Account Holder as a resident of a Reportable Jurisdiction(s);

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2. current mailing or residence address in a Reportable Jurisdiction(s);

3. one or more current or most recent telephone numbers in a Reportable Jurisdiction(s) and no telephone number in the jurisdiction of the Reporting Financial Institution;

4. current standing instructions (other than with respect to a Depository Account) to repeatedly transfer funds to an account maintained in a Reportable Jurisdiction(s);

5. currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction(s); or

6. a current "hold mail" instruction or "in-care-of" address in a Reportable Jurisdiction(s) if the Reporting Financial Institution does not have any other address on file for the Account Holder.

168. If any of the indicia listed are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then, the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply the curing procedure and one of the exceptions subsequently applies (see below).

Can the indicia be cured (through self-certification and Documentary Evidence)?

CRS p. 33,
Com. p. 120

169. Indicia can be cured (and the Account Holder consequently not treated as resident in a jurisdiction by virtue of the indicia) by obtaining a self-certification from the Account Holder stating their jurisdiction(s) of residence and/or Documentary Evidence establishing the Account Holder's status.

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Instances where the account balance or value (after aggregation) is over $1m (High Value Accounts)

170. The Standard includes enhanced review procedures for High Value Accounts. These are accounts with a balance or value of over $1,000,000, after aggregating all accounts held by the same Account Holder to the extent the Financial Institution's computerised systems allow and those known about by the relationship manager, at the date set to determine Preexisting Accounts or at the end of any subsequent calendar year.

CRS p. 34, Com p. 121, CRS p. 42, Com p. 154

171. In the first instance, the electronic record search as set out above, is required to be completed with respect to all High Value Accounts (i.e. the residency test may not be used).

Do the Financial Institution's systems capture all the necessary information to complete the indicia search?

172. If the Reporting Financial Institution's electronically searchable databases include all the fields, and capture all of the information required to complete the indicia search, then a further paper record search is not required.

CRS p. 34, Com p. 121

Paper record search for missing indicia

173. Where the Reporting Financial Institution's electronically searchable databases do not capture the necessary information then a further paper record search is required for the information not held electronically. The Financial Institution must review the current customer master file for indicia and, to the extent not contained in the current customer master file, the records associated with the account for any of the indicia not contained in the electronically searchable databases.

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Was only a "hold mail" or "in-care-of" address found during the indicia search and the relationship manager does not have actual knowledge the Account Holder is a Reportable Person?

CRS p. 36, Com p. 124

174. Where the only indicia found is a "hold mail" or "in-care-of" address in a reportable jurisdiction and no other address is found, then special procedures apply (the undocumented account procedures). The Reporting Financial Institution must obtain Documentary Evidence or a self-certification from the Account Holder (see further below in this Handbook). If this procedure does not successfully establish the Account Holder's residence for tax purposes then the Reporting Financial Institution must report the account to its tax authority as an undocumented account.

Was Reportable Jurisdiction indicia found during the indicia search or does the relationship manager have actual knowledge that the Account Holder is a Reportable Person?

CRS p. 35, Com p. 112

175. For High-Value Accounts the relationship manager inquiry is required in addition to any electronic or paper record searches. The Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.

Effect of finding indicia

CRS p. 35, Com p. 124

176. If any of the indicia are discovered in the enhanced review of High Value Accounts, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then, the Reporting Financial Institution must treat the account as a Reportable Account

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unless it elects to apply the curing procedure and one of the exceptions subsequently applies.

Additional procedures

177. If a Preexisting Individual Account becomes a High Value Account in a calendar year the Reporting Financial Institution must complete the enhanced review for High Value Accounts with respect to such account in the subsequent calendar year.

Com p. 124

Timing of review

178. While the selection of the deadline for completion of the due diligence on Preexisting Accounts is a decision for the implementing jurisdiction, it is expected that it will be 12 months after the date to determine Preexisting Accounts for High Value Individual Accounts and 24 months for Lower Value Individual Accounts and all Entity Accounts.

CRS p. 37,
Com p. 126

Chapter 4.2: Due Diligence for New Individual Accounts

179. While the due diligence for Preexisting Accounts relies mainly on information the Financial Institution already has on file, the opening of a New Account requires the Financial Institution to request additional information relevant to tax compliance. Figure 14 sets out the process for New Individual Accounts.

CRS p. 37,
Com p. 127

180. In general a New Account is an account opened after the date set to determine Preexisting Accounts. However the Standard provides that a jurisdiction may modify the definition of Preexisting Account so that in certain cases, an account that would otherwise be treated as a New Account may be instead treated as a Preexisting Account.

Com p. 181

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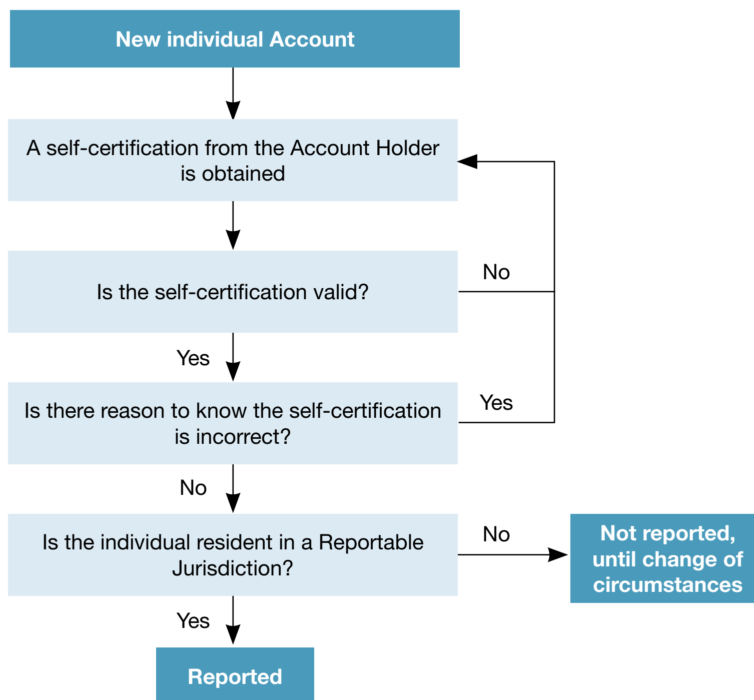
Figure 14: Due diligence procedure for New Individual Accounts



A self-certification from the Account Holder is obtained

CRS p. 37, Com p. 127

181. Any individual that opens an account needs to provide a self-certification which establishes where the individual is resident for tax purposes. If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, then, the Reporting Financial Institution must treat the account as a Reportable Account.

182. Participating Jurisdictions are expected to provide information to assist taxpayers to determine their residence(s) for tax purposes. In this respect, the OECD AEOI Portal[12] contains both a compilation of tax residency rules and information on the

12 www.oecd.org/tax/automatic-exchange/

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principles for issuance and the format of TINs in Participating Jurisdictions.

Is the self-certification valid?

183. The self-certification can be provided in any form but in order for it to be valid the Standard sets out that it must be signed (or otherwise positively affirmed, i.e. involving some level of active input or confirmation) by the Account Holder, be dated, and must include the Account Holder's: name; residence address; jurisdiction(s) of residence for tax purposes; TIN(s) and date of birth.

Com p. 128

Is there reason to know the self-certification is incorrect?

184. Once the Reporting Financial Institution has obtained a self-certification it must confirm its reasonableness based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures (the reasonableness test).

185. A Reporting Financial Institution is considered to have confirmed the reasonableness of a self-certification if it does not know or have reason to know that the self-certification is incorrect or unreliable. Where a self-certification fails the reasonableness test the Reporting Financial Institution is expected to either obtain a valid self-certification or a reasonable explanation and documentation as appropriate supporting the reasonableness of the self-certification.

CRS p. 37,
Com p. 133

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Chapter 4.3: Due Diligence for Preexisting Entity Accounts

CRS p. 38, Com p. 135

186. The due diligence for Preexisting Entity Accounts has two parts:

1. First, the Reporting Financial Institution must establish whether the Entity is a Reportable Person. If so, the account is then a Reportable Account.

2. Second, for certain Entity Account Holders (Passive NFEs), the Reporting Financial Institution must establish whether the Entity is controlled by a Reportable Person(s).

These processes are set out below.

Review procedure to establish whether the Entity is a Reportable Person

187. Figure 15 and the associated text sets out the process to establish whether the Entity Account Holder is a Reportable Person and therefore whether the account is a Reportable Account by virtue of its Account Holder.

188. Is the account balance or value (after aggregation) $250K or less at the date set to determine Preexisting Accounts, or at the end of any subsequent calendar year, and the Financial Institution wishes to apply the threshold? (Where permitted)

CRS p. 38, Com p. 135

189. The CRS provides an optional exemption from review for certain Preexisting Entity Accounts. This exemption is subject to (i) the implementing jurisdiction allowing Reporting Financial Institutions to apply it, and (ii) the Reporting Financial Institution electing to apply it to all or a clearly identified group of accounts.

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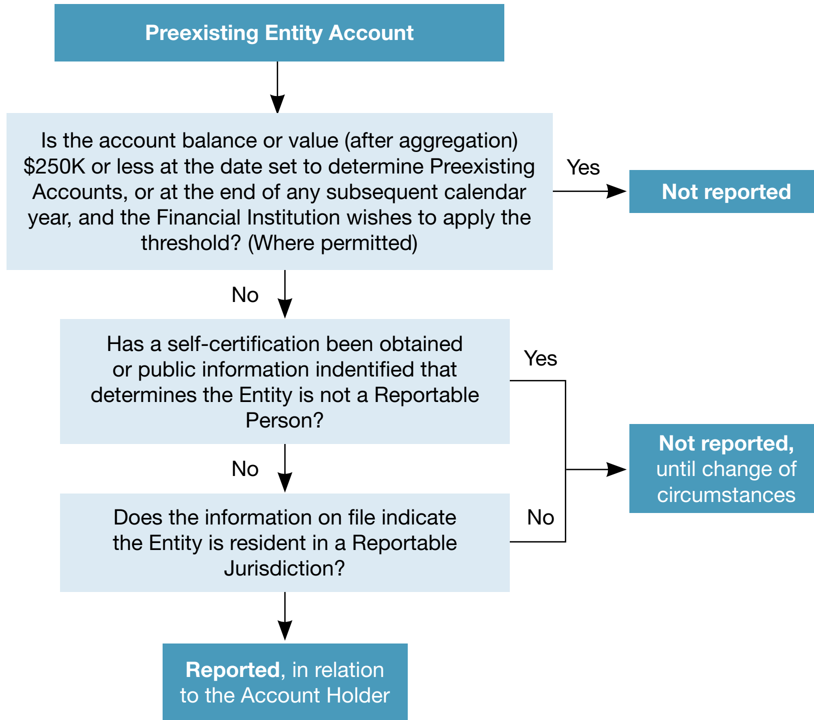
Figure 15: Due diligence procedure for Preexisting Entity Accounts[13]



190. In order to determine whether an Entity is resident in a Reportable Jurisdiction, a Reporting Financial Institution must review information maintained for regulatory or customer relationship purposes, including information collected for AML/KYC purposes (this includes place of incorporation, address, or address of one or more of the trustees of a trust). Indications of residence for different types of Entity are set out in Table 3.

CRS p. 38,
Com p. 136

13 Please note that steps 2 and 3 may be taken in either order.

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CRS p. 39,
Com p. 138

Table 3: Indications of the Entity Account Holder's residence

Entity type	Indication of residence
Most taxable entities	Place of incorporation or organisation
Fiscally transparent entities excluding trusts	Address (which could be indicated by the registered address, principal office or place of effective management)
Trusts	The address of one or more trustees

Has a self-certification been obtained or public information identified that determines the Entity is not a Reportable Person?

Com p. 137

191. If the information indicates that the Account Holder is resident in a Reportable Jurisdiction, then the Reporting Financial Institution must treat the account as a Reportable Account, unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available (including information published by an authorised government body or standardised industry coding systems), that the Account Holder is not a Reportable Person.

Com p. 138

192. For the self-certification to be valid the Standard sets out that it must be signed (or otherwise positively affirmed, i.e. involving some level of active input or confirmation) by a person authorised to sign on behalf of the Entity, be dated, and must include the Account Holder's: name; address; jurisdiction(s) of residence for tax purposes and TIN(s).

193. The self-certification may also contain information on the Account Holder's status, such as the type of Financial Institution or the type of NFE it is. This could be useful for the rest of the due diligence process for Preexisting Entity Accounts (see the next steps in relation to Controlling Persons).

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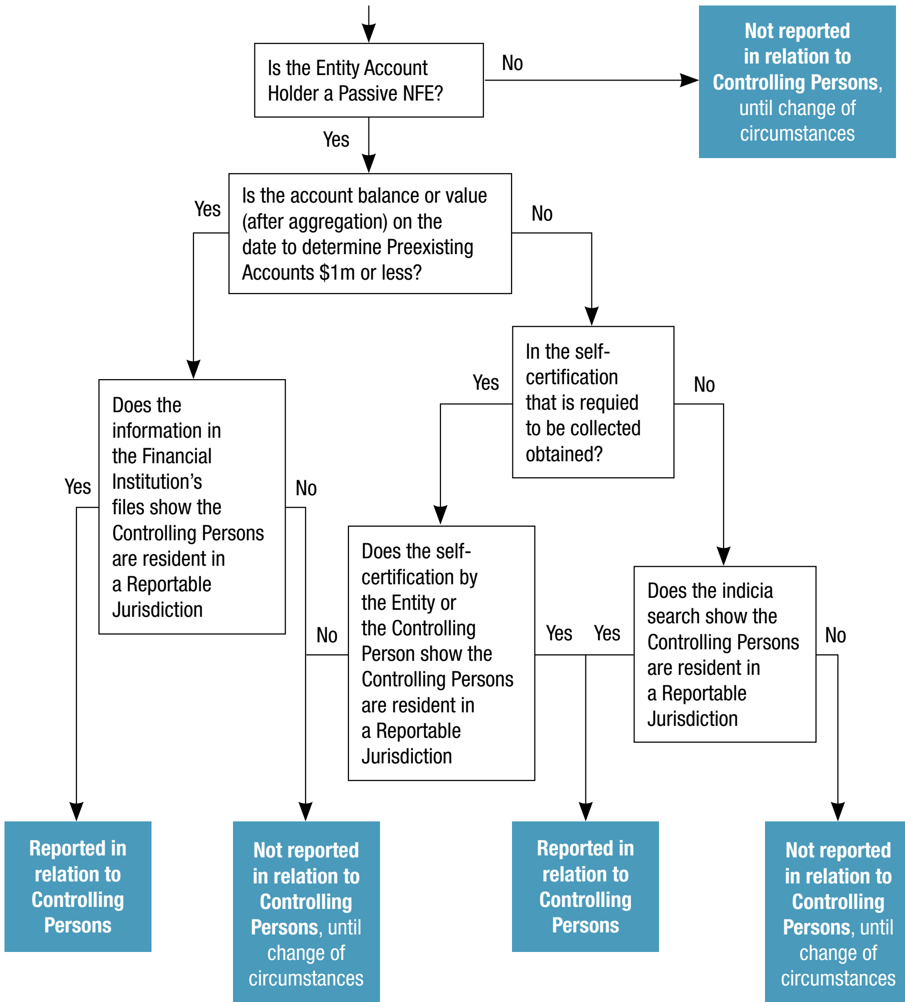
Review procedure for Controlling Persons

194. Whether or not the account has been identified as a Reportable Account during the first part of the review procedure, the Reporting Financial Institution must carry out the second

CRS p. 39,
Com p. 139

Figure 16: Due diligence procedure in relation to Controlling Persons for Preexisting Accounts



part to the review procedure to first identify whether the Entity is a Passive NFE and then, if so, identify its Controlling Persons. This could result in additional information becoming reportable (including to one or more additional jurisdictions) in relation to an account already identified as a Reportable Account or in the account becoming a Reportable Account by virtue of the Entity Account Holder's Controlling Person(s). The process is set out in Figure 16 with each step subsequently explained in further detail.

195. The review procedure is designed to determine whether a Preexisting Entity Account is held by one or more Entities that are Passive NFEs with one or more Controlling Persons that are Reportable Persons. Where this is the case then the Financial Account becomes a Reportable Account in relation to the Controlling Persons, with information in relation to the Reportable Account and the Controlling Persons becoming reportable. In making these determinations the Reporting Financial Institution can follow the guidance in the order most appropriate under the circumstances.

Is the Entity Account Holder a Passive NFE?

CRS p. 39,
Com p. 139

196. For the purposes of determining whether the Account Holder is a Passive NFE the Reporting Financial Institution may use any of the following information with which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution, other than a professionally managed Investment Entity resident in a non-participating jurisdiction which is always treated as a Passive NFE (i.e. that is, a category (b) Investment Entity that is not a Participating Jurisdiction Financial Institution):

1. information in its possession (such as information collected pursuant to AML/KYC procedures); or

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2. information that is publicly available (such as information published by an authorised government body or a standardised industry coding system).

197. Otherwise the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status. When the Account Holder is a Passive NFE, the Reporting Financial Institution must then determine whether the Passive NFE has Controlling Persons by reviewing the AML/KYC documentation it has available with respect to the Account Holder.

Is the account balance or value (after aggregation) $1m or less?

198. If the Account Holder is a Passive NFE and Controlling Persons have been identified, then the balance or value of the account must be determined. The due diligence procedures are less stringent for accounts with a balance or value of $1,000,000 or less.

CRS p. 40, Com p. 140

199. Where the account balance is $1,000,000 or less, in order to determine whether the Controlling Persons of a Passive NFE are Reportable Persons, the Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

200. Where the balance or value of the accounts exceeds $1,000,000 a self-certification with respect to the Controlling Persons must be collected (from either the Account Holder or the Controlling Person(s)) in order to determine their status as Reportable Persons. The self-certification can be provided in any form but in order for it to be valid the Standard sets out that it must be signed (or otherwise positively affirmed, i.e. involving some level of active input or confirmation) by the Controlling Person(s) or the Entity Account Holder, be dated, and must include each Controlling Person's: name; residence

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address; jurisdiction(s) of residence for tax purposes; TIN(s) and date of birth.

Com p. 147

201. If the self-certification is not obtained the Financial Institution must rely on the indicia search as set out in this Handbook to determine whether the Controlling Person(s) is a Reportable Person(s).

202. If there is a change in circumstances that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account by the later of the end of the reporting period or 90 days.

Chapter 4.4: Due Diligence for New Entity Accounts

CRS p. 40,
Com p. 143

203. As with the procedure for Preexisting Entity Accounts, the due diligence procedure for New Entity Accounts has two parts:

1. First, the Reporting Financial Institution must establish whether the Entity is a Reportable Person. If so, the account is then a Reportable Account.

2. Second, for certain Entity Account Holders (Passive NFEs), the Reporting Financial Institution must establish whether the Entity is controlled by Controlling Person(s) that are Reportable Person(s).

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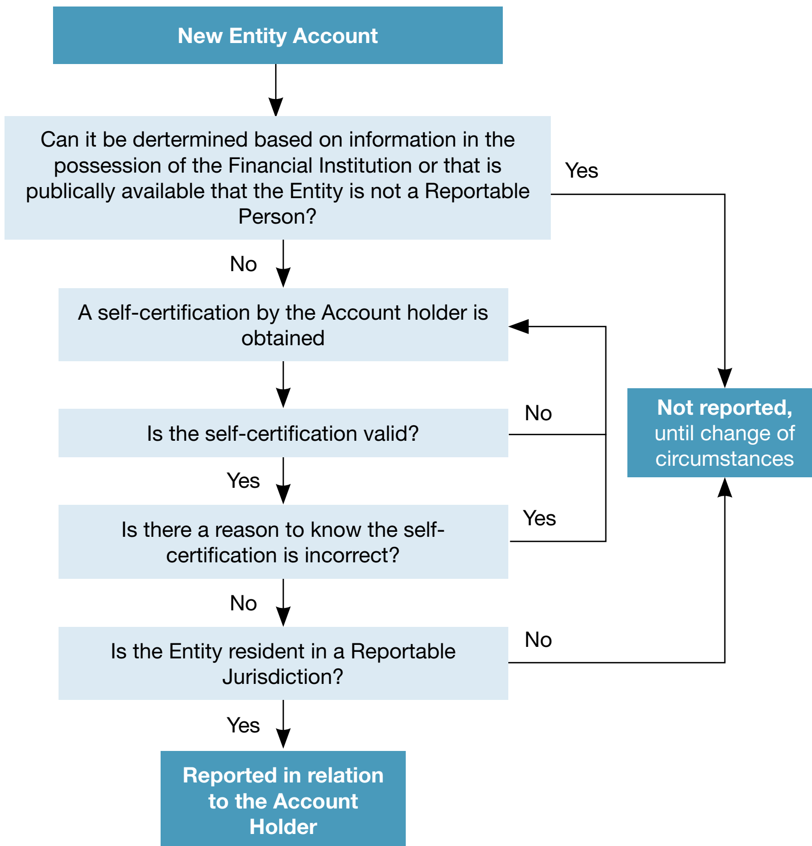
These processes are set out below.

Review procedure to establish whether the Entity is a Reportable Person

204. Figure 17 and the associated text below set out the process to establish whether the Entity Account Holder is a Reportable Person and therefore whether the account is a Reportable Account by virtue of its Account Holder.

Figure 17: Due diligence procedure for New Entity Accounts



Com p. 181

205. The optional provision in relation to the definition of Preexisting Account as set out in the context of New Individual Accounts in this Handbook also applies to Entity Accounts. So where provided for, some accounts that would otherwise need to be treated as New Accounts can be instead treated as Preexisting Accounts.

Can it be determined based on information in the possession of the Financial Institution or that is publicly available that the Entity is not a Reportable Person?

CRS p. 41,
Com p. 143

206. In determining whether a New Entity Account is held by one or more Entities that are Reportable Persons, the Reporting Financial Institution may follow the procedures in the order most appropriate under the circumstances. For example, as publicly traded corporations, Government Entities and Financial Institutions are among those Entities explicitly excluded from being Reportable Persons the Reporting Financial Institution may first establish on the basis of available information that the Entity Account Holder is such an Entity and therefore not a Reportable Person.

A Self-certification by the Account Holder is obtained

207. Alternatively, it may be more straightforward to first obtain a self-certification to establish that the Entity is not resident in a Reportable Jurisdiction and is therefore not a Reportable Person.

208. Participating Jurisdictions are expected to provide information to assist taxpayers to determine their residence(s) for tax purposes. In this respect, the OECD AEOI Portal contains both a compilation of tax residency rules and the information on the principles for issuance and the formats of TINs in Participating Jurisdictions.

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Is the Self-certification valid?

209. For the self-certification to be valid the Standard sets out that it must be signed (or otherwise positively affirmed, i.e. involving some level of active input or confirmation) by a person authorised to sign on behalf of the Entity, be dated, and must include the Account Holder's: name; address; jurisdiction(s) of residence for tax purposes and TIN(s).

Com p. 145

Is there reason to know the self-certification is incorrect?

210. The Reporting Financial Institution must confirm the reasonableness of such self-certification based on the information obtained in connection with the opening of the account (the reasonableness test). Essentially the Financial Institution must not know or have reason to know that the self-certification is incorrect or unreliable. If the self-certification fails the reasonableness test, a new valid self-certification would be expected to be obtained in the course of the account opening procedures.

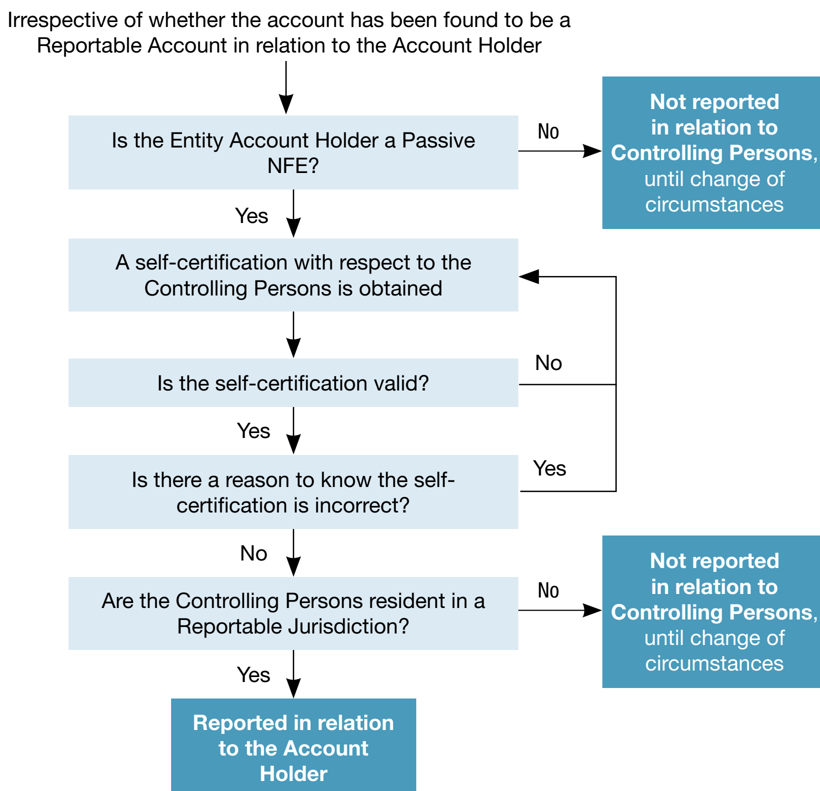
Com p. 146

Review procedure for Controlling Persons

211. Notwithstanding whether the account has been found to be a Reportable Account following the first part of the test, the Financial Institution must carry out the procedure in relation to Controlling Persons to identify whether additional information must also be reported or whether an account now becomes a Reportable Account. The procedure is outlined in Figure 18 with each step described below.

CRS p. 41,
Com p. 147

Figure 18: Due diligence procedure in respect of Controlling Persons for New Entity Accounts



Is the Entity Account Holder a Passive NFE?

CRS p. 41, Com p. 147

212. For purposes of determining whether the Account Holder is a Passive NFE the Reporting Financial Institution may use any of the following information on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution, other than a professionally managed Investment Entity resident in a non-participating jurisdiction which is always treated as a Passive NFE (i.e., that is a category

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(b) Investment Entity that is not a Participating Jurisdiction Financial Institution):

1. information in its possession (such as information collected pursuant to AML/KYC procedures); or

2. information that is publicly available (such as information published by an authorised government body or standardised industry coding system).

213. Otherwise the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status.

214. For the self-certification to be valid the Standard sets out that it must be signed (or otherwise positively affirmed, i.e. involving some level of active input or confirmation) by a person authorised to sign on behalf of the Entity, be dated, and must include the Account Holder's: name; address; jurisdiction(s) of residence for tax purposes and TIN(s).

215. A Reporting Financial Institution that cannot determine the status of the Account Holder as an Active NFE or a Financial Institution other than non-participating professionally managed Investment Entity must presume that it is a Passive NFE.

Identifying Controlling Persons of a Passive NFE

216. For the purposes of determining the Controlling Persons of an Account Holder a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC procedures, provided they are consistent with Recommendation 10 and 25 of the FATF Recommendations (as adopted in February 2012).

Com p. 199

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Obtain a Self-certification with respect to the controlling persons

217. For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may only rely on a self-certification from either the Account Holder or the Controlling Person.

218. The self-certification can be provided in any form but in order for it to be valid the Standard sets out that it must be signed (or otherwise positively affirmed, i.e. involving some level of active input or confirmation) by the Controlling Person(s) or the Entity Account Holder, be dated, and must include the Controlling Person's: name; residence address; jurisdiction(s) of residence for tax purposes; TIN(s) and date of birth.

219. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account (even if the Controlling Person is resident in the same jurisdiction as the Passive NFE).

Com p. 147

220. If there is a change in circumstances that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account by the later of the end of the reporting period or 90 days.

Chapter 4.5: Other definitions and general due diligence rules

Timings

CRS p. 31,
Com p. 106

221. An account is treated as a Reportable Account beginning as of the date it is identified as such and maintains such status until the date it ceases to be a Reportable Account (e.g.

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because the Account Holder ceases to be a Reportable Person or the account becomes an Excluded Account, is closed, or is transferred in its entirety). Where an account is identified as a Reportable Account based on its status at the end of the calendar year or reporting period, information with respect to that account must be reported as if it were a Reportable Account through the full calendar year or reporting period in which it was identified as such (or the date of closure). Unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates. For account balances the relevant balance or value must be determined as of 31 December of the calendar year, or, if an alternative reporting period is used then the relevant balance or value must be determined as of the last day of the reporting period, within that calendar year.

Service providers

222. Each Jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil their reporting and due diligence obligations. The Reporting Financial Institutions will however always remain responsible for their reporting and due diligence obligations, including their obligations on confidentiality and data protection.

CRS p. 31, Com p. 108

223. There are numerous examples where reporting might most appropriately be fulfilled by someone that is not necessarily the Financial Institution itself (e.g. fund managers on behalf of funds and trustees on behalf of trusts).

Alternative procedures for Preexisting Accounts

224. A Jurisdiction may allow Reporting Financial Institutions to apply (i) the due diligence procedures for New Accounts to Preexisting Accounts, and (ii) the due diligence procedures for High Value Accounts to Lower Value Accounts.

CRS p. 31, Com p. 108

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225. This provides flexibility for Financial Institutions to apply the more stringent rules, to a larger number of Financial Accounts.

Currency translation

CRS p. 43, Com p. 156

226. All dollar amounts in the Standard are in US dollars and include equivalent amounts in other currencies as determined. When implementing the Common Reporting Standard, jurisdictions may permit Reporting Financial Institutions to apply the dollar threshold amounts described in the Standard along with the equivalent amounts in other currencies. This would allow financial institutions that operate in several jurisdictions to apply the threshold amounts in the same currency in all the jurisdictions in which they operate.

Other definitions and procedures

227. For ease of reference cross references are provided below to other more detailed due diligence rules and definitions:

Com p. 205

- Reliance on documentation collected by other persons

CRS p. 60, Com p. 202, Com p. 150

- What Documentary Evidence is and when Documentary Evidence and self-certifications can be relied on

Com p. 201

- The definition of a Related Entity

Com p. 198

- The definition of Controlling Persons

Com p. 154

- The account aggregation rules

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Chapter 5: The information that gets reported and exchanged

228. Once accounts are determined to be Reportable Accounts then the Financial Institution must report information in relation to that account to the tax authority. This is the information that a jurisdiction agrees to exchange with its automatic exchange partners as specified in the MCAA, a bilateral CAA or another international basis for the exchange of information, such as the EU DAC2 Directive.

CAA p. 24, CRS p. 29, Com p. 94

229. The information is:

- information required for the automatic exchange partner jurisdiction to identify the Account Holder concerned (Identification information);
- information to identify the account and the Financial Institution where the account is held (Account information); and
- information in relation to the activity taking place in the account and the account balance (Financial information).

230. Together, this information should be sufficient to identify the account holder and then to establish a picture of the compliance risk of that account holder (i.e. whether they have properly declared the relevant financial information). The following tables set out the information to be reported in greater detail.

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Table 4: Identification information

Information required to be reported in relation to Individual and Entity Account Holders that are Reportable Persons, Entities with Controlling Persons that are Reportable Persons and the Controlling Persons themselves	
Information	*Further description (as applicable)*
Name	
Address	The address recorded for the Account Holder pursuant to the due diligence procedures. For individuals will be the current residence address (or the mailing address if no current residence address is held).
Jurisdiction(s) of residence	For Preexisting Accounts this will be based on the residence address test or the indicia search (or a self-certification if obtained) and for New Accounts this will be based on a self-certification.
TIN(s)	The TIN to be reported with respect to an account is the TIN assigned to the Account Holder by its jurisdiction of residence (i.e. not by a jurisdiction of source). The TIN is not required to be reported with respect to Preexisting Accounts if (i) it is not in the records of the Reporting Financial Institution, and (ii) there is not otherwise a requirement for the TIN to be collected by the Reporting Financial Institution under domestic law (subject to reasonable efforts to obtain the information).

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Additional information required to be reported in relation to Individuals/ Controlling Persons only	
Information	*Further description (as applicable)*
Date of birth	The date of birth is not required to be reported with respect to Preexisting Accounts if (i) it is not in the records of the Reporting Financial Institution, and (ii) there is not otherwise a requirement for the date of birth to be collected by the Reporting Financial Institution under domestic law (subject to reasonable efforts to obtain the information).
Place of birth	The place of birth is not required to be reported for both Preexisting and New Accounts unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.

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Table 5: Account information

Information required with respect to all Reportable Accounts	
Information	*Further description (as applicable)*
The account number (or functional equivalent)	The identifying number of the account or, if no such number is assigned to the account, a functional equivalent (i.e. a unique serial number, contract number or policy number, or other number).
The name and identifying number (if any) of the Reporting Financial Institution	The Reporting Financial Institution must report its name and identifying number (if any) to allow Participating Jurisdictions to easily identify the source of the information reported and subsequently exchanged.

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Table 6: Financial information

Information required with respect to all Reportable Accounts	
Information	*Further description (as applicable)*
The account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) or, if the account was closed during the reporting period, the closure of the account.	An account with a balance or value that is negative must be reported as having an account balance or value equal to zero. In general, the balance or value of a Financial Account is the balance or value calculated by the Financial Institution for purposes of reporting to the Account Holder. In the case of an equity or debt interest in a Financial Institution, the balance or value of an Equity Interest is the value calculated by the Financial Institution for the purpose that requires the most frequent determination of value, and the balance or value of a debt interest is its principal amount. In the case of an account closure, the Reporting Financial Institution must only report that the account was closed. Where jurisdictions already require financial institutions to report the average balance or value of the account they are free to maintain reporting of that information instead of requiring reporting of the balance or value of the account.

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Information required with respect to Depository Accounts only	
Information	*Further description (as applicable)*
The total gross amount of interest paid or credited to the account	

Information required with respect to Custodial Accounts only	
Information	*Further description (as applicable)*
The total gross amount of interest paid or credited to the account.	
The total gross amount of dividends paid or credited to the account	
The total gross amount of other income generated with respect to the assets held in the account paid or credited to the account	The term 'other income' means any amount considered income under the laws of the jurisdiction where the account is maintained, other than any amount considered interest, dividends, or gross proceeds or capital gains from the sale or redemption of Financial Assets.
The total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account	The term 'sale or redemption' means any sale or redemption of Financial Assets.

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Information required with respect to Other Accounts only (i.e. not Depository or Custodial Accounts)	
Information	*Further description (as applicable)*
The total gross amount paid or credited to the Account Holder with respect to the account with respect to which the Reporting Financial Institution is the obligor or debtor	Such 'gross amount' includes, for example, the aggregate amount of: any redemption payments made (in whole or part) to the Account Holder; and any payments made to the Account Holder under a Cash Value Insurance Contract or an Annuity Contract even if such payments are not considered Cash Value.

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General rules

Reporting period

231. The information to be reported must be that as of the end of the relevant calendar year or other appropriate reporting period.

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Joint accounts

232. Each holder of a jointly held account is attributed the entire balance or value of the joint account, as well as the entire amounts paid or credited to the joint account. The same is applicable with respect to:

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1. an account held by a Passive NFE with more than one Controlling Person that is a Reportable Person;

2. an account held by an Account Holder that is a Reportable Person (on an NFE with a Reportable Controlling Person) and is identified as having more than one jurisdiction of residence; and

3. an account held by a Passive NFE that is a Reportable Person with a Controlling Person that is a Reportable Person.

Currency

233. The information must be reported in the currency in which the account is denominated and the currency must be identified in the information reported. Any currency conversions, such as in relation to thresholds, must be calculated by applying a spot rate as of the last day of the reporting period.

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Chapter 6: Treatment of trusts in the CRS

CRS p. 43 and 57,
Com p. 158 and 191

234. The CRS will generally apply to trusts in two circumstances: (i) when a trust is a Reporting Financial Institution, and (ii) when a trust is a NFE that maintains a Financial Account with a Reporting Financial Institution.

235. This chapter of the Handbook first outlines the basic features of a trust which are relevant to the CRS. It then describes the application of the steps discussed in Chapters 1-5 of the Handbook to a trust that is a Reporting Financial Institution, in which case the trust will report about the Financial Accounts held in the trust. This chapter then describes the application of the steps discussed in Chapters 1-5 of the Handbook by a Reporting Financial Institution to a trust that is a NFE Account Holder, in which case the Reporting Financial Institution may have reporting obligations regarding the account held by the trust and its Controlling Persons. This guidance may also apply to other similar legal arrangements to the extent the application of such guidance is appropriate.

Chapter 6.1: Basic features of a trust

236. In general terms, a trust is a fiduciary relationship, rather than an entity with its own separate legal personality. The trust arrangement commences when a person (the settlor, or also called the grantor) transfers specific property to the trustee, with the intention that it be applied for the benefit of others (the beneficiaries). A settlor may place any kind of transferrable property into a trust.

237. A trustee holds the legal title to the trust property and has a duty to administer and deal with the trust property in the interests of the beneficiaries. The terms on which the trustee must act for the beneficiaries are determined by the settlor. These terms may be recorded in a written document (the trust

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deed), or may be given orally. The terms may be very specific, or leave broad discretion to the trustee.

238. The parties to a trust must include a settlor, a trustee and at least one beneficiary, and there may be more than one of each. These parties may be natural persons or Entities.

239. Depending on the nature of the settlor's continuing interest in a trust, the trust may be revocable or irrevocable. A trust is irrevocable where the settlor has disposed of all of its interest in the trust property. For example, where the settlor no longer has any right to revoke the trust, vary the terms of the trust, or to have the trust property revert to the settlor. A trust is revocable where the settlor has retained some interest or rights over the trust, such as the right to revoke the trust or to have all or a portion of the trust property return to the settlor. The domestic law in each jurisdiction may further define a revocable and irrevocable trust.

240. The beneficiaries may be named individually for members of a described group of people (a class of beneficiaries). An example of a class of beneficiaries is "the grandchildren of A." Describing the beneficiaries as a class will not make the trust invalid provided that at some point members of the class will be able to be specifically identified.

241. A beneficiary may have a right to receive mandatory distributions, or may receive discretionary distributions. In general terms, a mandatory beneficiary has an entitlement to a set amount of property at a set time (e.g. "B will receive $50 each year"). If the trustee refused to make the distribution, a mandatory beneficiary could enforce their right against the trustee and obtain the property.

242. A discretionary beneficiary does not have an enforceable right to a certain amount of property at any set time. Rather, a

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discretionary beneficiary is dependent on the trustee to exercise its discretion in the beneficiary's favour. For example, "C will receive a distribution of property from the trust if and when the trustee sees fit." If the trustee refused to make a distribution, a discretionary beneficiary could only sue the trustee to consider exercising its discretion in the beneficiary's favour. For purposes of the Standard, a contingent beneficiary is treated like a discretionary beneficiary. A contingent beneficiary does not have an enforceable right to trust property until a certain event or set of circumstances occurs.

243. A protector may also be appointed in connection with a trust. This is not a compulsory requirement of a trust, but may be included in some jurisdictions. A protector enforces and monitors the trustee's actions, such as overseeing investment decisions or authorising a payment to a beneficiary.

Chapter 6.2: Determining whether the trust is a Reporting Financial Institution or an NFE

CRS p. 44 and 57, Com p. 161 - 164

244. As a trust is considered to be an Entity in the CRS, it may be a Financial Institution or a Non-Financial Entity (NFE). The most likely scenario in which a trust will be a Financial Institution is if it falls within the definition of Investment Entity as described in Section VIII, paragraph A(6)(b) of the CRS. This is the case when a trust has gross income primarily attributable to investing, reinvesting, or trading in Financial Assets and is managed by another Entity that is a Financial Institution. This would also include trusts that are Collective Investment Vehicles or other similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in Financial Assets.

245. If a trust is not a Financial Institution, it will be a Non-Financial Entity. NFEs are either Active NFEs or Passive NFEs depending on their activities. It is possible, although perhaps

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less common in practice that a trust could qualify as an Active NFE, such as a trust that is a regulated charity or a trading trust carrying on an active business.

246. If a trust is not an Active NFE, it will be a Passive NFE. In addition, if a trust is holding a Financial Account with a Reporting Financial Institution, such Reporting Financial Institution must treat the trust as a Passive NFE if it is an Investment Entity described in Section VIII, subparagraph A(6)(b) that is not resident or located in a Participating Jurisdiction.

CRS p. 58, Com p. 195 and 159

Chapter 6.3: The treatment of a trust that is a Reporting Financial Institution in the CRS

247. The five steps set out in chapters 1 to 5 are relevant in applying the CRS to a trust: (i) Reporting Financial Institutions (ii) review their Financial Accounts (iii) to identify their Reportable Accounts (iv) by applying the due diligence rules and (v) then report the relevant information.

(i) Determining if the trust is a Reporting Financial Institution

248. A trust that is a Financial Institution will be a Reporting Financial Institution if it is resident in a Participating Jurisdiction and does not qualify as a Non-Reporting Financial Institution. A trust may be a Non-Reporting Financial Institution such as a Broad Participation Retirement Fund or Narrow Participation Retirement Fund. A trust could also be a Non-Reporting Financial Institution where the trustee itself is a Reporting Financial Institution, and that trustee undertakes all information reporting in respect of all Reportable Accounts of the trust (and all such reports are exchanged with the relevant jurisdictions concerned).

CRS p. 47- 48, Com p. 166

249. A trust will be considered to be resident where the trustee(s) is resident. If there is more than one trustee, the trust

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will be a Reporting Financial Institution in all Participating Jurisdictions in which a trustee is resident. In other words, if the trustees are each resident in different jurisdictions, the trust would be a Reporting Financial Institution in each of those Participating Jurisdictions, and would each separately report in respect of their Reportable Accounts.

Com p. 159

250. However, where the trust is considered to be resident for tax purposes in a particular Participating Jurisdiction, and the trust reports all the information required to be reported with respect to Reportable Accounts maintained by the trust that will relieve the trust from reporting in the jurisdictions of residence of the other co-trustees. In order to obtain such relief, each trustee should be able to demonstrate that all necessary reporting by the trust is actually taking place.

(ii) Identifying the Financial Accounts of a trust that is a Reporting Financial Institution

CRS p. 51,
Com p. 178

251. Where a trust is a Reporting Financial Institution, it must identify its Financial Accounts. If the trust is an Investment Entity, the CRS defines its Financial Accounts as the debt and Equity Interests in the Entity.

252. Debt interest is not defined in the CRS, and therefore what is considered a debt interest will be determined under the local law of each implementing jurisdiction.

Com p. 198

253. The Equity Interests are held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. The reference to any other natural person exercising ultimate effective control over the trust, at a minimum, will include the trustee and the protector as an Equity Interest Holder. Further, a discretionary beneficiary will only be treated as an Account Holder in the years in which it receives a distribution from the

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trust. If a settlor, beneficiary or other person exercising ultimate effective control over the trust is itself an Entity, that Entity must be looked through (including any further intermediate Entities), and the ultimate natural controlling person(s) behind that Entity must be treated as the Equity Interest Holder. The term "Controlling Persons" as applies in the context of Passive NFEs will also apply here, which also corresponds to the term "beneficial owner" as described in Recommendation 10 and the Interpretive Note of Recommendation 10 contained in the 2012 FATF Recommendations.

(iii) Identifying the Reportable Accounts of a trust that is a Reporting Financial Institution

254. The debt and Equity Interests of the trust are Reportable Accounts if they are held by a Reportable Person. For example, if a settlor or beneficiary is resident in a Reportable Jurisdiction, their Equity Interest is a Reportable Account.

CRS p. 57, Com p. 191

(iv) Applying the due diligence rules

255. The trust will apply the due diligence rules in the CRS in order to determine the identity and residence of its Account Holders.

256. Where an Equity Interest (such as the interest held by a settlor, beneficiary or any other natural person exercising ultimate effective control over the trust) is held by an Entity, the Equity Interest holder will instead be the Controlling Persons of that Entity. As such, the trust will be required to look through a settlor, trustee, protector or beneficiary that is an Entity to locate the relevant Controlling Person. This look through obligation should correspond to the obligation to identify the beneficial owner of a trust under domestic AML/KYC procedures. In respect of Preexisting Accounts, Reporting Financial Institutions may rely on the information collected in connection with the

CRS p. 51, 38 and 41, Com p. 178, 140, 147 and 199

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account pursuant to their AML/KYC procedures. In respect of New Accounts, Reporting Financial Institutions, in addition to other due diligence procedures, can rely on AML/KYC procedures to determine the identity of the Controlling Persons exercising ultimate control if these procedures are in accordance with the 2012 FATF Recommendations. For this reason, and to ensure consistency, it will be in the interest of Reporting Financial Institutions that their jurisdiction of residence has AML/KYC procedures in place that are consistent with the 2012 FATF Recommendations.

(v) Reporting the relevant information

CRS p. 29, Com. p. 94, Annex 3 p. 245

257. A trust that is a Reporting Financial Institution will report the account information and the financial activity for the year in respect of each Reportable Account. The account information includes the identifying information for each Reportable Person (such as name, address, residence, Taxpayer Identification Number, date of birth and Account Number), and the identifying information of the trust (name and identifying number of the trust). It is possible that a trust that is a Financial Institution may not have an account number for each of the Equity Interest holders. The trust should in that case use a unique identifying number that will enable the trust to identify the subject of the report in the future.

258. The financial activity includes the account balance or value, as well as gross payments paid or credited during the year.

Com p. 98

259. The account balance is the value calculated by the Reporting Financial Institution (the trust) for the purpose that requires the most frequent determination of value. For settlors and mandatory beneficiaries, for example, this may be the value that is used for reporting to the Account Holder on the investment results for a given period. If the Financial Institution has not otherwise recalculated the balance or value for other reasons, the account balance for settlors and mandatory

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beneficiaries may be the value of the interest upon acquisition or the total value of all trust property.

260. Where an account is closed during the year, the fact of closure is reported (in addition to any distributions made prior to closure). A debt or Equity Interest in a trust could be considered to be closed, for example, where the debt is retired, or where a beneficiary is definitely removed.

CRS p. 29

261. The financial information to be reported will depend on the nature of the interest held by each Account Holder. Where the trust does not otherwise calculate the account value held by each Account Holder, or does not report the acquisition value, the account balance or value to be reported is as shown in Table 7. Note that where a settlor or beneficiary is an Entity, the Account Holder will be the Controlling Persons of that Entity.

Table 7: The financial activity to be reported where a trust is a Financial Institution that does not otherwise calculate the account value

Account Holder	Account Balance or Value	Gross payments
Settlor	Total value of all trust property	The total gross amount paid or credited to the settlor in reporting period (if any)
Beneficiary: mandatory	Total value of all trust property	The total gross amount paid or credited to the beneficiary in reporting period
Beneficiary: discretionary (in a year in which a distribution is received)	Nil	The total gross amount paid or credited to the beneficiary in reporting period
Any other person exercising ultimate effective control (including trustee and protector)	Total value of all trust property	The total gross amount paid or credited to the settlor in reporting period (if any)
Debt interest holder	Principal amount of the debt	The total gross amount paid or credited in reporting period (if any)
Any of the above, if account was closed	The fact of closure	The total gross amount paid or credited until the date of account closure to any of the above mentioned Account Holder(s)

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Chapter 6.4: The treatment of a trust that is a Passive NFE

262. If a NFE holds an account with a Reporting Financial Institution, the Reporting Financial Institution may be required to report the trust for purposes of CRS. This section of the Handbook describes the application of the CRS to a trust that is a Passive NFE. In instances where the trust is an Active NFE the trust itself may have a Reportable Account with the Financial Institution, which needs to be determined in light of the relevant due diligence procedures.

263. The following five steps will apply: (i) Reporting Financial Institutions (ii) review their Financial Accounts (iii) to identify their Reportable Accounts (iv) by applying the due diligence rules and (v) then report the relevant information. Assuming here that the first two steps are met (a trust has a Financial Account with a Reporting Financial Institution), the next section sets out the determination of whether the trust is a Reportable Person, the due diligence rules that are applied by the Reporting Financial Institution to the trust, and the information to be reported by the Reporting Financial Institution about the trust.

(i) Identifying whether the account held by the trust is a Reportable Account

264. The account held by a trust that is a NFE is a Reportable Account if: a) the trust is a Reportable Person; or b) the trust is a Passive NFE with one or more Controlling Persons that are Reportable Persons.

265. The trust will be a Reportable Jurisdiction Person only if it is resident for tax purposes in a Reportable Jurisdiction and is not excluded from the definition of Reportable Person. In many cases a trust has no residence for tax purposes. In that case the trust is not considered to be a Reportable Person.

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266. The account held by a trust will also be reportable if the trust is a Passive NFE with one or more Controlling Persons that are Reportable Persons. The concept of Controlling Person used in the CRS is drawn from the 2012 FATF Recommendations on beneficial ownership. As such, the Controlling Persons of a trust are the settlor(s), trustee(s), beneficiary/ies, protector(s) and any other natural person exercising ultimate effective control over the trust. This definition of Controlling Person excludes the need to inquire as to whether any of these persons can exercise practical control over the trust.

CRS p. 57, Com p. 191

267. Where the beneficiaries are not individually named but are identified as a class, the CRS does not require that all possible members of the class be treated as Reportable Persons. Rather, when a member of a class of beneficiaries receives a distribution from the trust or intends to exercise vested rights in the trust property, this will be a change of circumstances, prompting additional due diligence and reporting as necessary. This reflects a similar obligation contained in the 2012 FATF Recommendations (as printed in March 2012; see Interpretive Note to Recommendation 10, at footnote 31).

CRS p. 57, Com p. 147

268. A settlor is reported regardless of whether it is a revocable or irrevocable trust. Likewise, both mandatory and discretionary beneficiaries are included within the definition of Controlling Persons. Unlike the case of an Equity Interest in a trust that is a Reporting Financial Institution, discretionary beneficiaries would be reported regardless of whether a distribution is received in a given year. However, when implementing the CRS, a jurisdiction may allow Reporting Financial Institutions to align the scope of the beneficiaries of a trust reported as Controlling Persons of the trust with the scope of the beneficiaries of a trust treated as Reportable Persons of a trust that is a Financial Institution. In such a case the Reporting Financial Institution would only need to report discretionary beneficiaries in the year they receive distributions from the trust. Jurisdictions

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allowing their Financial Institutions to make use of this option must ensure that such Financial Institutions have appropriate procedures in place to identify when a distribution is made to a discretionary beneficiary of the trust in a given year that enables the trust to report such beneficiary as a Controlling Person. For instance, the Reporting Financial Institution requires a notification from the trust or trustee that a distribution has been made to that discretionary beneficiary.

Com p. 199

269. In the event that a Controlling Person of a trust that is a Passive NFE is resident in the same jurisdiction as the Reporting Financial Institution, that Controlling Person would not be considered a Reportable Person. However, jurisdictions may adopt the optional wider approach to define Reportable Person to include their own residents in this scenario.

(ii) Identifying Controlling Persons of a trust in chain of ownership

CRS p. 57, Com p. 198 - 199

270. Where a Passive NFE (e.g. in the form of a trust) maintains a Financial Account with a Reporting Financial Institution, that Reporting Financial Institution is required to look through the chain of ownership and control to identify Controlling Persons, i.e. natural persons that are Reportable Persons. Examples of different scenarios are outlined in Figures 19 through 22 identifying Controlling Persons in each of the structures as described in the respective analysis below each of the figures.

271. It is important to point out that the ownership threshold for legal persons of 25% that is specified in footnote 30 in the Interpretative Note to Recommendation 10 of the 2012 FATF Recommendations (as printed in March 2012) is only indicative. For the purposes of determining the Controlling Person of an Account Holder, the AML/KYC procedures pursuant to the anti-money laundering or similar requirements as implemented in the domestic law and to which the Reporting Financial Institution is subject, apply (see also FAQs 4 and 6 on Sections

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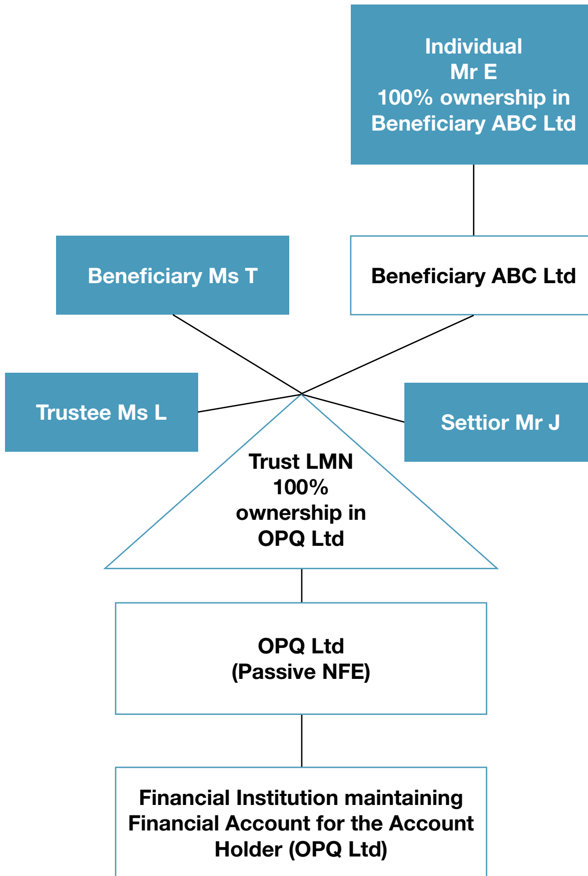
II-VII in this respect). For New Entity Accounts such AML/KYC Procedures must be consistent with Recommendations 10 and 25 of the 2012 FATF Recommendations. The examples below are simplified and do not reflect situations where there are other legal arrangements or structures in place where control is exercised through other means than ownership.

Figure 19: Controlling Persons of a trust in chain of ownership (Example 1)



CRS p. 57, Com p. 198 - 199

272. Figure 19 illustrates a structure where a Financial Institution is maintaining a Financial Account for Account Holder OPQ Ltd that is a Passive NFE, 100% owned by Trust LMN. The due diligence rules for identifying whether a Financial Account of a Passive NFE is Reportable Account require a look through approach to identify who are the Controlling Persons of the Account Holder. If the Controlling Persons are Reportable Persons, the Financial Account of the Passive NFE is a Reportable Account with respect to such Controlling Persons.

273. The Controlling Persons of Passive NFE are defined in the CRS as natural persons exercising control over the Entity. The CRS definition of the term Controlling Person corresponds to the term beneficial owner as set out in Recommendation 10 and the accompanying Interpretative Note of the 2012 FATF Recommendations.

274. The identity of beneficial owner of a legal person is defined as any natural person who ultimately has controlling ownership interest which is usually defined on the basis of a threshold. Footnote 30 to the Interpretative Note to Recommendation 10 of the 2012 FATF Recommendations (as printed in March 2012) gives an exemplary ownership threshold of 25%.

275. Should the ownership structure analysis result in doubt as to whether the person(s) with the controlling ownership interest are the beneficial owners or where no natural person exercises control through ownership interest the analysis shall proceed to identifying any other natural person(s) exercising control of the legal person through other means. As a last resort, if none of the previously mentioned tests result in identification of the beneficial owner(s), the senior managing official(s) will be treated as the beneficial owner(s).

276. For legal arrangements, such as trusts, the term beneficial owner is defined in the Interpretative Note to Recommendation

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10 of the 2012 FATF Recommendations as the 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 (including through a chain of control/ownership).

277. This effectively means that in the chain of ownership determination of Controlling Person of a Passive NFE is made by reviewing the beneficial owners of subsequent legal persons or arrangements holding ownership interests in or exerting control over that Passive NFE.

278. Based on the above, Reporting Financial Institution must identify Controlling Persons of the Passive NFE OPQ Ltd (that are natural persons) by determining the beneficial owners of the Trust LMN Ltd, as LMN Ltd holds a controlling ownership interest amounting to 100% ownership of OPQ Ltd For the purposes of reporting, Financial Institution is required to treat Ms L (trustee), Ms T (beneficiary), Mr J (settlor) and Mr E (having a 100% controlling ownership interest in corporate beneficiary ABC Ltd.) as Controlling Persons of the Passive NFE OPQ Ltd.

279. In the case of Figure 20 only Trust LMN exceeds the indicative 25% threshold of controlling ownership interest in the legal person OPQ Ltd, as defined in footnote 30 of the Interpretative Note to Recommendation 10 of the 2012 FATF Recommendations (as printed in March 2012). Trust LMN has 80% ownership interest in the Passive NFE OPQ Ltd, while ABC Ltd has 20% ownership interest. Accordingly, for the purposes of reporting, Financial Institution is required to treat Ms C (trustee), Ms A (individual beneficiary), Mr B (settlor) and Ms D (individual beneficiary) as Controlling Persons of Passive NFE OPQ Ltd, as the trustee, the settlor and the beneficiaries of the trust are considered beneficial owners of that trust pursuant to FATF Recommendation 10 and, accordingly, the CRS.

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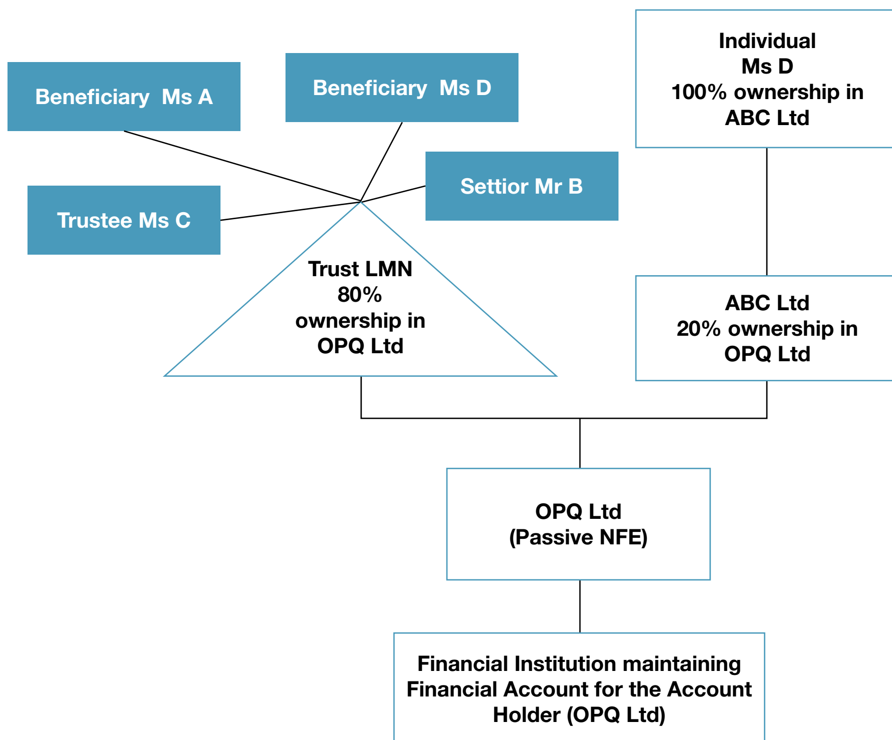
Figure 20: Controlling Persons of a trust in chain of ownership (Example 2)



280. Similarly, in the legal construct depicted in Figure 21 only Trust LMN exceeds the indicative 25% threshold of controlling ownership interest in the legal person OPQ Ltd as defined in footnote 30 of the Interpretative Note to Recommendation 10 of the 2012 FATF Recommendations (as printed in March 2012). Trust LMN has 80% ownership interest in the Passive NFE OPQ Ltd while Trust XYZ has 20% ownership interest. Thus, for the latter it is not required to determine beneficial owners based on the threshold.

281. In order to determine beneficial owners of Trust LMN, the Reporting Financial Institution is required to apply the same logic as that applicable to the corporate beneficiary ABC Ltd

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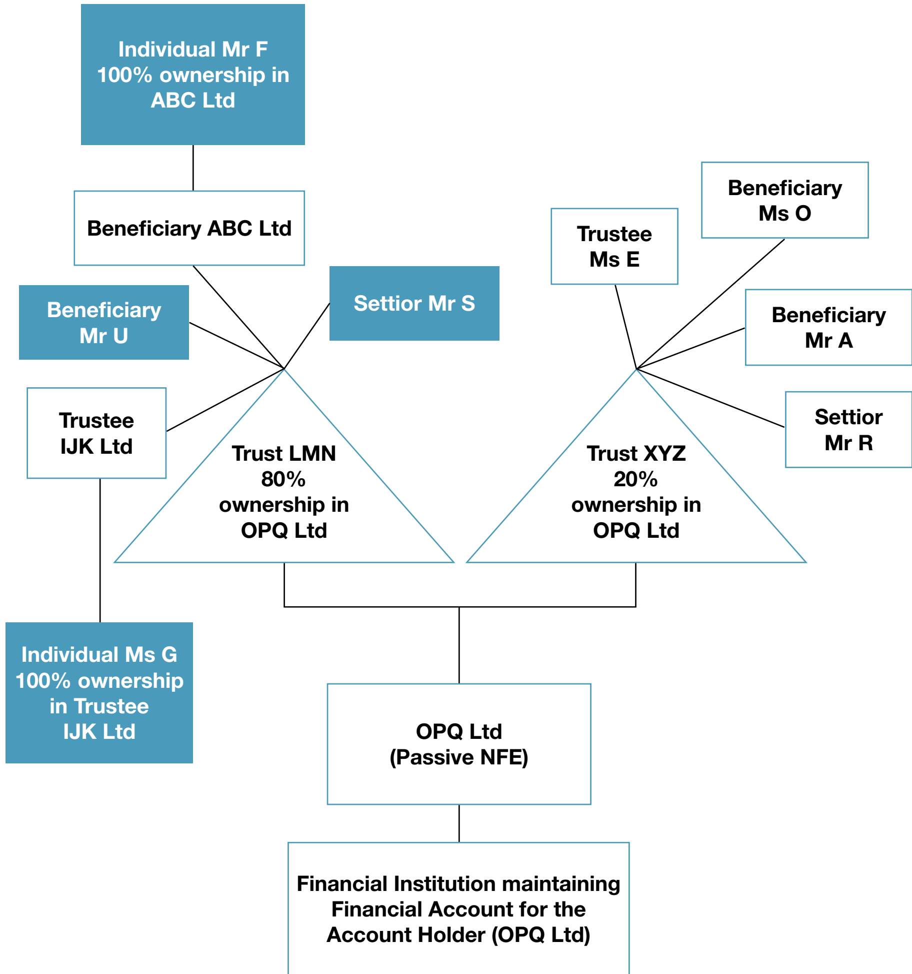
Figure 21: Controlling Persons of a trust in chain of ownership (Example 3)



and the corporate trustee IJK Ltd. As the corporate beneficiary ABC Ltd is 100% owned by the individual Mr F, he is considered to have ultimate controlling interest in ABC Ltd and shall therefore be treated as its beneficial owner. The same principle applies to the corporate trustee IJK Ltd and Ms G, who shall be identified as its beneficial owner.

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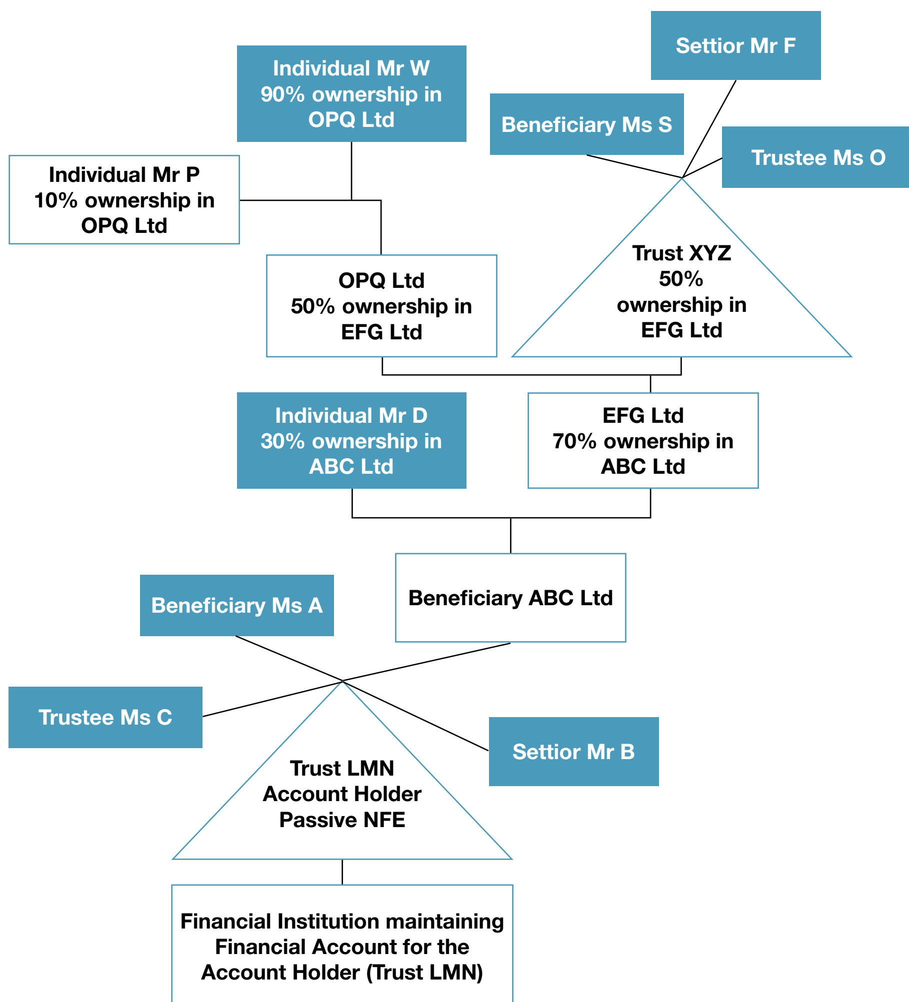
282. As a consequence, for the purpose of reporting under the CRS, the Reporting Financial Institution is required to treat as Controlling Persons of the Passive NFE OPQ Ltd: Ms G (100% owner of the corporate trustee IJK Ltd), Mr U (beneficiary), Mr S (settlor) and Mr F (100% owner of the corporate beneficiary ABC Ltd).

Figure 22: Controlling Persons of a trust in chain of ownership (Example 4)



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283. In Figure 22 the Account Holder is a Trust LMN that is a Passive NFE, and thus a look through approach needs to be applied in order to determine its Controlling Persons.

284. The CRS defines that Controlling Persons of a trust are its trustee(s), settlor(s), protector(s) (if any), and beneficiary(ies). Thus, the trustee Ms C, the beneficiary Ms A and the settlor Mr B are easily identifiable Controlling Persons of Trust LMN. Regarding the corporate beneficiary ABC Ltd, beneficial owners have to be determined in the same way as described in the previous figures.

285. Individual Mr D has 30% ownership interest in ABC Ltd, therefore he qualifies as Controlling Person for the purposes of the CRS and in application of the rules for identifying the beneficial owners of legal persons under FATF Recommendation 10.

286. The beneficial owners of legal person EFG Ltd. are determined on the basis of ownership structure where OPQ Ltd has equal percentage of ownership interest as Trust ZXY, i.e. 50% each. Based on that a further determination is needed to identify the natural persons that are the beneficial owners of the both OPQ Ltd and Trust ZXY. For the legal person OPQ Ltd the ownership structure is split between individual Mr P and Mr W who hold respectively 10% and 90% of the ownership interests in OPQ Ltd In application of the rules of FATF Recommendation 10 with respect to legal persons, it is only Mr W that passes the indicative threshold of 25% ownership interest, and thus he should be considered as the Controlling Person of Trust LMN.

287. For Trust ZYX its beneficiaries, settlor and trustee should be identified as its beneficial owners, again in accordance with the rules for legal arrangements set out in FATF Recommendation 10. Accordingly, Ms S (beneficiary of ZYX), Mr F (settlor of ZYX) and Ms O (trustee of ZYX) are identified as Controlling Persons

of Trust LMN and shall be treated as Reportable Persons by the Financial Institution depicted in Figure 22.

(iii) Applying the due diligence rules

Com p. 198

288. The Reporting Financial Institution must apply the due diligence rules to determine if the account held by the trust is a Reportable Account.

289. Reporting Financial Institutions may rely on information collected pursuant to AML/KYC procedures to identify the Controlling Persons. In respect of Preexisting Entity Accounts, Reporting Financial Institutions may rely on the information collected in connection with the account pursuant to their AML/KYC procedures to determine if the Account Holder is resident in a Reportable Jurisdiction. In addition, Reporting Financial Institutions may also rely on information collected pursuant to AML/KYC procedures to identify the Controlling Persons. In respect of New Entity Accounts, Reporting Financial Institutions can rely on AML/KYC procedures to identify Controlling Persons if these procedures are in accordance with the 2012 FATF Recommendations. For this reason, and to ensure consistency, it will be in the interest of Reporting Financial Institutions that their jurisdiction of residence has AML/KYC rules in place that are consistent with the 2012 FATF Recommendations.

(iv) Reporting the relevant information

290. Where a trust is a Reportable Person, the Reporting Financial Institution will report the account information and the financial activity for the year with respect to the account of the trust.

291. The account information includes the identifying information of the trust (such as the name of the trust, address, residence, Taxpayer Identification Number, and account

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number), and the identifying information of the Reporting Financial Institution (name and identifying number).

292. In respect of a trust that is a Passive NFE, in addition to the information mentioned above, the Reporting Financial Institution must report the Controlling Persons of the trust that are Reportable Persons. Where the Reporting Financial Institution has information available that identifies the type of each Controlling Person (i.e. whether it is the settlor, trustee, protector or beneficiary), this information is also expected to be reported. Including this information in reports will significantly increase the usefulness of the data to the receiving jurisdiction and benefit the Controlling Persons themselves due to the increased clarity in relation to their status. With respect to New Entity Accounts, given that the 2012 FATF Recommendations require the identification of the settlor, trustees, beneficiaries, protectors and any other natural person exercising ultimate effective control of the trust, Reporting Financial Institutions should have this information available.

CRS p. 41, Com p. 147

293. The financial information to be reported will be the account balance or value of the account held by the trust and payments made or credited to such account. Each Controlling Person is attributed the entire value of the account, as well as the entire amounts paid or credited to the account, as shown in Table 8.

CRS p. 29, Com p. 94

294. Where the financial account held by the trust is closed during the year, the fact of closure is reported and the gross payments made or credited until the date of account closure.

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Table 8: The financial activity to be reported where a trust is a Passive NFE

Account Holder	Account Balance or Value	Gross payments
Settlor	Total account balance or value	Gross payments made or credited as per Section I.A of the CRS
Trustee	Total account balance or value	Gross payments made or credited as per Section I.A of the CRS
Beneficiary: mandatory	Total account balance or value	Gross payments made or credited as per Section I.A of the CRS
Beneficiary: discretionary (if option at paragraph 134 on page 199 is exercised)	Total account balance or value	Gross payments made or credited as per Section I.A of the CRS
Protector (if any)	Total account balance or value	Gross payments made or credited as per Section I.A of the CRS
Any of the above, if account was closed	The fact of closure	Gross payments made or credited until the date of account closure as per Section I.A of the CRS

295. The reports will be sent bilaterally. For example, consider a trust that is a Passive NFE with one or more Controlling Person. The Controlling Persons of the trust are all Reportable Persons: (1) settlor resident in jurisdiction A; (2) trustee resident in jurisdiction B; and (3) beneficiary resident in jurisdiction C. The Reporting Financial Institution is resident in jurisdiction X and will send the reportable information to its Competent Authority. The Competent Authority will then exchange the following reports (assuming that in jurisdiction X, each of jurisdictions A, B and C are Reportable Jurisdictions):

Reportable Jurisdiction	Subject of information report
A	The settlor resident in Jurisdiction A as a Controlling Person of a Passive NFE
B	The trustee resident in Jurisdiction B as a Controlling Person of a Passive NFE
C	The beneficiary resident in Jurisdiction C as a Controlling Person of a Passive NFE

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PART III: THE STANDARD COMPARED WITH FATCA MODEL 1 IGA

Part III: The Standard compared with FATCA Model 1 IGA

296. As discussed earlier, the Standard was designed to build on FATCA Model 1 IGA, given that many of the jurisdictions implementing the Standard will also be implementing their FATCA Model 1 IGA. Although differences exist because of the multilateral dimension of the Standard, FATCA IGA governments and financial institutions can largely align the requirements of their FATCA Model 1 IGA with the requirements of the Standard. The comparisons provided below focus on the differences in wording between the FATCA Model 1 IGA and the CRS and aim to assist jurisdictions in identifying where those differences can be overcome and where the differences cannot be aligned.

297. The comparisons provided in the below table reflect analysis by the OECD Secretariat to assist officials in their deliberations on implementation of the Standard alongside the Model 1 FATCA IGA. The interpretation and application of the FATCA IGAs remains a matter for the Parties to the Agreements.

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Topic	The Standard Compared with Model 1 FATCA IGA	Comment
Nexus for Reporting Financial Institutions	The Standard uses the residence of the Financial Institution as the reporting nexus (see definition of "Participating Jurisdiction Financial Institution", Section VIII, A, 2 of the Standard). The Commentary contains detailed guidance on the definition of residence. Model I FATCA IGA allows a FATCA Partner to define its Reporting Financial Institutions by using either the residence or the jurisdiction under which the Financial Institution is organised (or both, in the case of some Model 1 FATA IGAs). The Model 1 FATCA IGA clarifies in a footnote that this decision is usually made based on the appropriate concept under the FATCA Partner's tax laws and, where there is no such concept, the legal organisation test is generally chosen (see definition of FATCA Partner Financial Institution, Article 1,1, l) of the Model 1 FATCA IGA and related footnote).	Most FATCA Partners use the residence of the Financial Institution as the reporting nexus. The Model 1 FATCA IGA provides that for terms not defined in the IGA, the term shall have the meaning it has at that time under the law of the Party applying the IGA, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party, unless the context requires otherwise or two Competent Authorities agree to a common meaning., Jurisdictions should explore the extent to which they can rely on the approach set out in the Standard to determine the residence of a Financial Institution for both the Standard and the Model 1 FATCA IGA.
Definition of Investment Entity	The definition of Investment Entity in Article 1,1, (j) of the Model 1 FATCA IGA differs from the definition of Investment Entity in Section VIII, A, 6 of the Standard.	The definition of Investment Entity in Article 1(1)(j) of the Model 1 FATCA IGA cannot be used for CRS purposes on its own, as it is less prescriptive than the definition of Investment Entity in Section VIII(A)(6). However, the definitions of the Model 1 FATCA IGA and the CRS can be read consistently. For example, the CRS definition includes a gross income test to determine whether an Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph A(6)(b), and could be used to interpret the less prescriptive aspects of the Model 1 FATCA IGA definition. The CRS definition is in fact based on the definition of Investment Entity in the US FATCA regulations, which may be used to interpret the Model 1 FATCA IGA definition.

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Categorisation of Financial Institutions	Annex II to the Model 1 FATCA IGA describes which Entities are treated as Non-Reporting Financial Institutions as: a) Exempt Beneficial Owners (i.e. entities that are exempt from reporting and withholding under the FATCA rules); and b) Deemed Compliant Foreign Financial Institutions (i.e. Financial Institutions that are deemed to be compliant with the FATCA reporting requirements). In addition, the definition of a Non-Reporting Financial Institution in the Model 1 FATCA IGA includes Deemed-Compliant Financial Institutions or Exempt Beneficial Owners described in the US FATCA Regulations. The sub-categories of Exempt Beneficial Owner and Deemed-Compliant Foreign Financial Institution are not used in the Standard.	The Standard only requires Entities to determine whether they are in the category of Reporting Financial Institutions or Non-Reporting Financial Institutions. Therefore, it was not necessary to adopt Non-Reporting Financial Institutions subcategories of, Exempt Beneficial Owner, Deemed Compliant FFI, and Financial Institutions treated as such under the US FATCA Regulations which are FATCA specific. Notwithstanding this classification into subcategories of Non-Reporting Financial Institutions for FATCA purposes but not for the Standard, the Entities described as Non-Reporting Financial Institutions in the Standard are largely consistent with the Entities described in Annex II to the Model 1 FATCA IGA
Collective Investment Vehicle	The conditions for qualifying as a Collective Investment Vehicle as set out in Sections IV,E and F of Annex II to the Model 1 FATCA IGA (in the Standard described as Exempt Collective Investment Vehicle, see Section VIII,B,9 of the Standard) were slightly amended.	The conditions in the Standard were amended to take into account the multilateral context, remove US specificities and the consequential changes to the definition of Reportable Persons.
Other low-risk Non-Reporting Financial Institutions	The Standard includes the additional general category of Other Low-risk Non-Reporting Financial Institutions to be determined under domestic law (see Section VIII,B,1,c) of the Standard). The Non-Reporting Financial Institutions contained in Annex II to the Model 1 FATCA IGAs are agreed th rough a bilateral discussion. Where an Entity is described in one of the categories in Annex II, it may be treated as a Non-Reporting Financial Institution even though it is not specifically listed. A jurisdiction has the ability to include a specific list of Entities described in the Annex II categories in its domestic legislation. In addition, Annex II may be modified to include additional Entities that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the Entities described in Annex II as of the date of signature of the IGA.	There is likely to be significant overlap between the Entities included in the category of Other Low-risk Non-Reporting Financial Institutions in the Standard and those excluded from reporting under Annex II of the Model 1 FATCA IGA. However this will depend on meeting the requirements set out in the Standard and Annex II to the Model 1 FATCA IGA.

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The categories of Non-Reporting Financial Institutions	Annex II to the Model 1 FATCA IGA includes several categories of Entities that are treated as Non-Reporting Financial Institutions that are excluded from reporting that are not included in the Standard. These are: - Treaty Qualified Retirement Fund; - Investment Entity Wholly Owned by Exempt Beneficial Owners; - Local Banks; Financial Institutions with a Local Client Base; - Financial Institutions with Only Low-Value Accounts; - Sponsored Investment Entity and Controlled Foreign Corporation; - Sponsored Closely Held Investment Vehicle; - Investment Advisors and Investment Managers (see Sections II through IV of Annex II to the Model 1 FATCA IGA). Further categories are also treated as Non-Reporting Financial Institutions in the definition in the Model 1 FATCA IGA by reference to Financial Institutions treated as Deemed-Compliant Financial Institutions or Exempt Beneficial Owners in the US FATCA Regulations.	These categories are either not suitable for the Standard, due to the differing context or approach of the Standard compared to the Model 1 FATCA IGA, or have been incorporated elsewhere in the Standard. - Financial Institutions with Only Low-Value Accounts were not included as they rely on the $50,000 threshold contained in FATCA which is not present in the Standard. - Treaty Qualified Retirement Funds, Local Banks and Financial Institutions with a Local Client Base do not translate into a multilateral setting. - Investment Entity Wholly Owned by Exempt Beneficial Owners: These entities are treated as Non-Reporting Financial Institutions on the basis of the fact that none of their direct account-holders are persons that trigger any reporting obligation. As a result, even without these exceptions such Investment Entities would have no reporting obligations. . - Sponsored Investment Entity and Controlled Foreign Corporation; Sponsored Closely Held Investment Vehicle: These exceptions are based on the condition that a sponsor is performing the due diligence and reporting on behalf of the Financial Institution. - Investment Advisors and Investment Managers: Financial Institutions that are not maintaining any financial accounts have no reporting responsibilities. Therefore, even without the exception, these entities would not have any reporting obligations if they are not maintaining any Financial Accounts.
Financial Asset	The term Financial Asset has been specifically defined in the Standard (see Section VIII, A,7 of the Standard) and is used in the definitions of Investment Entity (see Section VIII, A, 6 of the Standard) and Custodial Institution (see Section VIII, A, 4 of the Standard). The Model 1 FATCA IGA does not include such a definition.	The definition of Financial Asset in the Standard is consistent with the current US FATCA Regulations except that non-debt direct investments in real property have been specifically excluded from the Standard as a clarification. Jurisdictions could adopt the approach in the Standard and rely on it for purposes of both the Standard and the Model 1 FATCA IGA.

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Debt or Equity Interests in an Investment Entity	The FATCA Model 1 IGA excludes as a Financial Account of an Investment Entity interests in such Entity that are regularly traded on an established securities market. However, the exclusion does not apply if the holder of the interest (other than a Financial Institution acting as an intermediary) is registered on the books of the Investment Entity (except for interests first registered on the books of the Investment Entity prior to 1 July 2014, and with respect to interests first registered on the books of such Financial Institution after 1 July 2014, a Financial Institution is not required to apply the exclusion until 1 January 2016). The Standard does not exclude equity or debt interests in an Investment Entity from the definition of Financial Account where the interests are regularly traded on an established securities market. However, the Standard does exclude a Financial Institution from the definition of Reportable Person and thus if the equity or debt interest in an Investment Entity is held by a Custodial Institution, the interest is not subject to reporting by the Investment Entity.	In the Model 1 FATCA IGA interests in an Investment Entity that are regularly traded on an established market are generally held by Custodial Institutions and therefore will be reported by the Custodial Institution maintaining the Custodial Account and holding the interests of the Investment Entity. As a result the approach in the Standard is largely consistent with the scope of equity or debt interest in an Investment Entity that are subject to reporting
Cash Value Insurance Contract	The definition of Cash Value Insurance Contract in the Model 1 FATCA IGA excludes Insurance Contracts with a Cash Value of 50.000 USD or lower (see Article 1,1,y) of the Model 1 FATCA IGA). The Standard does not have this exclusion (see Section VIII,C,7 of the Standard).	This difference is due to a policy decision taken when developing the Standard.

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Cash Value	The definition of Cash Value in Article 1,1, z) of the Model 1 FATCA IGA is different from the equivalent definition in Section VIII, C,8 of the Standard.	The definition in the Standard of Cash Value has incorporated the more detailed definition of amounts excluded from cash value that is set out in the current US FATCA Regulations but is slightly more narrow than the definition in the current US FATCA Regulations. Jurisdictions can elect to use a definition in the US FATCA Regulations in lieu of a definition in the Model 1 FATCA IGA and, may rely on the definition in the US FATCA Regulations for both the Standard and the Model 1 FATCA IGA.
Certain excluded retirement savings accounts	The Standard provides that contributions to certain qualifying Excluded Accounts (regulated personal retirement or pension accounts; accounts in a regulated or registered retirement or pension plan; accounts in regulated and regularly traded non-retirement investment vehicles or in certain regulated savings vehicles) where they are made from other qualifying Excluded Accounts (the categories above; Broad or Narrow Participation Retirement Funds; and Pension Funds of a Governmental Entity, International Organisation or Central Bank) (see Section VIII,C,17,a) and b) of the Standard) will not cause an otherwise Excluded Account to fail to satisfy the contribution limitation requirement. Annex II to the Model 1 FATCA IGA does not provide a similar provision, except in the case of certain retirement funds.	The current US FATCA regulations permit certain contributions to retirement and pension accounts and non-retirement savings accounts where these contributions are from certain other accounts excluded from the definition of Financial Account or certain other Deemed-Compliant Financial Institutions (i.e., rollover contributions). This provision in the current US FATCA Regulations is largely consistent with the Standard. Jurisdictions could elect to use the definition of Financial Account in the current US FATCA Regulations in lieu of a definition in the Model 1 FATCA IGA to incorporate the rollover provision. Jurisdictions would therefore be able to rely on the approach in the Standard for purposes of both the Standard and the Model 1 FATCA IGA.

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Preexisting Account	The Standard contains rules allowing Financial Institutions to treat a New Account opened by an Account Holder of Preexisting Account as a Preexisting Account. The conditions for a New Account to be treated as a Preexisting Account are similar to those in the current US FATCA regulations. However the Standard contains one additional condition, which is that no new, additional, or amended information is required to be obtained from the Account Holder of the Preexisting Account.	The Model 1 FATCA IGA does not provide that a Financial Institution may treat a New Account opened by an Account Holder of a Preexisting Account. The definition of a Preexisting Account in the current US FATCA Regulations allows certain new accounts opened by account holders of Preexisting Accounts to be treated as Preexisting Account. Jurisdictions could elect to use the definition of Preexisting Account in current US FATCA Regulations in lieu of the definition in the Model 1 FATCA IGA to be able to treat certain New Accounts as Preexisting Accounts. While the current US FATCA regulations do not impose the condition that no new, additional, or amended customer information be required in order to open the account, jurisdictions that have elected to use the definition of a Preexisting Account in the current US FATCA Regulations should be able to rely on the approach in the Standard for purposes of both the Standard and the Model 1 FATCA IGA.

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Depository Accounts due to non-returned overpay-ments	This category is included in the definition of Excluded Accounts under the Standard (see Section VIII,C,17,f) of the Standard). It effectively allows for the exclusion of deposit accounts that meet certain requirements including that the Financial Institution implements policies and procedures either to prevent the customer from making an overpayment in excess of USD 50,000, or to ensure that any customer overpayment in excess of USD 50,000 is refunded to the customer within 60 days. This category is not contained in Annex II to the Model 1 FATCA IGA.	Although this category is not contained in Annex II to the Model 1 FATCA IGA, the Annex I to the Model 1 FATCA IGA excludes from review, identification, and reporting Preexisting and New Individual Accounts that are Depository Accounts with a balance of USD 50,000 or less unless a Reporting Financial Institution elects otherwise, where the implementing rules in the Financial Institution's jurisdiction provide for such election. Annex I to the Model 1 FATCA IGA also excludes from review, identification, and reporting, a Preexisting Entity Account with a balance or value that does not exceed USD 250,000 until the balance or value exceeds USD 1,000,000, unless a Reporting Financial Institution elects otherwise, where the implementing rules in the Financial Institution's jurisdiction provide for such election. Annex I to the Model 1 FATCA IGA also excludes from review, identification, and reporting, a New Entity Account that is a credit card account or a revolving credit facility, provided that the Reporting Financial Institution maintaining such account implements policies and procedures to prevent an account balance owed to the account holder that exceeds USD 50,000. Therefore, where Annex I and the Standard overlap a single approach could be adopted to exclude Depository Accounts with a balance of less than USD 50,000 from due diligence and reporting provided the requirements of the Standard and Annex I are met with respect to such account.

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Low-risk Excluded Accounts	The Standard includes the additional general category of Low-risk Excluded Accounts to be determined under domestic law (see Section VIII,C,17,g) of the Standard). The Excluded Accounts contained in the Model I FATCA IGA are agreed through a bilateral discussion. Where an account is described in one of the categories in Annex II to the Model I FATCA IGA, it may be treated as an excluded account even though it is not specifically listed. A jurisdiction has the ability to include a specific list of excluded accounts described in the Annex II categories in its domestic legislation. In addition, Annex II may be modified to include additional accounts that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the accounts described in Annex II as of the date of signature of the IGA.	There is likely to be significant overlap between the Financial Accounts included in the category of Low-risk Excluded Accounts in the Standard and those excluded from the definition of a Financial Account under Annex II to the Model 1 FATCA IGA. However this will depend on the Financial Account meeting the requirements set out in the Standard and Annex II to the Model 1 FATCA IGA.
Reportable Jurisdiction Persons	Under the Standard only residents of a Reportable Jurisdiction are considered Reportable Jurisdiction Persons, with residence generally considered to mean tax residence. Where Entities do not have a residence for tax purposes, the Standard indicates the place of effective management should be used (see Section VIII,D,3 of the Standard). Since under US tax law a US citizen is also a US tax resident, the Model 1 FATCA IGA provides that both US citizens and US residents are included in the definition of US person (see Article 1,1,ee) of the Model 1 FATCA IGA).	The approach taken in the Standard definition generally determines residence under the tax laws of a Reportable Jurisdiction. Because in the case of the US, a US tax resident includes a US citizen and a US resident, . the approach in the Model 1 FATCA IGA is consistent with the Standard and Financial Institutions will need to consider US citizenship as well as residence in order to fulfil the requirements of the Model 1 FATCA IGA.

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Non-Reportable Persons	Under the Model 1 FATCA IGA a detailed list is provided setting out each category of Non-Reportable US Persons. The categories are drawn from the FATCA statute and contain US-specific definitions with references to US domestic law (see Article 1,1,ff) of the Model 1 FATCA IGA). The Standard contains a shorter list of Non-Reportable Persons with non-jurisdiction specific descriptions (see Section VIII,D,2 of the Standard).	The categories of Non-Reportable Persons in the Standard were developed with the categories in the Model 1 FATCA IGA in mind. However the Standard has adapted some of the categories contained in Model 1 FATCA IGA to apply to a multilateral setting by removing US specific elements. Therefore, while many of the categories are broadly consistent, two separate approaches are required.
Passive NFEs and Controlling Persons	Under the Standard, the Controlling Persons of Passive NFEs are reportable, regardless of whether they are resident in the same jurisdiction as the Passive NFE (see Section VIII,D,1 and 8 of the Standard). Under the Model 1 FATCA IGA only US Controlling Persons of passive foreign non-financial entities (NFFEs) are reportable (i.e., not where the Entity is resident in the US) (see Article 1,1,cc) of the Model 1 FATCA IGA).	In this respect the Standard adopts a different approach than the Model 1 FATCA IGA so two different approaches will need to be maintained.
The definition of a Passive NFE	Under the Standard the definition of a Passive NFE includes Investment Entities not resident in a Participating Jurisdictions (whether they would otherwise be Active or Passive) (see Section VIII,D,8 of the Standard). This is not the case under the Model 1 FATCA IGA (see Section VI,B,2 of Annex I to the Model 1 FATCA IGA.	The inclusion of these Entities in the definition of Passive NFE ensures transparency by requiring reporting on their Controlling Persons under the Standard. The inclusion of these Entities exists only under the Standard.
Related Entity	Under the Standard an entity is a Related Entity of another entity if either entity controls the other entity, or the two entities are under common control. For this purpose, control includes direct or indirect ownership of more than 50 percent of the vote and value of such entity, whereas under the Model 1 FATCA IGA the control test is satisfied, if direct or indirect ownership is 50 percent of either the vote or value of such entity.	When developing the Standard it was decided to apply different requirements for considering an entity a Related Entity, by requiring ownership of the majority of both voting rights and shares. As such, the Standard differs from the Model 1 FATCA IGA. However, the Standard is consistent with the approach taken in the US FATCA Statute and Regulations. Jurisdictions could adopt the definition in the FATCA statute, and to the extent that it is consistent with the Standard rely on a common approach for purposes of both the Standard and the Model 1 FATCA IGA.

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Controlling Persons	Both the Standard and Model 1 FATCA IGA provide with respect to the notion of a Controlling Person an explicit reference to the Financial Action Task Force (FATF) recommendations. The Commentary to the Standard provides a description of the FATF recommendations.	The definition of Controlling Persons under the Standard is the same as the definition used in the Model 1 FATCA IGA. The Commentary to the Standard provides a description of certain FATF recommendations. Jurisdictions should be able to rely on these descriptions for purposes of both the Standard and Model 1 FATCA IGA to the extent consistent with the implementation of the FATF recommendations in their jurisdiction.
Application of the due diligence procedures	Under the Standard, a jurisdiction may allow Reporting Financial Institutions to apply the due diligence procedure for New Accounts to Preexisting Accounts and the procedure for High Value Accounts to Low-Value Accounts (see Section II,E of the Standard). The Model 1 FATCA IGA does not explicitly provide for this option.	Jurisdictions may choose to adopt the due diligence procedures without this option and apply a single approach in the Model 1 FATCA IGA for and the Standard As the due diligence procedures for New Accounts will satisfy the due diligence procedures for Preexisting Accounts in the Model 1 FATCA IGA and the due diligence procedures for High Value Accounts will satisfy the due diligence procedures for Lower Value Accounts in the Model I FATCA IGA, jurisdictions could also adopt this option in Section II, E of the Standard and also achieve a single approach for both the Standard and Model 1 FATCA IGA.
Thresholds for Preexisting Individual Accounts	The Standard does not include the $50,000 threshold for Preexisting Individual Accounts that is included in the Model 1 FATCA IGA. Nor does it include the $250,000 threshold for Cash Value Insurance Contracts or Annuity Contracts (see Section III, A of the Standard and Section II, A of Annex I to the Model 1 FATCA IGA).	A policy decision was made to not to include these thresholds under the Standard. Under the Model 1 FATCA IGA jurisdictions decide whether their implementing legislation includes the thresholds so the approach contained in the Standard could also be adopted for reporting under the Model 1 FATCA IGA.

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New Accounts	Under the Standard, the indicia search is not available for New Accounts, which almost always need to be documented by a self-certification of the Account Holder. Under the Model 1 FATCA IGA, all New Accounts generally need to be documented with a self-certification.	When implementing the Standard and the FATCA Model 1 IGA, consistency can be achieved by adopting the requirements as in the Model 1 IGA rather than the current US FATCA Regulations (which allow New Account to be documented with certain specified documentary evidence or with a self-certification). A common approach can be achieved if Financial Institutions document all of the jurisdictions in which the account holder is a tax resident as required under the Standard, rather than using documentary evidence to determine US tax residency for US Reportable Accounts and self-certifications for the rest.
Citizenship indicia for Preexisting Individual Accounts	Annex I to the Model 1 FATCA IGA includes indicia for a Preexisting Individual Account in relation to the citizenship of the Account Holder (see Section II,B,1,a) and b) of Annex I to the Model 1 FATCA IGA). This is not included in the Standard.	Under US tax law, a US tax resident includes US citizens as well as US residents. The Model 1 FATCA IGA indicia were designed with US tax law in mind.
Telephone number indicia	The Model 1 FATCA IGA includes, as an indicium for a Preexisting Individual Account, a US telephone number (see Section II,B,1,d) of Annex I of the Model 1 FATCA IGA). Under the Standard a telephone number is only an indicium where it is a Reportable Jurisdiction telephone number and where there is no telephone number in the Financial Institution's jurisdiction (see Section III,B,2,c) of the Standard).	To reduce burdens for Financial Institutions associated with the application of the indicia search in a multilateral context, only a phone number in a Reportable Jurisdiction where the Financial Institution does not hold a phone number for the Account Holder in the jurisdiction of the Financial Institution is included as indicia in the Standard, unlike the Model 1 FATCA IGA.
Standing instructions	The Model 1 FATCA IGA includes all standing instructions to transfer funds to US accounts as indicium for a Preexisting Individual Account (see Section II,B,1,e) of Annex I to the Model 1 FATCA IGA). Under the Standard, standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction are also indicia other than standing instructions with respect to Depository Accounts are not considered indicia (see Section III,B,2,d) of the Standard).	This carve out in the Standard was introduced to reduce burdens for Financial Institutions associated with the application of the indicia search in a multilateral context.

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Hold mail or in-care-of addresses as indicia	Under the Standard, where only a "hold mail" or "in-care-of" address is discovered in the electronic search, and no other indicia are found, certain procedures must be followed to rectify the situation or the account must be reported as an undocumented account (see Section III,B,2,f) and 5 of the Standard). Under the Model 1 FATCA IGA, a "hold mail" or "in care of" address that is the sole address on file is indicia for a Preexisting Individual Account that is a high value account and an "in care of" address outside the US or "hold mail" address is not indicia for a pre-existing individual account that is a lower value account, (see Section II,B,1,g) and c) of Annex I to the Model 1 FATCA IGA).	In a multilateral context, the Standard's approach to require reporting to the domestic tax administration is more appropriate when the indicia do not provide a clear indication of tax residence.
Self-certification	Under the Standard, Financial Institutions must obtain the date of birth of a new Account Holder as part of the self-certification process (see Section IV,B of the Standard). This is not required under the Model 1 FATCA IGA (see Section III,B of Annex I to the Model 1 FATCA IGA).	The date of birth is reportable information under the Standard as it is a core element for data matching for many jurisdictions. A self-certification under a Model 1 FATCA IGA could include, in addition the requirements under the IGA, the date of birth of the account holder in order to comply with the Standard.

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Unreliable or incorrect self-certifications after change in circumstances	Under the Standard where there is a change in circumstances and a self-certification is found to be unreliable or incorrect, in the case of a New Individual Account, a Financial Institutions must obtain a valid self-certification or, in the absence of a self-certification, report based on where the Account Holder claims to be a resident and where the Account Holder may be a residence as a result of the change in circumstances. In the case of a New Entity Account, a Financial Institution must re-determine the status of the Account Holder consistent with the procedures applicable to Preexisting Entity Accounts (see Section IV,C of the Standard and Commentary on Section VI to the CRS paragraph 21). Under Annex I to the Model 1 FATCA IGA where there is a change in circumstances with respect to a New Account that has been identified as a US Reportable Account that causes the Financial Institution to know, or have reason to know, that the self-certification is incorrect or unreliable, the Financial Institution must obtain a valid self-certification. If the Financial Institution is unable to obtain a valid self-certification, the Financial Institution must report the account as a US Reportable Account. (see Section III,B,2 of Annex I to the Model 1 FATCA IGA).	Whereas in a bilateral setting with the US continuing to report the account as a US Reportable Account works, it is not appropriate in a multilateral context. Therefore, in the absence of a valid self-certification, the Standard requires reporting of all jurisdictions where the Account Holder may be a resident.

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Preexisting Entity Accounts	Under the Standard a Preexisting Entity Account becomes a Reportable Account when the aggregate balance or value exceeds $250,000 (see Section V, A of the Standard). Under the Model 1 FATCA IGA, a Pre-Existing Entity Account that has a balance or value of $250,000 or less is not required to be reported, until the account balance or value exceeds $1,000,000 (see Section IV,A of Annex I to the Model 1 FATCA IGA).	The Standard and FATCA Model 1 IGA provide the same threshold for excluding a Preexisting Entity Account from due diligence but different thresholds for when the previously excluded account becomes subject to due diligence. This reflects the general approach in the Standard to remove thresholds while recognising the compliance costs associated with reviewing low value Entity Accounts. Under the Model 1 FATCA IGA the exclusions of certain accounts from due diligence is elective where the implementing rules in the Financial Institution's jurisdiction provide for such election. A Financial Institution that had applied the election could revoke the election for Preexisting Entity Accounts once they exceed USD 250,000, where implementing rules in the jurisdiction so permit and the approach contained in the Model I FATCA IGA could be aligned with the approach in the Standard.
Currency translation	Under the Standard jurisdictions can determine the rules governing currency translation in their domestic law (see Section VII,C,4, of the Standard). The Model 1 FATCA IGA prescribes that when applying the thresholds US dollar amounts must be converted into non-US dollar amounts using the published spot determined as of the last day of the calendar year preceding the year in which the Financial Institution is determining the balance or value (see Section VI,C,4, of Annex I to the Model 1 FATCA IGA).	. It would be possible for jurisdictions to align their domestic rules on currency translation under the Standard to the rules applicable under the Model 1 FATCA IGA.
Dormant Accounts	Under the Standard, a dormant account may be treated as an excluded account and thus would not require reporting. Under the Model 1 FATCA IGA, a dormant account is reviewed, identified, and reported like any other account.	Jurisdictions may choose whether to include a dormant account as an excluded account under the Standard. However, a single approach could be achieved by documenting and reporting a dormant account like any other account for purposes of both the Standard and the Model 1 FATCA IGA.

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Double or multiple residency	Due to the multilateral context of the Standard in case of double or multiple residency of an Account Holder, determined on the basis of the due diligence procedures, information will be exchanged with all jurisdictions in which the Account Holder is found to be resident for tax purposes. This rule is not contemplated under Model 1 FATCA IGA.	As the Model 1 FATCA IGA is a bilateral instrument and is focussed on exchanging information between the US and a FATCA Partner jurisdiction, questions of dual or multiple residency are not considered in the context of the Model 1 FATCA IGA.
Reporting of average monthly balances	The Standard allows for reporting of the (highest and/or monthly) average balance or value of Reportable Accounts, instead of the balance or value at the end of the calendar year, in case a jurisdiction has such a reporting mechanism in place.	Where a particular IGA provides for the reporting of the average balance or value of a Reportable Account (e.g. the IGA between the US and Mexico) and a jurisdiction is reporting the average balance or value of a Reportable Account under the Standard, a single approach could be taken. However, the IGAs are the result of bilateral negotiations, and where the IGA does not provide for such reporting, but a jurisdiction choses to report the average balance or value for purposes of the Standard, two different approaches will need to be followed.
Exclusion for the passive income definition	The Standard provides a definition of passive income that is similar to the definition provided in the current US FATCA Regulations. The definition in the Standard does not explicitly exclude commodity hedging transaction by controlled foreign companies from the passive income definition. The same applies to amounts gained by insurers in connection with their reserves. The Model 1 FATCA IGA does not contain a definition of passive income.	Both the Standard and FATCA Model 1 IGA permit the definition of passive income to be developed based on a jurisdiction's applicable law, including tax law. To facilitate effective implementation of the Standard, a jurisdiction's definition of passive income is expected to be consistent with the list provided in the Commentary.
Validity of documentary evidence	The general rule under the Standard is that Documentary Evidence remains valid for five years. The Model 1 FATCA IGA does not provide a period of validity for Documentary Evidence.	The Standard contains a number of exceptions to the general rule that in practice will likely mean the general rule only applies in a limited number of cases. Where the general rules do apply the validity period of Documentary Evidence under the Standard could be limited to five years.

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Preexisting Account that becomes High Value Account	Both the Standard and Model 1 FATCA IGA require that a Financial Institution, within a specified period of time, complete the enhanced review with respect to a Preexisting Individual Account that becomes a High Value account as of the last day of a subsequent calendar year. The Model 1 FATCA IGA requires such review to be performed within 6 months. The Standard requires the enhanced review be performed within the calendar year following the year in which the account became a High Value account.	When implementing the Standard and the Model 1 FATCA IGA, consistency can be achieved by adopting the requirement to perform the enhanced review within six months of the end of the year in which the Preexisting Individual Account became a High Value account as provided in the Model 1 FATCA IGA.
Date and place of birth	Under the Standard, subject to certain conditions, the date and place of birth of each Reportable Person is required to be reported (see Section I,A,1 of the Standard). The Model 1 FATCA IGA requires the reporting of date of birth for Preexisting Accounts where the TIN is not available and requires that FATCA Partner establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting Financial Institutions to obtain TIN. TIN is required for all New Accounts. The Model 1 FATCA IGA does not require the reporting of the place of birth (see Article 3,4 of the Model 1 FATCA IGA).	The date of birth has received additional emphasis under the Standard, and the place of birth has been added in certain cases, to enhance the accuracy of data matching in a multilateral context.
Account closure	Where accounts are closed in the reporting period, under the Model 1 FATCA IGA Financial Institutions must report the account balance immediately before closure (see Article 2,a),4 of the Model 1 FATCA IGA). Under the Standard only the fact that the account has been closed needs to be reported (see Section I, A,4 of the Standard).	The simplified approach adopted in the Standard is seen as sufficient for the Standard. The account balance or value upon closure is still required under the Model 1 FATCA IGA.

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TIN	For Preexisting Accounts, where a Financial Institution does not have a TIN in its records and it is not otherwise required to be collected by the Financial Institution, the Standard does not require the Financial Institution to report this information (although it must use reasonable efforts to obtain it) (see Section I,C of the Standard). Under the Model 1 FATCA IGA, where the TIN is not available for Preexisting Accounts, the date of birth must be reported if it is in the Financial Institution's records (see Article 3,4 of the Model 1 FATCA IGA). While there is no reasonable efforts requirement there is a commitment to require the collection and reporting of TINs for Preexisting Accounts from 2017 TIN is required to be collected and reported for all New Accounts under the Model 1 FATCA IGA (see Article 6,4,b) of the Model 1 FATCA IGA).	The Standard and the Model 1 FATCA IGA are broadly consistent in the first instance in that Financial Institutions must report the identification information it has on file.. However, the Standard and the Model 1 FATCA IGA reflect differing requirements to obtain TIN information, and different approaches may be needed.

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Verbal Self-Certification	Provided a self-certification contains all the required information (see, for example, Commentary on Section IV, paragraph 7) and the self-certification is signed or positively affirmed by the customer, the Standard foresees that a Financial Institution may gather verbally the information required to populate or otherwise obtain the self-certification. A self-certification is otherwise positively affirmed if the person making the self-certification provides the Financial Institution with an unambiguous acknowledgement that they agree with the representations made through the self-certification. In all cases, the positive affirmation is expected to be captured by the Financial Institution in a manner such that it can credibly demonstrate that the self-certification was positively affirmed (e.g., voice recording, digital footprint, etc.). The approach taken by the Financial Institution in obtaining the self-certification is expected to be in a manner consistent with the procedures followed by the Financial Institution for the opening of the account and the Financial institution will need to maintain a record of this process for audit purposes, in addition to the self-certification itself. The Model 1 FATCA IGA does not provide for a verbal self-certification or verbal positive affirmation.	To achieve consistency, a Financial Institution could gather the information required to populate or otherwise obtain a self-certification in written or electronic form and also require signature or positive affirmation in written or electronic form both for the Standard and the Model 1 FATCA IGA.

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ANNEX I
CRS-RELATED
FREQUENTLY ASKED
QUESTIONS

Annex I
CRS-related Frequently Asked Questions

Section I: General reporting requirements

1. Reporting balance or value

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)?

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 1, 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 for other reasons.

2. Aggregation and excluded accounts

Are Excluded Accounts required to be included when applying the aggregation rules?

No. The aggregation rules refer to the aggregation of Financial Accounts (Section VII, C). The definition of Financial Accounts specifically excludes Excluded Accounts (Section VIII, C(1)).

3. Account Holder Information

How does a Reporting Financial Institution report an individual that does not have both a first and last name?

The CRS schema requires the completion of the data elements for first name and last name. If an individual's legal name is a mononym or single name, the first name data element should be completed as "NFN" (No First Name) and the last name field should be completed with the account holder's mononym.

4. Reporting of sales proceeds credited or paid with respect to the Custodial Account

Subparagraph A(5)(b) of Section I provides that, in case of a Custodial Account, the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account are to be reported.

Is reporting of these gross proceeds also required when they are paid or credited with respect to the Custodial Account?

Yes, as is the case for the income items set out in subparagraph A(5)(a) of Section I, reporting of gross proceeds from the sale or redemption of Financial Assets held in a Custodial Account under subparagraph A(5)(b) of Section I is required both in case these gross proceeds are paid or credited to the account and in case they are paid or credited with respect to such account.

In the case that Financial Assets are held in a Custodial Account, any income, and gross proceeds from the sale or redemption of such Financial Assets are reportable by the Custodial Institution maintaining such Custodial Account, regardless of the account to which such amounts are paid or credited.

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5. Requirement to collect TINs

Paragraph 30 of the Commentary on Section I provides that a TIN is not required to be reported with respect to a Reportable Account held by a Reportable Person with respect to whom a TIN has not been issued. Should a Financial Institution request a Reportable Person to obtain and provide a TIN, in case such Reportable Person is or may be eligible to obtain a TIN (or the functional equivalent) in its jurisdiction of residence, but is not required to obtain a TIN and has not obtained a TIN?

No.

6. Intermittent distributions to discretionary beneficiaries of a trust that is a Reporting Financial Institution

In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as the settlor or beneficiary of all or a portion of the trust. For these purposes, a beneficiary who may receive a discretionary distribution from the trust only will be treated as a beneficiary of the trust if such person receives a distribution in the calendar year or other appropriate reporting period (see Section VIII (C)(4) and related commentary).

If a discretionary beneficiary of a trust that is a Financial Institution receives a distribution from the trust in a given year, but not in a following year, should the absence of a distribution in such following year be treated as an account closure?

No, the absence of a distribution does not constitute an account closure, as long as the beneficiary is not permanently excluded from receiving future distributions from the trust.

7. Reporting Controlling Persons of settlors that are Entities

The Standard provides that where the settlor of a trust is an Entity, Reporting Financial Institutions must also identify the Controlling Person(s) of the settlor and report them as Controlling Person(s). Are the Controlling Persons to be identified and reported only in the year of settlement, or also in subsequent years?

The identification and reporting of Controlling Persons of the settlor is required not only in the year of settlement but also in all subsequent years.

8. Reporting requirements in year of closure of a trust account

What is the financial activity to be reported in case of closure of an account:

a) maintained by a trust that is a Reporting Financial Institution?

b) maintained by a Reporting Financial Institution for a trust that is a Passive NFE?

In both cases the financial activity to be reported includes both the fact of closure of the account and the gross payments made to the Account Holder during the relevant reporting period.

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9. Collection of TINs from a Controlling Person that is not a Reportable Jurisdiction Person

Pursuant to Section VIII(D)(8), an Investment Entity described in Section VIII(A)(6)(b) that is not a Participating Jurisdiction Financial Institution is a Passive NFE, and the due diligence procedures in either Section V or Section VI must be applied to the account of the Investment Entity to determine whether its account is a Reportable Account. The account is a Reportable Account if the Passive NFE has one or more Controlling Persons who are Reportable Persons. In the case where a Controlling Person is not a Reportable Jurisdiction Person, is there a requirement to collect the TIN of such Controlling Person?

Subject to provisions in domestic law, in particular with respect to the so-called "wider approach", as reflected in Annex 5 to the Standard, if a Controlling Person is not a Reportable Jurisdiction Person, the TIN is not required to be collected from such Controlling Person.

10. Qualification of usufruct for CRS purposes

How may a usufruct (a legal right to use and derive profit from property) to be treated for CRS purposes?

Both the bare owner ("nu-propriétaire") and the usufructuary ("usufruitier") may be considered as joint Account Holders or as Controlling Persons of a trust for due diligence and reporting purposes.

11. Reporting Obligations of the Reporting Financial Institution that is in the process of being liquidated

How should a Reporting Financial Institution that is in the process of being liquidated or wound up discharge its due diligence and reporting obligations under the CRS?

As a general rule, a Financial Account is treated as a Reportable Account as of the date it is identified as such pursuant to the due diligence procedures (Section II(A)). The Reportable Account remains reportable until the date it ceases to be a Reportable Account (e.g. due to the closure of the account). If a Reportable Account is closed due to the liquidation or winding up of the Reporting Financial Institution, information with respect to such account remains annually reportable until the date of closure of the Financial Account (Commentary to Section II(A)) by the Reporting Financial Institution in the framework of the liquidation or the winding-up.

In this respect, jurisdictions may provide further guidance to their Reporting Financial Institutions on how to fulfil their due diligence and reporting obligation during the liquidation or winding up process, taking into account relevant domestic legal provisions, in particular in the areas of corporate and insolvency law.

In this respect, an option could be to allow reliance on a third-party service provider to ensure that all due diligence and reporting obligations of the Reporting Financial Institution are adequately carried out (Section II(D)).

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Sections II-VII: Due diligence requirements

1. Documentary Evidence

Does the Standard require a Reporting Financial Institution to retain a paper copy of the Documentary Evidence collected as part of its due diligence procedures?

No. A Reporting Financial Institution is not required to retain a p aper copy of the Documentary Evidence, but may do so (Paragraph 157 to the Commentary on Section VIII). A Reporting Financial institution may retain an original, certified copy, or photocopy of the Documentary Evidence or, instead, a notation of the type of documentation reviewed, the date the documentation was reviewed, and the document's identification number (if any) (for example, a passport number).

2. Residence address test – requirement to manually review Documentary Evidence

Does the requirement in the Standard to confirm the residence address with the Documentary Evidence on file require accounts to be manually reviewed?

The Standard does not require a paper search to examine the Documentary Evidence. Generally, a requirement of the residence address test is that the residence address is based on Documentary Evidence (Section III, B, (1) and the associated Commentary). If a Financial Institution has kept a notation of the Documentary Evidence, as described above, or has policies and procedures in place to ensure that the current residence address is the same as the address on the Documentary Evidence provided, then the Reporting Financial Institution will have satisfied the Documentary Evidence requirement of the residence address test.

3. Residence address test – two residence addresses

Is it possible that after the application of the residence address test it is determined that the Account Holder has two residence addresses?

Yes. Provided all the conditions for applying the residence address test are met (Section III, B, (1), and the associated Commentary), then it would be possible for the residence address test to result in two addresses being found. For example, with respect to a bank account maintained in Country A, a bank could have two addresses meeting the requirements in a case where a resident of Country B is working and living half her time in Country B and Country C. In this case a self-certification could be sought or the account could be reported to all Reportable Jurisdictions where there is a residence address.

4. Reliance on AML/KYC procedures for identifying Controlling Persons

With respect to Pre-existing Entity Accounts with an aggregate account balance or value that does not excess USD 1,000,000, what is the due diligence and reporting requirement in cases where the Financial Institution holds information on the names of Controlling Persons and no other information as it was not required to collect such information pursuant to applicable AML/KYC procedures?

The Standard provides that for accounts with a balance or value below USD 1 million (after applying the aggregation rules), the Financial Institution may rely on information collected and maintained for regulatory or customer relationship purposes, including AML/KYC procedures to determine whether a Controlling Person is a Reportable Person (Section V, D, (2), c)). Since, in the example given, the Financial Institution does not have and is not required to have any such information on file that indicates the Controlling Person may be a Reportable Person, it cannot document the residence of the Controlling Persons and does not need to report that person as a Controlling Person.

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5. Identification of Controlling Persons of Passive NFEs with Financial Institutions in the chain of legal ownership

For purposes of determining the Controlling Persons of a Passive NFE, does the CRS allow a Reporting Financial Institution to not determine/report such Controlling Person on the basis that there is a Reporting Financial Institution in the ownership chain between the Passive NFE and the Controlling Person?

No. The CRS status of intermediate Entities in the ownership chain is irrelevant for these purposes.

6. AML/KYC Procedures and due diligence for CRS purposes

With respect to the due diligence procedures set out in Sections III-VII, what are the consequences of a change in the AML/KYC Procedures to be applied by Financial Institutions?

Section VIII(E)(2) provides that the term "AML/KYC Procedures" means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such a Reporting Financial Institution is subject. Consequently, for carrying out the due diligence procedures of Sections III-VII, the applicable AML/KYC Procedures are those to which a Financial Institution is subject at a given moment in time, as long as, for New Accounts, such procedures are consistent with the 2012 FATF Recommendations.

Where there is an amendment to the applicable AML/KYC Procedures (e.g. upon a jurisdiction implementing new FATF Recommendations), Financial Institutions may be required to collect and maintain additional information for AML/KYC purposes in that jurisdiction. For the purposes of the due diligence procedures set out in Sections III-VII and in line with paragraph 17 of the Commentary on Section III, the additional information obtained under such amended AML/KYC Procedures must be used to determine whether there has been a change of circumstances in relation to the identity and/or reportable status of Account Holders and/or Controlling Persons.

As explained in paragraph 4 of the Commentary on Section VII, if the additional information obtained is inconsistent with the claims made by a person in a self-certification, there has been a change in circumstances, and a Financial Institution will have a reason to know that a self-certification is unreliable or incorrect.

7. Obligations of a Financial Institution to establish tax residency

What are the obligations under the Standard of a Financial Institution to establish the tax residency of its customers in relation to the New Account procedures?

A Financial Institution is not required to provide customers with tax advice or to perform a legal analysis to determine the reasonableness of self-certification. Instead, as provided in the Standard, for New Accounts the Financial Institution may rely on a self-certification made by the customer unless it knows or has reason to know that the self- certification is incorrect or unreliable, (the "reasonableness" test), which will be based on the information obtained in connection with the opening of the account, including any documentation obtained pursuant to AML/KYC procedures. The Standard provides examples of the application of the reasonableness tests (Section IV, A, and the associated Commentary).

The Standard also states that Participating Jurisdictions are expected to help taxpayers determine, and provide them with information with respect to, their residence(s) for tax purposes (Paragraph 6 of the Commentary to Section IV and Paragraph 9 of the Commentary on Section VI). The OECD is facilitating this process through a centralised dissemination of the information (on the Automatic Exchange Portal). Financial Institutions could also direct customers towards this information.

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8. The Validation of TINs

With respect to a Taxpayer Identification Number (TIN) provided on a self-certification, when will a Reporting Financial Institution know or have reason to know the self-certification is incorrect or unreliable?

The Standard provides that a Reporting Financial Institution may rely on a self-certification unless it knows or has reason to know that the self-certification is incorrect or unreliable (Section VII, paragraph A and associated Commentary). This includes, among the other information provided on the self-certification, the TIN in relation to a Reportable Jurisdiction. The Standard includes an expectation that Participating Jurisdictions will provide Reporting Financial Institutions with information with respect to the issuance, collection and, to the extent possible, the practical structure and other specifications of TINs (Commentary to Section VIII, paragraph 149). The OECD will be facilitating this process through a centralised dissemination of the information (on the Automatic Exchange Portal).

A Reporting Financial Institution will have reason to know that a self-certification is unreliable or incorrect if the self-certification does not contain a TIN and the information included on the Automatic Exchange Portal indicates that Reportable Jurisdiction issues TINs to all tax residents. The Standard does not require a Reporting Financial Institution to confirm the format and other specifications of a TIN with the information provided on the Automatic Exchange Portal. However Reporting Financial Institutions may nevertheless wish to do so in order to enhance the quality of the information collected and minimise the administrative burden associated with any follow up concerning reporting of an incorrect TIN. In this case, they may also use regional and national websites providing a TIN check module for the purpose of further verifying the accuracy of the TIN provided in the self-certification.

9. Self-Certification – meaning of "positively affirmed"

A requirement for a self-certification to be valid on account opening under the Standard is that it must be signed or positively affirmed by the customer (Paragraph 7 to the Commentary on Section IV). How should "otherwise positively affirmed" be understood?

A self-certification is otherwise positively affirmed if the person making the self-certification provides the Financial Institution with an unambiguous acknowledgement that they agree with the representations made through the self-certification. In all cases, the positive affirmation is expected to be captured by the Financial Institution in a manner such that it can credibly demonstrate that the self-certification was positively affirmed (e.g., voice recording, digital footprint, etc.). The approach taken by the Financial Institution in obtaining the self-certification is expected to be in a manner consistent with the procedures followed by the Financial Institution for the opening of the account. The Financial Institution will need to maintain a record of this process for audit purposes, in addition to the self-certification itself.

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10. Verbal self-certification

Does the Standard allow for the gathering of information for a self-certification verbally on account opening under the Standard?

A self-certification may be provided in any manner and in any form (see for example Paragraph 9 to the Commentary on Section IV). Therefore, provided the self-certification contains all the required information (see for example Paragraph 7 to Commentary on Section IV) and the self-certification is signed or positively affirmed by the customer, a Financial Institution may gather verbally the information required to populate or otherwise obtain the self- certification. The approach taken by the Financial Institution in obtaining the self-certification is expected to be in a manner consistent with the procedures followed by the Financial Institution for the opening of the account. The Financial institution will need to maintain a record of this process for audit purposes, in addition to the self-certification itself.

11. Self-certification with yes/no response

Does the Standard allow for a self-certification to solicit a yes/no response to questions about tax residence?

Yes. A self-certification can be completed based on a yes/no response to record the customer's jurisdiction(s) of tax residence, instead of requiring the completion of a blank field. The Standard does not prescribe how information on jurisdiction(s) of tax residence must be collected but provides that the information with respect to tax residence cannot be prepopulated (see paragraphs 7 and 8 to the Commentary on Section IV). For example, in order to complete a self- certification the customer could be asked whether the jurisdiction in which the account is being opened is the sole tax residence of the account holder, with additional questions only being asked if the answer is no.

12. Self-certification provided on the basis of a PoA

Does the Standard allow for a self-certification to be provided by third party on the basis of a power of attorney?

If an Account Holder has provided that another person has legal authority to represent the Account Holder and make decisions on their behalf, such as through a power of attorney, then that other person may also provide a self-certification.

13. Reason to Know

Should a self-certification contain language requiring the Account Holder to update the Reporting Financial Institution if there is a change in the information that affects the Account Holder's status?

Although this is not a requirement under the Standard, a Reporting Financial Institution may want (or may be required to under a particular jurisdiction's domestic law) to include such language in self-certifications collected from its Account Holders as it may reduce the onus on the Reporting Financial Institution in applying the reasonableness test. Pursuant to the reasonableness test, a Reporting Financial Institution may not rely on a self-certification if it knows or has reason to know that the information contained on the self-certification is unreliable or incorrect. Commentary on Section VII paragraph 2-3.

Jurisdictions may also consider including in their domestic law implementing the CRS a requirement on Account Holders to provide a self-certification to the Reporting Financial Institution and to inform the Reporting Financial Institution if there is a change to information contained in the self-certification that affects their status under CRS.

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14. New Accounts of Pre-existing Account Holders

With respect to the allowance to treat certain New Accounts of a pre-existing customer as a Pre-existing Account, how broad is the requirement that the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for purposes of the CRS?

The Commentary provides that a jurisdiction may allow Reporting Financial Institutions to treat a New Account opened by an Account Holder that holds an account with the Reporting Financial Institution (or a Related Entity within the same jurisdiction as the Reporting Financial Institution) as a Pre-existing Account provided that certain conditions are met. Such conditions include that the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for purposes of the CRS. See Commentary to Section VIII, paragraph 82. This condition should be interpreted to include any instances in which the Account Holder is required to provide the Reporting Financial Institution with new, additional or amended customer information (as a result of a legal, regulatory, contractual, operational or any other requirement) in order to open the account. The rationale for this condition is that such instances provide an opportunity to obtain a self-certification together with new, additional or amended customer information as part of the opening of the account.

15. The relationship manager test

How might the standard of knowledge test applicable to a Relationship Manager contained in the Standard be operationalised in practice?

The standard of knowledge test applicable to a Relationship Manager (for example, Section III, C(4) and the associated Commentary) could be operationalised through regular (e.g. yearly) instructions and training by a Financial Institution to all of its employees that could be considered Relationship Managers according to the Standard (Paragraphs 38 to 42 of the Commentary to Section III, C(4)). This could include the Financial Institution maintaining a record of a response made by each Relationship Manager stating that they aware of their obligations and the channels to communicate any reason to know that an Account Holder for which they manage the relationship is a Reportable Person. These communications could then be centrally processed by the Financial Institution in the manner required by the Standard.

16. Reliance on Service Providers

Does the Standard provide any restrictions on the use of a service provider to fulfil a Reporting Financial Institution's due diligence and/or reporting requirements under the CRS?

A jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil their reporting and/or due diligence obligations. See Commentary on Section II, paragraph 6. The Standard does not require, for instance, that the service provider be within the same jurisdiction as the Reporting Financial Institution or obtain approval from the relevant jurisdiction to act as a service provider. The Commentary does provide that the Reporting Financial Institution must satisfy the requirements contained in domestic law and will remain responsible for its reporting and due diligence obligations (i.e., the actions of the service provider are imputed to the Reporting Financial Institution). To facilitate effective implementation, the jurisdiction must have access to the relevant records and evidence relied upon by the Reporting Financial Institution and service provider for the performance of the reporting and/or due diligence procedures set out in the CRS. See Commentary on Section IX, paragraphs 7-12.

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17. Determination of CRS Status of Entities

Which jurisdiction's rules should apply to determine an Entity's status?

The Commentary provides that an Entity's status as a Financial Institution or nonfinancial entity (NFE) should be resolved under the laws of the Participating Jurisdiction in which the Entity is resident. See Commentary on Section IX, paragraph 2. If an Entity is resident in a jurisdiction that has not implemented the CRS, the rules of the jurisdiction in which the account is maintained determine the Entity's status as a Financial Institution or NFE since there are no other rules available.

When determining an Entity's status as an active or passive NFE, the rules of the jurisdiction in which the account is maintained determine the Entity's status. However, a jurisdiction in which the account is maintained may permit (e.g. in its domestic implementation guidance) an Entity to determine its status as an active or passive NFE under the rules of the jurisdiction in which the Entity is resident provided that the jurisdiction in which the Entity is resident has implemented the CRS.

18. Residence Address Test – Penalty of perjury

The Commentary on Section III defines in what situations the Residence Address Test can be applied. Paragraph 10 refers to a declaration signed under penalty of perjury. What does "penalty of perjury" mean?

"Penalty of perjury" in this context is meant to include all situations where a jurisdiction has included a penalty of a criminal nature for providing a false declaration in its law.

19. Requirement to obtain a TIN in the framework of the curing procedure

Does a Reporting Financial Institution need to ensure that a Tax Identification Number (TIN) is present on the self-certification of an Account Holder, in case such self-certification is obtained as part of the curing procedure foreseen by subparagraph B(6) of Section III and indicates that the Account Holder is a Reportable Person?

In the context of the due diligence procedures for Preexisting Accounts, the Financial Institution is required to use reasonable efforts to obtain a TIN. In case the self-certification is received in the course of the curing procedure, this implies as a minimum that the Financial Institution requests the Account Holder to provide a self-certification which includes a TIN, if applicable. The Financial Institution can rely on such a self-certification, even if it does not contain a TIN of the Account Holder, provided it continues to use reasonable efforts to obtain the TIN.

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20. New Entity Accounts – Reliance on publicly available information

Subparagraph A(1)(a) of Section VI provides a Financial Institution needs to obtain a self-certification for the purposes of determining the tax residence of a New Entity Account Holder. Subparagraph A(1)(b) then provides that, if the self-certification indicates that the New Entity Account Holder is resident in a Reportable Jurisdiction, the account is to be considered a Reportable Account, unless the Financial Institution reasonably determines, based on information in its possession or that is publicly available, that the New Entity Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

In case a Financial Institution knows, based on information in its possession or that is publicly available, that a New Entity Account Holder is not a Reportable Person, irrespective of its residence (e.g. because it is a corporation that is publicly traded), is the Financial Institution still required to obtain a self-certification from the New Entity Account Holder?

Paragraph 6 of the Commentary on Section VI provides that the steps of subparagraph (A)(1)(a), i.e. obtaining a self- certification, and subparagraph (A)(1)(b), i.e. confirming the status as a Reportable Person, may be taken in either order. Consequently, a Financial Institution may first determine whether a New Entity Account Holder is a Reportable Person. In case it is found that the New Entity Account Holder is not a Reportable Person (e.g. because it is a Financial Institution or a corporation that is publicly traded), the Financial Institution would not be required to obtain a self-certification from such New Entity Account Holder under subparagraph (A)(1)(a).

21. Determination of the threshold for due diligence with respect to Controlling Persons

For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person with respect to a Preexisting Entity Account, a Reporting Financial Institution may, in accordance with subparagraph (D)(2)(c) of Section V, only rely on the information collected and maintained pursuant to AML/KYC Procedures in case the aggregate account balance of such account held by one or more NFEs does not exceed USD 1 million. At what point in time is the USD 1 million threshold for the purpose of determining the due diligence procedure applicable to Controlling Persons of Passive NFEs to be determined?

In line with the general rules applicable to thresholds applied in the framework of the due diligence procedures, as reflected e.g. in paragraph B of Section II and paragraphs A, B and E(2) of Section V, the point in time at which the surpassing of the threshold should be verified is the last day of the calendar year or other appropriate reporting period.

Example:

In case the account balance of the relevant account is USD 900 000 on the date on which the Financial Institution carried out the due diligence, but USD 1 100 000 at year-end, the threshold of USD 1 million has been surpassed for the purpose of the due diligence obligations in that year.

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22. Timing of self-certifications

With respect to New Individual and Entity Accounts the Standard provides that the Reporting Financial Institution must obtain a self-certification upon account opening. In such cases, is it expected that Reporting Financial Institutions can only open the account once a valid self-certification is received?

The Standard provides that a Reporting Financial Institution must obtain a self-certification upon account opening (Sections IV(A) and VI(A). Where a self-certification is obtained at account opening but validation of the self-certification cannot be completed because it is a 'day two' process undertaken by a back-office function, the self-certification should be validated within a period of 90 days.

There are a limited number of instances, where due to the specificities of a business sector it is not possible to obtain a self-certification on 'day one' of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market. In such circumstances, the self-certification should be both obtained and validated as quickly as feasible, and in any case within a period of 90 days. Given that obtaining a self-certification for New Accounts is a critical aspect of ensuring that the CRS is effective, it is expected that jurisdictions have strong measures in place to ensure that valid self-certifications are always obtained for New Accounts.

What will constitute a "strong measure" in the above exceptional instances may vary from jurisdiction to jurisdiction and should be evaluated in light of the actual results of the measure. The crucial test for determining what measure can qualify as "strong measures" is whether the measures have a strong enough impact on Account Holders and/or Financial Institutions to effectively ensure that self-certifications are obtained and validated in accordance with the rules set out in the CRS. In that light, for instance, measures that foresee the closure or freezing of the account after the expiry of 90 days or the application of very elevated penalties on Financial Institutions and/or Account Holders, can all constitute "strong measures".

In all cases, Reporting Financial Institutions shall ensure that they have obtained and validated the self-certification in time to be able to meet their due diligence and reporting obligations with respect to the reporting period during which the account was opened.

23. Look-through requirement for widely-held CIVs and pension funds in the form of trusts in non-participating jurisdictions

When determining the Controlling Persons for New Entity Accounts as part of the application of the "look-through" requirement pursuant to Section VI(2) with respect to an Investment Entity described in Section VIII(A)(6)(b) resident in a non-Participating Jurisdiction that is a widely-held, regulated, trust-type Collective Investment Vehicle (CIV) or a trust-type pension fund, do Reporting Financial Institutions need to go beyond the information collected and maintained pursuant to domestic AML/KYC Procedures which are as a minimum consistent with Recommendations 10 and 25 of the FATF Recommendations (as adopted in February 2012)?

No, as provided for in Paragraph 137 of the Commentary on Section VIII.

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24. Application of New Account procedures to Preexisting Accounts – relationship manager inquiry

Pursuant to Section II(E) jurisdictions may allow Reporting Financial Institutions to apply the due diligence procedures for New Accounts also to Preexisting Accounts. In such cases, is a Reporting Financial Institution required to apply the relationship manager inquiry, where a self-certification has been obtained under the New Account due diligence procedures?

A relationship manager inquiry as provided in Section III is not applicable, since New Account due diligence procedures are applied, but if a relationship manager is assigned to the account, the relationship manager and thus the Reporting Financial Institution may have reason to know that a self-certification is unreliable or incorrect. In accordance with Section VII(A), a Reporting Financial Institution may not rely on a self-certification if the Reporting Financial Institution has reason to know that the self-certification is incorrect or unreliable. Paragraph 3 of the Commentary on Section VII explains that a Reporting Financial Institution has reason to know that a self-certification is unreliable or incorrect if its knowledge, including the knowledge of any relevant relationship manager, of relevant facts or statements contained in the self-certification is such that a reasonable prudent person in the position of the Reporting Financial Institution would question the claim being made.

25. Confirming the validity of self-certifications

If an Individual Account Holder indicates on a self-certification that he or she does not have a jurisdiction of residence for tax purposes, may the Financial Institution rely on other documentation at its disposal, in particular an address, to determine the residence for tax purposes?

In line with general principles set out in Section IV, when obtaining a self-certification from an Account Holder, the Financial Institution is required to confirm the reasonableness of the self-certification on the basis of other documentation, including any documentation collected pursuant to AML/KYC Procedures that is at its disposal. For instance, the fact that the self-certification indicates that the Account Holder has no residence for tax purposes but the other documentation on file contains an address constitutes a reason to doubt the validity of the self-certification. In such cases and in line with paragraph 25 of the Commentary to Section IV, the Financial Institution must ensure that it obtains a reasonable explanation and documentation, as appropriate, that supports the reasonableness of the self-certification. If the Financial Institution does not obtain a reasonable explanation as to the reasonableness of the self-certification, the Financial Institution may not rely on the self-certification and must obtain a new, valid self-certification from the Account Holder (see also Question 22 on Sections II-VII).

Section IX requires jurisdictions to put in place compliance review procedures. Financial Institutions may want to inform their Account Holders that, as part of such procedures, jurisdictions may monitor and review Account Holders that have not indicated a tax residence as part of their self-certification.

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26. Determining Controlling Persons of Entity

The CRS provides that the term "Controlling Person" must be interpreted in a manner consistent with Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force (FATF) Recommendations (Section VIII(D)(6) and associated Commentary). The Interpretative Note on Recommendation 10, inter alia, states that for legal persons those persons should be identified that have a controlling ownership interest in that legal person. In relation to legal persons that are companies it is then further specified that a "controlling ownership interest depends on the ownership structure of the company. It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25%)."

If the domestic implementation of the FATF Recommendations of a jurisdiction provides for an ownership threshold lower than 25% for the identification of controlling ownership interests in companies for AML/KYC purposes, may such jurisdiction allow a Reporting Financial Institution that is subject to such domestic AML/KYC requirements to still apply the 25% threshold for its reporting under the CRS?

No. The CRS provides that for purposes of determining the Controlling Persons of an Account Holder the AML/KYC Procedures pursuant to the anti-money laundering or similar requirements as implemented in the domestic law and to which the Reporting Financial Institution is subject apply.

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Section VIII: Definitions

A. Reporting Financial Institutions

1. Entities and Cash Pooling Activities

What is the CRS status of an Entity that regularly manages working capital by pooling the cash balances, including both positive and deficit cash balances, (*i.e.,* cash pooling) of one or more Related Entities that are primarily engaged in a business other than that of a Financial Institution and does not provide such cash pooling services to any Entity that is not a Related Entity?

To determine the CRS status of an Entity that engages in cash pooling it is necessary to consider whether the Entity is a Financial Institution, or more specifically a Depository Institution or an Investment Entity, or an NFE. The Standard defines a Depository Institution as an Entity that accepts deposits in the ordinary course of a banking or similar business. See Section VIII, subparagraph (A)(5) and Commentary on Section VIII, paragraph 12-14. For purposes of determining whether an Entity is a Depository Institution, an Entity that engages in cash pooling exclusively on behalf of one or more Related Entities will not be engaged in a banking or similar business by virtue of such activity.

If the Entity is not a Depository Institution, the Entity may still be a Financial Institution if it meets the definition of an Investment Entity as set forth in Section VIII, subparagraph (A)(6), except such section specifically provides that an Investment Entity does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraph (D)(9)(d) through (g).

An Active NFE described in Section VIII, subparagraph (D)(9)(g) includes an NFE that primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution. See Section VIII, subparagraph (D)(9)(g). Since cash pooling is typically performed to reduce external debt and increase the available liquidity on behalf of Related Entities, cash pooling will be considered a financing transaction for purposes of the Active NFE definition. Therefore, an Entity that engages in cash pooling on behalf of one or more Related Entities that are not Financial Institutions and does not provide such cash pooling services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution, will have the CRS status of Active NFE.

2. Holding Company or Treasury Centre of Financial Group

In what circumstances, if any, will a holding company or treasury centre of a financial group have the status of Financial Institution under CRS?

A holding company or treasury centre of a financial group will have the status of a Financial Institution if it meets the definition of Financial Institution provided in Section VIII, paragraph A. Thus, whether a holding company or treasury centre has the status of Financial Institution depends of the facts and circumstances, and in particular on whether it engages in the specified activities or operations of a Financial Institution (as defined in Section VIII, paragraph A.) even if those activities or operations are engaged in solely on behalf of Related Entities or its shareholders. An Entity that, for example, enters into foreign exchange hedges on behalf of the Entity's Related Entity financial group to eliminate the foreign exchange risk of such group, will meet the definition of Financial Institution provided that the other requirements of Investment Entity definition are met. A holding company will also meet the definition of Financial Institution, specifically, Investment Entity, if it functions as or hold itself out as an investment fund, private equity fund, venture capital fund, and similar investment vehicles if investors participate (either through debt or equity) in investment schemes through the holding company. See Commentary to Section VIII, paragraph 20.

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3. Investment Entity

In what circumstances will an Entity be managed by another Entity that is a Depository Institution, Custodial Institution, a Specified Insurance Company, or an Investment Entity described in Section III, subparagraph A(6)(a)?

The Commentary provides, for purposes of determining whether an Entity is an Investment Entity described in Section VIII, paragraph (A)(6)(b), that an Entity is managed by another Entity if the managing Entity performs, either directly or through a service provider, any of the activities or operations described in paragraph (A)(6)(a) on behalf of the managed Entity. These activities and operations include trading in money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; individual and collective portfolio management, or otherwise investing, administering, or managing Financial Assets or money on behalf of other persons. Further, the managing Entity must have discretionary authority to manage the Entity's assets (in whole or in part). See Commentary on Section VIII, paragraph 17.

For example, a private trust company that acts as a registered office or registered agent of a trust or performs administrative services unrelated to the Financial Assets or money of the trust, does not conduct the activities and operations described in Section VIII, subparagraph (A)(6)(a) on behalf of the trust and thus the trust is not "managed by" the private trust company within the meaning of Section VIII, paragraph (A)(b)(6).

Also, an Entity that invests all or a portion of its assets in a mutual fund, exchange traded fund, or similar vehicle will not be considered "managed by" the mutual fund, exchange traded fund, or similar vehicle.

In both of these examples, a further determination needs to be made as to whether the Entity is managed by another Entity for the purpose of ascertaining whether the first-mentioned Entity falls within the definition of Investment Entity, as set out in Section VIII, paragraph (A)(6)(b).

4. Reliance on Model 1 FATCA IGA definition of Investment Entity for purposes of CRS

Can jurisdictions rely on the definition of Investment Entity used in the Model 1 FATCA IGA for the purposes of implementing the CRS?

No, the definition of Investment Entity in Article 1(1)(j) of the Model 1 FATCA IGA cannot be used for CRS purposes on its own, as it is less prescriptive than the definition of Investment Entity in Section VIII(A)(6). However, the definitions of the Model 1 FATCA IGA and the CRS can be read consistently. For example, the CRS definition includes a gross income test to determine whether an Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph A(6)(b), and could be used to interpret the less prescriptive aspects of the Model 1 FATCA IGA definition. The CRS definition is in fact based on the definition of Investment Entity in the US FATCA regulations, which may be used to interpret the Model 1 FATCA IGA definition.

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5. Indirect Investment in Real Estate

If an Entity's gross income is primarily attributable to indirect investment(s) in real property, will such Entity have the status of Investment Entity?

An Entity the gross income of which is primarily attributable to investing, reinvesting, or trading real property is not an Investment Entity (irrespective of whether it is professionally managed) because real property is not a Financial Asset. See Commentary on Section VIII, paragraph 17. If, instead, an Entity is holding an interest in another Entity that directly holds real property, the interest held by the first-mentioned Entity is a Financial Asset, and the gross income derived from that interest is to be taken into account to determine whether the Entity will meet the definition of Investment Entity under Section VIII, subparagraph (A)(6)(a)(iii) or paragraph (A)(6)(b). See Section VIII; subparagraph (A)(7) for the definition of Financial Asset.

6. Investment Entity definition – managed by

In the context of Section VIII (A)(6)(b), does the notion of "managed by" also include cases where an Entity has discretionary authority to manage the assets (in whole or part) of another Entity, but does not manage the second Entity itself?

Yes, the concept of "managed by" under Section VIII (A)(6)(b) also covers cases where an Entity has discretionary authority to manage the assets (in whole or part) of another Entity, but does not manage the second Entity itself.

7. Investment Entity definition – substantial activity test

In determining whether an Entity meets the "50% gross income test" under the definition of Investment Entity, is it permissible to apply the three-year test on the final day of a non-calendar year accounting period, as foreseen for the "20% gross income test" for Custodial Institutions?

Yes. In line with the approach chosen for Custodial Institutions, the three-year test for determining whether an Entity meets the "50% gross income test" under the definition of Investment Entity may be applied on the final day of a non- calendar year accounting period of the year preceding the year in which the determination is made.

8. E-money providers – qualification as a Depository Institution

What is the status of electronic money providers for CRS purposes?

No special rules apply to electronic money providers. Like other financial industry participants, they must determine whether they are a Financial Institution, as defined by the CRS. That determination will depend on the facts and circumstances. For instance, in order to determine whether an electronic money provider is a Depository Institution, the analysis must be done with reference to Section VIII(A)(5) and the related Commentary, in particular paragraph 13.

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B. Non-reporting Financial Institutions

1. The status of a Central Bank/International Organisation/Governmental Entity

Is it not inconsistent that a Central Bank, International Organisation or Governmental Entity can meet the requirements to be both classified as a Non-reporting Financial Institution and an Active NFE?

How the Standard applies to a Central Bank, International Organisation or Governmental Entity will depend on the facts. The definition of NFE specifically excludes Financial Institutions (Section VIII, D(7)). The first test will therefore be whether the Central Bank, International Organisation or Governmental Entity qualifies as a Financial Institution. This is a functional test and depends on the facts. Where the Central Bank, International Organisation or Governmental Entity is determined to be a Financial Institution then it can be classified as a Non-reporting Financial Institution, provided it meets the requirements to be such in the Standard (Subparagraphs (1), (2), (3) and (4) of Section VIII, B, and the associated Commentary).

Where the Central Bank, International Organisation or Governmental Entity does not meet the requirements to be classified as a Financial Institution then it will be a NFE and will be consequently classified as an Active NFE (Section VIII, D, (9) and the associated Commentary).

2. Low Risk Non-reporting Financial Institutions

What is the relationship between the jurisdiction specific categories of Low Risk Non-reporting Financial Institutions and the contents of Annex 2 to the FATCA IGAs being concluded with the US?

The categories of Non-Reporting Financial Institutions in the Standard (Section VIII, B and the associated Commentary) include some of the types of institutions contained in Annex 2 of the Model FATCA IGA. During the process of developing the Standard, however, it was decided that several of the categories in Annex 2 of the Model FATCA IGA were either not appropriate or not desirable in the context of the Standard and they were therefore not included. These are categories such as Treaty Qualified Retirement Funds, Financial Institutions with a Local Client Base, Local Banks, Financial Institutions with Only Low-Value Accounts, Sponsored Investment Entities and Controlled Foreign Corporations, Sponsored and Closely Held Investment Vehicles.

There was a recognition, though, that there may be jurisdiction-specific Financial Institutions that could reasonably be understood to be similarly low risk to the categories included in the Standard but may nevertheless not be covered by the categories provided in the Standard. A residual category was therefore provided to allow Participating Jurisdictions to specifically identify these jurisdiction-specific low risk Financial Institutions as Non-Reporting Financial Institutions, provided they meet the requirements set out in the Standard (Section VIII, B, (1), c)) and the associated Commentary).

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3. Depository Accounts held by a Central Bank

A Central Bank is a Non-Reporting Financial Institution except with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of the type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution. See Section VIII; subparagraph B (1) (a).

Will a Depository Account maintained by a Central Bank for its employee be considered an obligation held in connection with a commercial financial activity that will require the Central Bank to perform due diligence and reporting with respect to such account as a Reporting Financial Institution?

No. Depository Accounts held by a Central Bank for current or former employees (and the spouse and children of such employees) will not be considered held in connection with a commercial financial activity and thus the Central Bank will be a Non-Reporting Financial Institution with respect to such Financial Accounts.

C. Financial account

1. Debt Interest

The Standard provides that the Financial Accounts of an Investment Entity are its debt and equity interests (Section VIII, C, (1), a) and the associated Commentary). What is the definition of a debt interest?

There is no definition of debt interest provided in the Standard.

The Standard provides that if a term is not defined it shall have a meaning consistent with the local law of the applicable jurisdiction (Paragraph 2 of Section 1 of the Model Competent Authority Agreement). Therefore, the definition of debt interest is determined under local law of the implementing jurisdiction.

2. Excluded Account

The Standard provides that a life insurance contract with a coverage period that will end before the insured individual attains age 90 is an Excluded Account provided the additional requirements described in Section VIII, subparagraph C(17)(c) are satisfied. Should this exclusion be read to cover term life insurance contracts?

Yes. The Standard includes as an Excluded Account certain term life insurance contracts that meet the conditions specified in Section VIII, subparagraph C(17)(c). See Commentary to Section VIII, paragraphs 86 and 91 which use the wording “term life insurance contract”.

3. Excluded Account – Dormant accounts

The Standard provides, as an example of a Low-risk Excluded Account, a dormant account with an annual balance that does not exceed USD 1000. See Commentary on Section VIII, paragraph 103, Example 6.

In light of the fact that the USD 1000 threshold is provided as an example, to what extent can jurisdictions electing to include dormant accounts as a Low-risk Excluded Account fix a higher threshold?

Even though the USD 1000 amount is only indicative it is expected that jurisdictions electing to include dormant accounts as a Low-risk Excluded Account do not fix a threshold that substantially exceeds this amount.

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4. OTC Derivatives

A Financial Asset is defined in the CRS to include a "security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract." See Section VIII, paragraph (A)(7).

Does the definition of Financial Asset include over-the-counter derivatives?

Yes, the definition of Financial Asset does not distinguish between exchange traded (or listed) derivatives or over-the- counter derivatives.

5. Excluded Accounts – substitute requirements – penalty regime

In accordance with subparagraph C(17)(g) of Section VIII, an account may only be included in the jurisdiction- specific list of low-risk Excluded Accounts, when (i) the account presents a low risk of being used to evade tax, (ii) the account has substantially similar characteristics to a category of Excluded Accents foreseen by the Standard, (iii) the account is defined as Excluded Account by domestic law and (iv) the status of the account as an Excluded Account does not frustrate the purposes of the Standard.

In that context, paragraph 103 of the Commentary to Section VIII contains an example with respect to requirement (ii), stating that a penalty regime (such as a high-rate flat tax) on early withdrawals from an Annuity Contract, treated as an Excluded Account pursuant to subparagraph C(17)(a), can present a substitute requirement for not limiting the contributions to such an Annuity Contract.

How is this example to be interpreted, in particular, in light of the fact that the Account Holder of an Annuity Contract may not be resident for tax purposes in the jurisdiction of the Financial Institution issuing the Annuity Contract?

The penalty regime on early withdrawals of the jurisdiction of the Financial Institution that has issued the Annuity Contract to a non-resident must ensure that such penalties can be effectively levied by the jurisdiction of the Financial Institution. In particular, the jurisdiction of the Financial Institution should ensure that applicable international tax law, including its Double Tax Conventions, do not prevent the effective levying of such penalties.

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6. Excluded Accounts – substitute requirements – reporting to tax authorities

In the context of Excluded Accounts, the fact that the information in relation to an account is required to be reported to the tax authorities constitutes both an indicator for low risk in the context of preparing the jurisdiction-specific list of low-risk Excluded Account under subparagraph C(17)(g) of Section VIII and a characteristic for qualifying a retirement or pension account as an Excluded Account pursuant to subparagraph C(17)(a) of Section VIII.

Does the fact that the information in relation to an account is required to be reported to the regulatory and/or social security authorities of the jurisdiction of the Reporting Financial Institution represent a substantially similar characteristic for the purposes of qualifying accounts as Excluded Accounts?

The fact that the information in relation to an account is required to be reported to the regulatory and/or social security authorities of the jurisdiction of the Reporting Financial Institution does only represent a substantially similar characteristic to the extent it is ensure under relevant domestic law that such information is made readily available to the tax authorities of the jurisdiction of the Reporting Financial Institution.

7. Excluded Accounts - low-value electronic money accounts

Under what conditions can electronic money accounts that are Depository Accounts be Excluded Accounts pursuant to Section VIII(C)(17)(g)?

The mere fact that a Financial Account is an electronic money account does not by itself enable that Financial Account to be specified by a jurisdiction in its domestic law as a low-risk Excluded Account. In order for such Financial Accounts to be specified as Excluded Accounts under the domestic law of an implementing jurisdiction pursuant to Section VIII(C)(17)(g), the jurisdiction needs to ensure that the accounts present a low risk for being used for tax evasion, have substantially similar characteristics to another category of Excluded Accounts and that their status as an Excluded Account does not frustrate the purposes of the CRS. The Commentary on Section VIII(C)(17)(g) provides examples of such low-risk jurisdiction-specific Excluded Accounts.

As an example of a low-risk Excluded Account in the context of financial inclusion, Example 5 states that a Depository Account subject to financial regulation (i) that provides defined and limited services, so as to increase financial inclusion, (ii) on which monthly deposits cannot exceed USD 1 250 and (iii) for which Financial Institutions have been allowed to apply simplified AML/KYC procedures consistent with the FATF Recommendations may be a low-risk Excluded Account.

Provided that electronic money accounts are regulated and meet the requirements of Section VIII(C)(17)(g), they may be defined as an Excluded Account by the implementing jurisdiction. The above-mentioned example can provide further illustrative guidance as to when the requirements of Section VIII(C)(17)(g) would be met in the context of financial inclusion.

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8. Determination of Equity Interest in the case of a widely-held CIV that is a Reporting Financial Institution

Certain CIVs that are Reporting Financial Institutions and that are organised in the form of a trust have the characteristics of publicly offered CIVs: the trustee and the beneficiaries are unrelated parties; the interests in the CIV are unitised; the CIV is required to keep an up-to-date register of the registered unit holders; certain registered unit holders are Custodial Institutions who maintain the units in the CIV on behalf of the investors in a Custodial Account; and the units are freely transferable financial instruments. Can such CIV treat the registered unit holders as their Account Holders for purposes of the CRS?

Yes, in such case these registered unit holders will be the Account Holders of the Equity Interests in the CIV (unless they are persons other than a Financial Institutions, holding the Equity Interest for the benefit or account of another person as described in Section VIII(E)(1)). The Custodial Institutions that are the registered unit holders will be responsible for reporting the Equity Interests in the CIV which they maintain for reportable Account Holders in a Custodial Account (see paragraph 71 of the Commentary on Section VIII).

9. Investment Entity – definition of Financial Account

According to Section VIII(C)(1)(b), an Equity or Debt Interest in a Financial Institution other than those described in Section VIII(C)(1)(a) is considered a Financial Account only if the class of interests was established with a purpose of avoiding reporting under the CRS. How does this rule apply to Debt or Equity Interests held in an Entity that is an Investment Entity, solely because it is an investment advisor or an investment manager?

Section VIII(C)(1)(b) applies to Debt and Equity Interests held in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Investment Entity, if the class of such interests was established with a purpose of avoiding reporting under the CRS.

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10. Excluded Accounts - Accounts held for the purpose of condominium or housing cooperative

In the context of Excluded Accounts, how should accounts held by a group of owners, for the purpose of paying the ongoing expenses of a condominium or housing cooperative be classified?

In accordance with Section VIII(C)(17)(g) of the CRS, jurisdictions may establish a specific domestic list of Excluded Accounts, provided such Financial Accounts pose a low risk of being used for tax evasion, have substantially similar characteristics to one of the categories of Excluded Accounts foreseen by the CRS in Section VIII(C)(17)(a) through (f) and do not frustrate the purposes of the CRS.

Pursuant to Section VIII(C)(17)(b), a Financial Account for non-retirement saving purposes is an Excluded Account when (i) it is subject to regulation as a non-retirement savings vehicle, (ii) it is tax-favoured, (iii) withdrawals are conditioned on meeting specific criteria and (iv) annual contributions are limited to USD 50,000 or less.

In light of the above, a Financial Account held by or on behalf of a group of owners or by the condominium company for the purpose of paying the expenses of the condominium or housing cooperative may be included in the jurisdiction-specific low-risk list of Excluded Accounts, provided (i) it is regulated in domestic law as a specific account for covering the costs of a condominium or housing cooperative, (ii) the account or the amounts contributed and/or kept in the account are tax-favoured, (iii) the amounts in the account may only be used to pay for the expenses of the condominium or housing cooperative and (iv) no single owner can annually contribute an amount that exceeds USD 50,000.

Where some of the above requirements (such as the Financial Account being tax-favoured or contributions being limited to USD 50,000) are not met, substitute characteristics or restrictions that assure an equivalent level of low risk could be considered, taking into account domestic specificities. This may include features such as: (i) no more than 20% of the annual and total contributions due in the year being attributable to single person, (ii) the account being operated by an independent professional, (iii) the amounts of the contributions and the use of the money being decided by agreement of owners in accordance with the condominium's or housing cooperative's constituting documents or (iv) disallowing withdrawals from the account for purposes other than the expenses of the condominium or housing cooperative.

11. Indirect distributions by a trust

How are indirect distributions by a trust treated under the CRS?

Pursuant to Section VIII(C)(4), a Reportable Person will be treated as a beneficiary of a trust "if such Reportable Person [...] may receive, directly or indirectly, a discretionary distribution from the trust".

Indirect distributions by a trust may arise when the trust makes payments to a third party for the benefit of another person. For example, instances where a trust pays the tuition fees or repays a loan taken up by another person are to be considered indirect distributions by the trust. Indirect distributions also include cases where the trust grants a loan free of interest or at an interest rate lower than the market interest rate or at other non-arm's length conditions. In addition, the write-off of a loan granted by a trust to its beneficiary constitutes an indirect distribution in the year the loan is written-off.

In all of the above cases the Reportable Person will be person that is the beneficiary of the trust receiving the indirect distribution (i.e. in the above examples, the debtor of the tuition fees or the recipient of the favourable loan conditions).

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D. Reportable account

1. Reporting of certain Controlling Persons

Does an Entity's Controlling Person(s) resident in the same jurisdiction as the Reporting Financial Institution need to be reported?

The Standard only requires the reporting of Reportable Jurisdiction Persons. Reportable Jurisdiction Persons are persons resident in a particular set of jurisdictions, as set out in the domestic implementing legislation of the Participating Jurisdiction where the Reporting Financial Institution is located (Section VIII, D, (3)). At a minimum, this list must include jurisdictions with which the Participating Jurisdiction has an agreement to automatically exchange information under the Standard. This would therefore not include persons resident solely in that Participating Jurisdiction itself.

There is, though, an approach discussed in the Standard which would allow a Participating jurisdiction to extend reporting to cover their own residents that are Controlling Persons, although this is not a requirement of the Standard (Paragraph 5 of Annex 5 to the Standard).

2. Passive Non-Financial Entities

An Entity is an Active Non-Financial Entity if less than 50% of its income is passive income and less than 50% of its assets produce or are held for the production of passive income. What if the assets could produce passive income but do not actually produce any income in the period concerned?

The test of whether an asset is held for the production of passive income (Section VIII, D, (9), a) and the associated Commentary) does not require that passive income is actually produced in the period concerned. Instead, the asset must be of the type that produces or could produce passive income. For example, cash should be viewed as producing or being held for the production of passive income (interest) even if it does not actually produce such income.

3. Passive Income

The CRS does not define passive income; however, the Commentary provides a list of items that should generally be considered passive income. The Commentary further provides that the determination of passive income may be made by "reference to each jurisdiction's particular rules." See Commentary on Section VIII, paragraph 126. In determining passive income, what is meant by the reference to each jurisdiction's particular rules?

To facilitate effective implementation of the Standard, a jurisdiction's definition of passive income should in substance be consistent with the list provided in the Commentary. Each jurisdiction may define in its particular rules the items contained in the list of passive income (such as, income equivalent to interest) consistent with domestic rules.

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4. Reportable Person – regularly traded definition

Section VIII (D)(2)(a) provides that "a corporation the stock of which is regularly traded on one or more established securities market" is not a Reportable Person.

In this respect, paragraph 112 of the Commentary on Section VIII provides that stock is "regularly traded" if there is a meaningful volume of trading with respect to the stock on an on-going basis.

Paragraph 113 of the Commentary provides further guidance as to the meaning of "meaningful volume of trading with respect to the stock on an on-going basis" with respect to each share class of the stock of the corporation.

How is the term "each share class of the stock of the corporation" to be interpreted?

For the purposes of the Standard, "each share class of the stock of the corporation" means one or more classes of the stock of the corporation that (i) were listed on one or more established securities markets during the prior calendar year and (ii), in aggregate, represent more than 50% of (a) the total combined voting power of all class of stock of such corporation entitled to vote and (b) the total value of the stock of such corporation.

5. Definition of Active NFE – stock regularly traded on an established securities market

The term Active NFE includes an NFE the stock of which is regularly traded on an established securities market or an NFE that is a Related Entity of an Entity the stock of which is regularly traded on an established securities market. Can an Entity other than a corporation have "stock which is regularly traded on an established securities market"?

No. The term "stock" is limited to shares in a corporation. Accordingly, only a corporation can qualify as an Active NFE on the basis of the fact that its stock is regularly traded on an established securities market.

6. 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?

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

7. Payment type code with respect to a Cash Value Insurance Contract, an Annuity Contract, an Equity Interest and a debt interest

May code CRS504 be used to identify all the payment types that are reported with respect to a Cash Value Insurance Contract, an Annuity Contract, an Equity Interest and a debt interest?

Yes, code CRS504 may be used to identify all the payment types that are reported with respect to a Cash Value Insurance Contract, an Annuity Contract, an Equity Interest and a debt interest, including where such payments are dividends, interest, gross proceeds or redemption payments. The Standard does not require the use of a specific code (i.e. CRS501, CRS502 or CRS503) to identify each payment type that is reported with respect to a Cash Value Insurance Contract, an Annuity Contract, an Equity Interest or a debt interest.

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E. Miscellaneous

1. Related Entity definition in case of indirect ownership

In order to determine whether an Entity is related to another Entity, it is required, pursuant to subparagraph E(4) of Section VIII of the Standard, to verify whether either Entity controls the other Entity or whether the two entities are under common control. The same provision states that control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

In the case of indirect ownership of vote and value of one Entity in another Entity, must the ownership be measured proportionally or not?

<u>Example:</u>

Entity A owns 51% of the total voting power and 51% of the total value of the stock of Entity B. Entity B on its turn owns 51% of the total voting power and 51% of the total value of the stock of Entity C. Are Entity A and Entity C Related Entities? Under a proportional rule, the Entities would not be related because the rule would require the percentages of vote and value to be multiplied, whilst in reality Entity A effectively controls Entity C.

Entities are considered Related Entities, if these Entities are connected through one or more chains of ownership by a common parent Entity and if the common parent Entity directly owns more than 50% of the stock or other equity interest in at least one of the other Entities. A chain of ownership is to be understood as the ownership by one or more Entities of more than 50 percent of the total voting power of the stock of an Entity and more than 50 percent of the total value of the stock of an Entity.

<u>Example:</u>

Entities A and C are considered "Related Entities" pursuant to subparagraph E(4) of Section VIII because Entity A has a direct ownership of more than 50 percent of the total voting power of the stock and more than 50 percent of total value of the stock of Entity B, and because Entity B has a direct ownership of more than 50 percent of the total voting power of the stock and more than 50 percent of total value of the stock of Entity C. Entities A and C are, hence, connected through chains of ownership. Notwithstanding the fact that Entity A proportionally only owns 26 percent of the total value of the stock and voting rights of Entity C, Entity A and Entity C are Related Entities.

Other issues

1. Data Safeguards – ISO-27000

The Standard refers to the ISO-27000 series in relation to safeguarding data. It is a requirement of the Standard that the series is applied and, if so, is a certification required?

Rather than being prescriptive, the ISO-27000 series provide an approach to managing risk through best practice recommendations on information security management, risks and controls. The precise approach taken will be shaped by the context of the overall information security management system a tax administration has. Furthermore, there are other approaches that can be seen as providing equivalent protection. There is therefore an expectation that jurisdictions either apply the ISO 27000-series, an equivalent standard or have a reasonable justification of why it is reasonable to depart from it in the context of a particular tax administration. (References to the ISO-270000 series can be found in paragraph 13 to the Commentary on Section 3 and paragraph 12 to Commentary on Section 5 of the Model Competent Authority Agreement).

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Standard for Automatic Exchange of Financial Information in Tax Matters

Implementation Handbook

SECOND EDITION

This is the second edition of the Common Reporting Standard Implementation Handbook. Its purpose is to assist government officials in the implementation of the Standard for the Automatic Exchange of Financial Account Information in Tax Matters ("Standard") and to provide a practical overview of the Standard to both the financial sector and the public at-large.

The Handbook provides an overview of the legislative, technical and operational issues and a more detailed discussion of the key definitions and procedures contained in the Standard.

Changes reflected in this edition of the Handbook provide additional and more up-to-date guidance on certain areas related to the effective implementation of the Standard. This includes revisions to sections pertinent to the legal framework for implementation of the AEOI, data protection, IT and administrative infrastructures as well as compliance measures. More clarity has been provided in the trust section of the Handbook relation to the identification of Controlling Persons.

This edition also includes all Frequently Asked Questions in relation to the Common Reporting Standard that have so far been issued by the OECD.

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