STANDARD FOR AUTOMATIC EXCHANGE OF FINANCIAL INFORMATION IN TAX MATTERS

IMPLEMENTATION HANDBOOK

OECD

BETTER POLICIES FOR BETTER LIVES

Standard for Automatic Exchange of Financial Information in Tax Matters

The CRS Implementation Handbook

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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* (herein the "Standard").

The Handbook provides a practical guide to the necessary steps to take in order to implement the Standard. Against that background, the Handbook is drafted in plain language, with a view to 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. It is intended to be a living document and will be updated and completed over time.

The Handbook is to assist 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 (in the column on the right hand side of the page in Parts I and II of the Handbook). The page numbers refer to the pages in the consolidated Standard.

Background to the creation of the Standard for Automatic Exchange

1. For many years countries around the world have been engaging in the automatic exchange of information in order to tackle offshore tax evasion and other forms of non-compliance. The OECD has been active in facilitating automatic exchange by creating the legal framework, developing technical standards, providing guidance and training and seeking to improve automatic exchange at a practical level. As shown by the 2012 OECD report to the G20 in Los Cabos, automatic exchange of information is widely practiced and is a very effective tool to counter tax evasion and to increase voluntary tax compliance.

2. In 2010, the US enacted the laws commonly known as FATCA, requiring withholding agents to withhold 30-percent of the gross amount of certain US connected payments made to foreign financial institutions unless such financial institutions agree to perform specified due diligence procedures to identify and report information about US persons that hold accounts with them to the US tax authorities. Many jurisdictions have opted to implement FATCA on an intergovernmental basis and, more specifically, to collect and exchange the information required to be reported under FATCA on the

basis of a Model 1 FATCA Intergovernmental Agreement (herein "FATCA IGA"). Many of these jurisdictions have also shown interest in leveraging the investments made for implementing the FATCA IGA to establish automatic exchange relationships with other jurisdictions, which themselves are introducing similar rules.

3. These countries recognise that, through the adoption of a common approach to automatic exchange of information, offshore tax evasion can be tackled most effectively while minimising costs for governments and financial institutions.

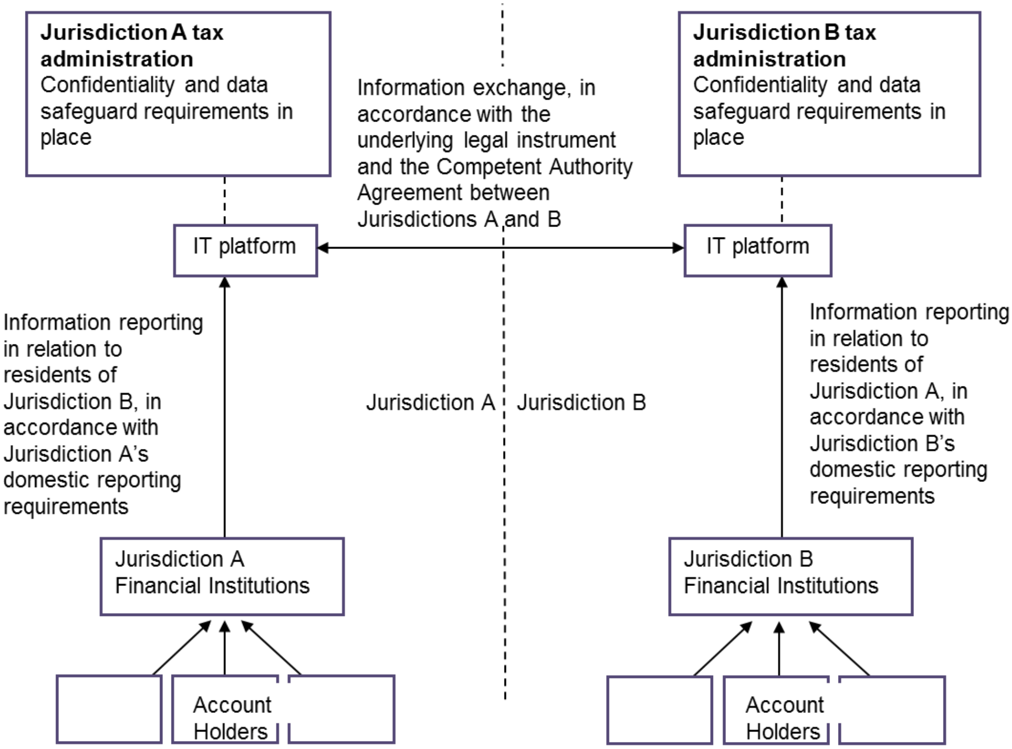
4. With the strong support of the G20, the OECD together with G20 countries and in close cooperation with the EU and other stakeholders has since developed the *Standard for Automatic Exchange of Financial Account Information*, or the Standard. This is a standardised automatic exchange model, which builds on the FATCA IGA to maximise efficiency and minimise costs.

The automatic information exchange framework

5. The diagram in the next page (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 taxpayers from jurisdictions with which their tax administration exchanges information. The tax administrations then exchange that information.

6. 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



The Standard for Automatic Exchange

7. The Standard consists of the following elements:

1. The Common Reporting Standard (herein the "CRS") that contains the due diligence rules for financial institutions to follow to collect and then report the information, that underpin the automatic exchange of financial information;

2. The Model Competent Authority Agreement (herein the "CAA") that links the CRS to the legal basis for exchange, specifying the financial information to be exchanged;

3. The Commentaries that illustrate and interpret the CAA and the CRS; 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

8. 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 their tax administration has the capacity to properly receive that 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 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 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 answers to such questions clarify the Standard and assist further on ensuring consistency in implementation and reducing the number of queries that governments are receiving. An up-to-date list of FAQs will be published at regular intervals on the AEOI Portal.

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

9. 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 right hand side of the page, with "CAA" referring to the 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 (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

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

10. 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.

11. 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 CRS p. 29

[1] Standard for Automatic Exchange of Financial Account Information in Tax Matters

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

12. 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. Furthermore this should help ensure consistency among jurisdictions implementing the Standard. As set out below, there are a number of issues which jurisdictions should consider early on in the implementation process. Consideration of many of these issues will likely be significantly assisted through consultations across government (such as with legal drafters and advisers – including data protection experts – and possibly with financial regulators) as well as with the businesses impacted and their representative bodies.

The use of primary legislation, secondary legislation and guidance

13. To ensure financial institutions carry out the due diligence and reporting rules, new legislation and guidance will likely be required. Given that many of the jurisdictions implementing the Standard will also be implementing their FATCA IGA these processes can be aligned. This could mean implementing both the FATCA IGA and the Standard at the same time or supplementing the legislation and guidance put in place to implement the FATCA IGA to also incorporate the additional requirements in relation to the Standard.

14. Those jurisdictions that have already begun implementing the requirements for both the FATCA IGA and the CRS have tended to adopt an approach where as much of the detail as possible is contained in subsidiary legislation/regulations or guidance. This is to both ensure the implementation process is as efficient as possible and to ensure greater flexibility when making any subsequent amendments.

15. In broad terms the primary legislation could include the high-level collection and reporting requirements in the Standard, such as 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. The

more detailed requirements could then be included in secondary legislation/regulations, likely consisting of the more detailed aspects of the CRS. The remaining areas of the Commentary could then be included in official guidance (possibly even by means of a cross reference to the Standard).

16. When considering how to implement the Standard into domestic law and whether it is appropriate to include particular requirements in 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.

Optional provisions

17. 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 together with additional information on the options available under the EU Directive implementing the CRS as well as coordination with FATCA. 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, jurisdictions will most likely decide to allow for these optional approaches. Whether jurisdictions will make use of the other optional provisions will most likely depend 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. This option is likely only desirable to a jurisdiction that has provided for the reporting of average balance or value in its FATCA IGA. The EU Directive does not provide for the reporting of average balance or value.	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 provide for the reporting based on such reporting period. This option is likely only desirable to a jurisdiction that includes (or will include) a reporting period other than a calendar year in its FATCA implementing legislation. The period between the most recent contract anniversary date and the previous contract anniversary date (e.g. in the case of a Cash Value Insurance Contract), and a fiscal year other than the calendar year, would generally be considered appropriate reporting periods. The EU Directive allows a jurisdiction to designate a reporting period other than a calendar year.	Com p. 99
3. **Phasing in the requirement to report gross proceeds.** A jurisdiction may provide for the reporting of gross proceeds to begin in a later year. If this option is provided a Reporting Financial Institution would report all the information required with respect to a Reportable Account. This will allow Reporting Financial Institutions additional time to implement systems and procedures to capture gross proceeds for the sale or redemption of Financial Assets. This option is contained in the Model FATCA IGAs, with reporting required beginning in 2016 and thus Financial Institutions may not need additional time for reporting of gross proceeds for the CRS. The MCAA and the EU Directive do not provide this option.	Com p. 105
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. The Model FATCA IGAs do not require nil returns but this could be required by local law.	

Due Diligence (Section II-VII of the CRS)	
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. This option is available for FATCA. The EU Directive includes this option.	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). This option may also be applied under FATCA and the EU Directive.	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. This option may also be applied under FATCA and the EU Directive.	CRS p. 31 Com p. 108
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	CRS p. 32 Com p. 111

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. The residence address test option is not available for FATCA. The EU Directive includes the residence address test.	
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 pre-existing 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. A similar exception exists for FATCA, however, FATCA allows the review to be delayed until the aggregate account balance or value exceeds $1 million. This option is foreseen by the EU Directive.	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. This option is not contained in the FATCA IGA but may be available through adopting the due diligence procedures of the US FATCA regulations. The EU Directive includes this option.	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 pre-existing entity account, when a Financial Institution is applying its due diligence procedures and accordingly required to maintained a record of documentary evidence, this option would permit the Financial Institution to rely on the standard industry code contained in its records. This option is not contained in the FATCA IGAs, but similar requirements may be adopted for FATCA by using the definition of documentary evidence in the US FATCA regulations. This option is contained in the EU Directive.	Com p.203
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. This allows a multinational Financial Institution to apply the amounts in the same currency in all jurisdictions in which they operate. Both these options are available for FATCA. The EU Directive allows for this option.	CRS p. 43 Com p. 156
Definitions (Section VIII of the CRS)	
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 pre-existing 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 the opening of the account does not require new, additional, or amended customer	Com p.181

information. This option is not contained in the FATCA IGAs, but similar requirements may be adopted for FATCA by using the definition of pre-existing account in the US FATCA regulations. The EU Directive includes this option.	
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. A similar approach can be achieved under FATCA by applying the Sponsoring Regime. The EU Directive also provides this modification.	Com p.183
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 immobilized as soon as possible and in any event prior to the date provided by the jurisdiction. FATCA contains this option and includes 31 December 2012 as the date after which bearer shares can no longer be issued and 1 January 2017 as the date to ensure redemption or immobilization. The EU Directive contains this option and includes 31 December 2015 as the date after which bearer shares can no longer be issued and 1 January 2018 as the date to ensure redemption or immobilization.	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. The EU Directive does not contain this option. Com p.198

Substantive additional detail

18. There are also areas of the Commentary that contain substantive additional detail that supplements the rules contained in the CRS. Depending on the local legislative framework, these may need to be included in legislation to be effective. This could include the following areas: Com p.111

- 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.198

- The definition of Controlling Persons; Com p. 200

- The procedure when reporting information in relation to jointly held accounts; Com p.148

- Ensuring that Financial Institutions can rely <u>only</u> 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.116

- 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.158

- The definition of the residence of a Financial Institution; Com p.176

- The approach taken when considering whether a Financial Com p.192

Institution maintains an account;

- The treatment of trusts that are non-financial entities (NFEs); Com p. 203
- Relying on the address of an Entity's principal office; Com p.102, 104
- Requiring the reporting of place and date of birth and the collection of taxpayer identification numbers (TINs).

19. It is also likely that financial institutions will need some jurisdiction-specific guidance. While the Commentary should clarify most areas, consultation with the financial sector will highlight any remaining areas of uncertainty.

Wider approach to implementing the Standard Annex 5 p. 284 CRS p. 58 Com p. 195

20. The due diligence procedures in the CRS are designed to identify accounts which are held by residents of jurisdictions with which the implementing jurisdiction exchanges information under the Standard. However, implementing jurisdictions may wish to go beyond the requirements of the Standard, both to enhance its efficiency and its effectiveness. There are various aspects to consider, each of which will need to be explored in the context of the jurisdiction's data protection laws.

21. In general, the fewer times a financial institution needs to complete the processes required under the Standard the less costly it will be overall for the financial institution to comply with the Standard.

22. In relation to New Accounts, the financial institution will generally be 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 automatically exchanges information, then 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).

23. 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 (again, aside from for audit purposes).

24. 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 jurisdictions could therefore consider, for example:

5. requiring or making it possible as an option for financial institutions to 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 concluded a CAA; or

6. requiring or making it possible as an option for information to be collected and a record maintained, 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), including where a CAA has not been concluded.

7. in either of these cases the financial institutions could also 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.

25. Such 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.

26. 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.

27. 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

28. 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 nonfinancial entity (NFE) and report the Controlling Persons of such Entity that are Reportable Persons. For purpose 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. CRS p. 58 Com p. 195

29. Over 90 jurisdictions have now committed to implement the Standard to start exchanging information in 2017 or 2018 and it is expected that the time period between January 1, 2016 and December 31, 2017 will be a dynamic period for operationalising these commitments and putting in place exchange agreements.

30. 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.

31. A jurisdiction could address this transitional implementation issue by treating all jurisdictions that have publicly and at government level committed to adopt the CRS by 2018 ("Committed Jurisdictions")[2] as Participating Jurisdictions for a transition period. A possible further limitation would be to reserve this treatment to Committed Jurisdictions that have signed

[2] Committed Jurisdictions would be those that have committed in the context of the Global Forum process but also those non-financial centre developing countries that have expressed that commitment by signing the Multilateral Competent Authority Agreement or an equivalent exchange instrument.

the Multilateral Competent Authority Agreement or an equivalent exchange instrument. This effectively presumes commitments will be delivered upon and suspends the application of the look through provision for Investment Entities described in Section VIII, subparagraph (A)(6)(b) that are resident (or located) in Committed Jurisdictions. 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 Jurisdictions will be re-assessed and updated no later than 1 July 2017, based on whether the listed Participating Jurisdictions have actually delivered on their commitment vis-à-vis the jurisdiction. 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 the due diligence procedures for Preexisting Entity Accounts, even if such accounts were opened after 1 January 2016.

Jurisdiction-specific low risk institutions and accounts

32. Given the standardised approach taken in the CRS, there will be 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 will be a key area for jurisdictions to consider during the legislative process.

33. A starting point for jurisdictions when considering what to identify as low risk are the institutions and accounts found in Annex II of the FATCA IGAs. However, jurisdictions must take into account that during the process of developing the Standard, it was decided that several of the categories in Annex II to 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.

Consultation with the financial sector may highlight any additional institutions or accounts that might be considered for inclusion.

34. 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.

35. It is expected that each jurisdiction will have 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 will be published. The Global Forum will also assess the jurisdiction-specific lists to ensure the conditions of the Standard have been met.

Differences to FATCA

36. 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 are already making 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.

37. 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.

38. 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 definitions and processes contained in the current US FATCA Regulations. It would therefore be 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

39. 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);
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).

40. Jurisdictions will 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.

[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.

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

The legal instrument

41. Once the financial institutions have collected and reported the information to their tax administration, it is exchanged with the jurisdiction's automatic exchange partners. There are various routes to do this but all require a legal instrument to be in place. This is because the legal instrument provides the necessary protections in relation to data safeguards and confidentiality to ensure the information is treated appropriately, for example, that it is only used for the purpose for which it is exchanged. Legal instruments that permit automatic exchange under the Standard include[4]:

1. Double Tax Agreements containing the standard OECD Model Article 26.

2. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the "Convention"), Article 6 of which specifically provides for the optional use of automatic exchange.

3. Tax Information Exchange Agreements ("TIEAs") that provide for the automatic exchange of information. (It should be noted that automatic exchange goes beyond the OECD standard model TIEA, so would need to be specifically included to allow for the TIEA to be used for exchange under the Standard, which may be achieved by inserting the language of Article 5A of the OECD Model Protocol).

42. Given the large number of signatories to the Convention, joining the Convention is probably the most efficient route to ensure information can be automatically exchanged with many jurisdictions under the Standard.

The Model Competent Authority Agreement

43. In addition to the legal instrument for exchange, at the administrative level automatic exchanges are typically based on separate agreements between Competent Authorities that set out the details of the information to be exchanged, how and when. The Standard therefore contains a Model CAA. CAA p.21

[4] Another example is regional legislation such as the European Directives on the automatic exchange of information.

44. There are three Model CAAs contained in the Standard, each developed to suit a different scenario:

1. 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 Double Tax Agreement. CAA p.21

2. The second Model CAA is a multilateral CAA that could be used to reduce the costs of signing multiple bilateral agreements (although the actual information exchange would still be on a bilateral basis). This could be used in conjunction with the Convention, something a very significant number of jurisdictions have already done (see below). Annex 1 p. 215

3. Finally the third Model CAA is a non-reciprocal model provided for use where appropriate (e.g., where a jurisdiction does not have an income tax). Annex 2 p. 223

All of the Model CAAs specify the following information:

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 CAA.

45. Jurisdictions are free to specify other provisions in the CAA as agreed by the signatories to it. There are specific areas where the CAA provides for particular optional provisions to be included, again where jurisdictions agree. These are:

1. allowing for direct contact between the exchange partner jurisdiction's tax administration and their partner's domestic financial institutions in relation to minor errors or non-compliance; CAA p. 24-25

2. phasing in the exchange of information in relation to gross proceeds; and Com p. 78

3. providing for the alternative method of calculating account balance or value. Com p. 98

46. Jurisdictions will also need to consider whether their domestic laws require particular data protection and confidentiality requirements to be included, in addition to the requirements in the Model CAA.

47. As provided for in the Model CAAs, the Standard does not require jurisdictions to either conclude the CAA before bringing forward legislation to implement the due diligence and reporting rules, nor do the rules need to be put in place before the signing of the CAA.

The Multilateral Competent Authority Agreement

48. On 29 October 2014 51 jurisdictions concluded a multilateral Competent Authority Agreement (the MCAA)[5] to implement the Standard. This agreement now has 61 signatories and is open for others to sign.

49. The MCAA has been concluded under Article 6 of the Convention and therefore provides the most efficient route to widespread exchange.

50. The MCAA is a framework agreement and does not become operational until domestic legislation is in place and the requirements on data protection/confidentiality are met. It can be signed with any intended exchange dates, which are specified at the time of signing.

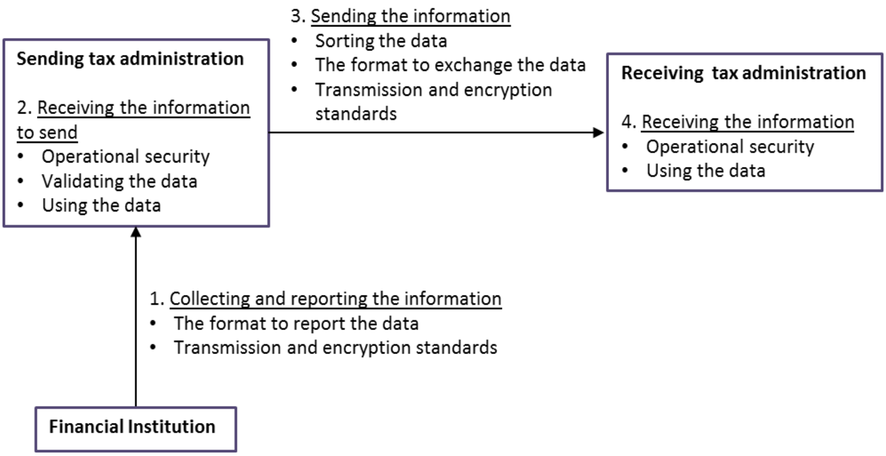
51. Exchange starts between two signatories once they both provide a subsequent notification stating they wish to exchange with each other.

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

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

52. 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.

Figure 3: IT and administrative infrastructure: areas to consider



1. Collecting and reporting the information

53. 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). It is important to engage with financial institutions early as they will often need to have new projects approved to build the systems to report the information. The quicker that sufficient certainty can be given to them over the requirements the sooner they can complete this process.

54. 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 the following year, which is the deadline contained in the Model CAA for Competent Authorities to exchange the information. Jurisdictions will need to build in time in that 9 month window CAA p.25

both for financial institutions to prepare the 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.

55. 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. For example, the CRS Schema is virtually identical to the FATCA schema in terms of structure and content, with both schemas making use of XML (extensible mark-up language). So for tax authorities and financial institutions that will be reporting and exchanging information under FATCA, the use of the CRS Schema will likely not require significant additional investment.

Annex 3 p. 230

56. 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

57. 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 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

58. 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.

Com p. 76

59. Some level of validation of the data will also likely 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 would also likely be part of the process to ensure financial institutions have effectively implemented the Standard.

60. 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.

61. 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. Sending the information

62. Before being sent, the data will then need to be processed for onward transmission. This will involve compiling all the reports received from the financial institutions and then sorting them by automatic exchange partner, ready for onward transmission.

63. The information then needs to be sent to the partner jurisdictions with which the implementing jurisdiction has an automatic exchange relationship, by the end of September following the end of the calendar year to which the data relates.

CAA p.25

64. To ensure consistency and predictability the Standard prescribes a standardised transmission format for jurisdictions to use when sending the information (the CRS Schema). It is almost identical to the schema used for exchanging information under FATCA. Annex 3 p. 230

65. In recognition that jurisdictions are already successfully automatically exchanging information, the Standard provides minimum standards in relation to transmission and encryption, rather than mandating a single solution. Jurisdictions will therefore need to agree on effective transmission methods and encryption standards for the secure exchange of information between each other. There is sufficient time for jurisdictions to agree on one or more methods with the very first exchanges under the Standard not taking place until well into 2017. It should be noted that the MCAA, signed between a large number of jurisdictions (see above), includes a commitment to work towards and agree on one or more methods for data transmission including encryption standards with a view to maximising standardisation and minimising complexities and costs. Com p. 74

66. Where jurisdictions do not use a common alphabet they will also need to consider issues in relation to transliteration and whether to agree in advance on a certain approach with their exchange partners. Where there is no agreement in advance, as a default, the sending jurisdiction should if requested transliterate the information into a Latin alphabet. Annex 3 p. 252

4. Receiving the information

67. Similarly to when the tax administration receives information from financial institutions, the tax administration that receives the data from its information exchange partners will also need to ensure it has appropriate operational security measures in place. For example, the information exchanged must be kept confidential in accordance with the exchange agreement, including limitations on use of the information only for tax purposes. Com p. 76

68. While not required by the Standard itself, when putting in place the necessary IT and administrative processes that are required to comply with the Standard, jurisdictions may want to consider how to best make use of the standardised bulk data which will be received. It is often the case that maximization of the potential compliance benefits of the data requires consideration early in the process of building the systems and processes to receive, hold and exchange the information.

69. Considerations could include automated processes such as data matching and interventions and analysis to highlight new or emerging areas of risk. Furthermore, mechanisms to provide management information and

feedback could be useful tools to evaluate the benefits of receiving the data and the effectiveness of particular interventions, as well as to provide feedback to the sending jurisdiction on the quality of the information received.

Requirement 4: Protect confidentiality and safeguard data Com p.79

70. The confidentiality of taxpayer information is a fundamental cornerstone to tax information exchange and is relevant to all of the previous three requirements (domestic legislation, information exchange instruments and operational matters). Taxpayers and tax administrations have a legal right to expect that sensitive financial information remains confidential and the Standard therefore contains extensive guidance on confidentiality and safeguarding data.

71. Confidentiality and safeguarding data is a matter of both the legal framework and systems and procedures to ensure the legal framework is respected in practice. Jurisdictions that have had to consider these issues in relation to implementing their FATCA IGA will be well placed when it comes to ensuring equivalent arrangements apply with respect to data collected and exchanged under the Standard.

72. 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

73. 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. Com p. 82

74. Before sending the information jurisdictions will also need to ensure their information exchange partners have the required standards in relation to ensuring the confidentiality of the data. In order to assist in this process the Standard includes a questionnaire that may be used to assess another jurisdiction's confidentiality safeguards. The questionnaire has been designed to also be consistent with the approach taken by the US under the FATCA IGA. Annex 4 p. 277

Breaches of confidentiality

75. The CAA includes a provision that requires a Competent Authority to immediately notify the other Competent Authority of a breach or failure of CAA p. 26 Com p. 81

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 CAA.

76. 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. Com p. 87

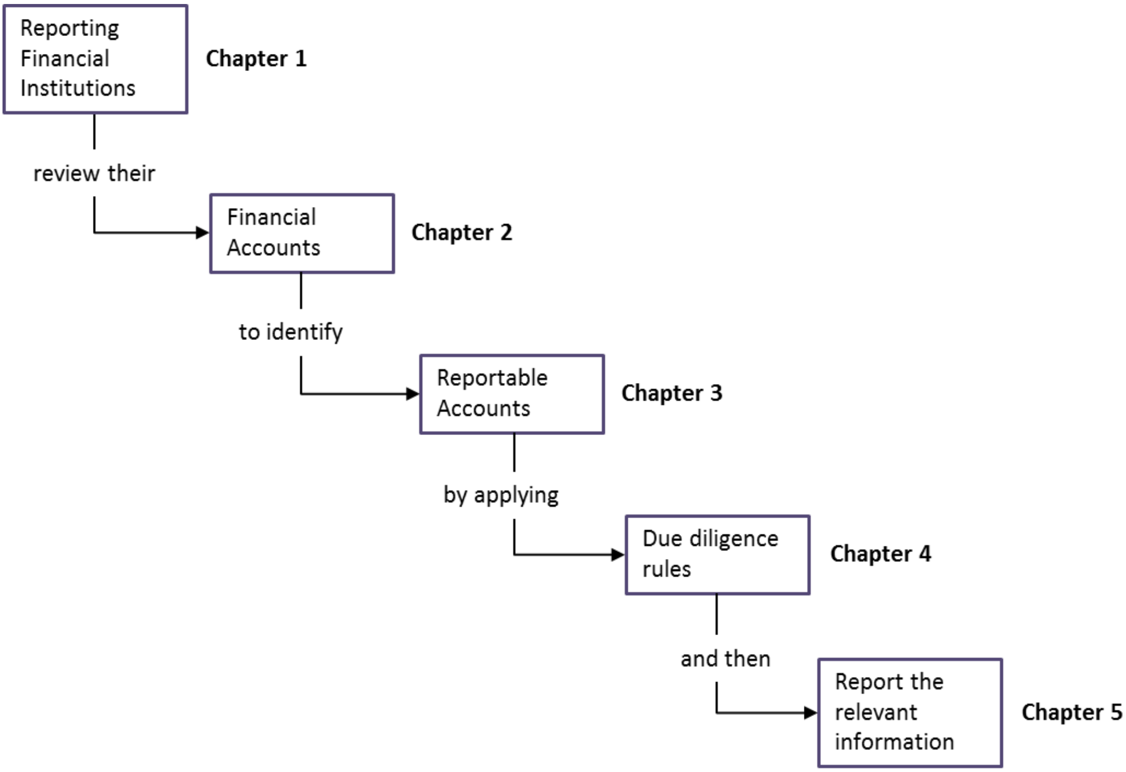
PART II: OVERVIEW OF THE COMMON REPORTING STANDARD AND DUE DILLIGENCE RULES

An overview of the Common Reporting Standard

77. A 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.

CRS p. 29

Figure 4: An overview of the Common Reporting Standard

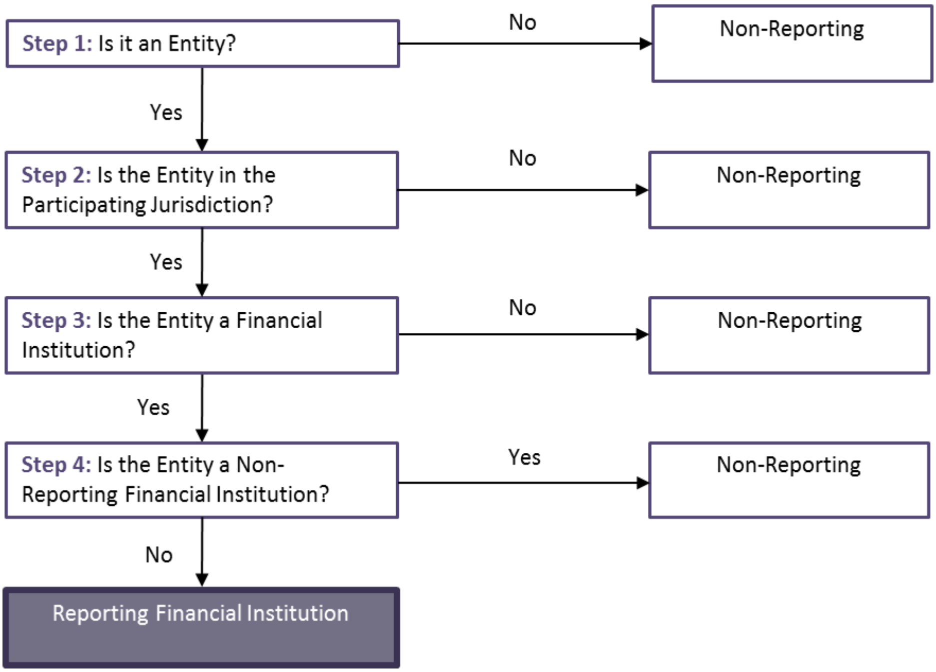


Chapter 1: Reporting Financial Institutions

78. 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?

79. 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

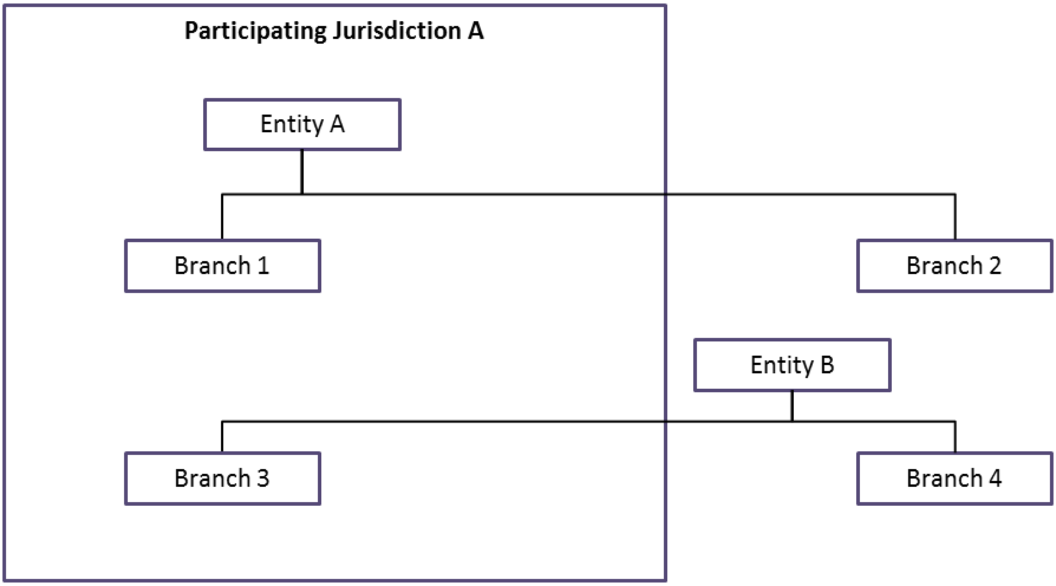
Step 2: Is the Entity in the Participating Jurisdiction?

80. 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.

81. 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.

CRS p. 44
Com p. 158

Figure 6: Reporting nexus under the CRS



82. The Standard provides specific rules to determine the residence of entities. These are shown in Table 1.

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.

83. 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 under the laws of, has its place of management, or where it is subject 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.

84. 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.

Step 3: Is the Entity a Financial Institution?

85. 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 are shown in Figure 7. CRS p. 44 Com p. 159

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

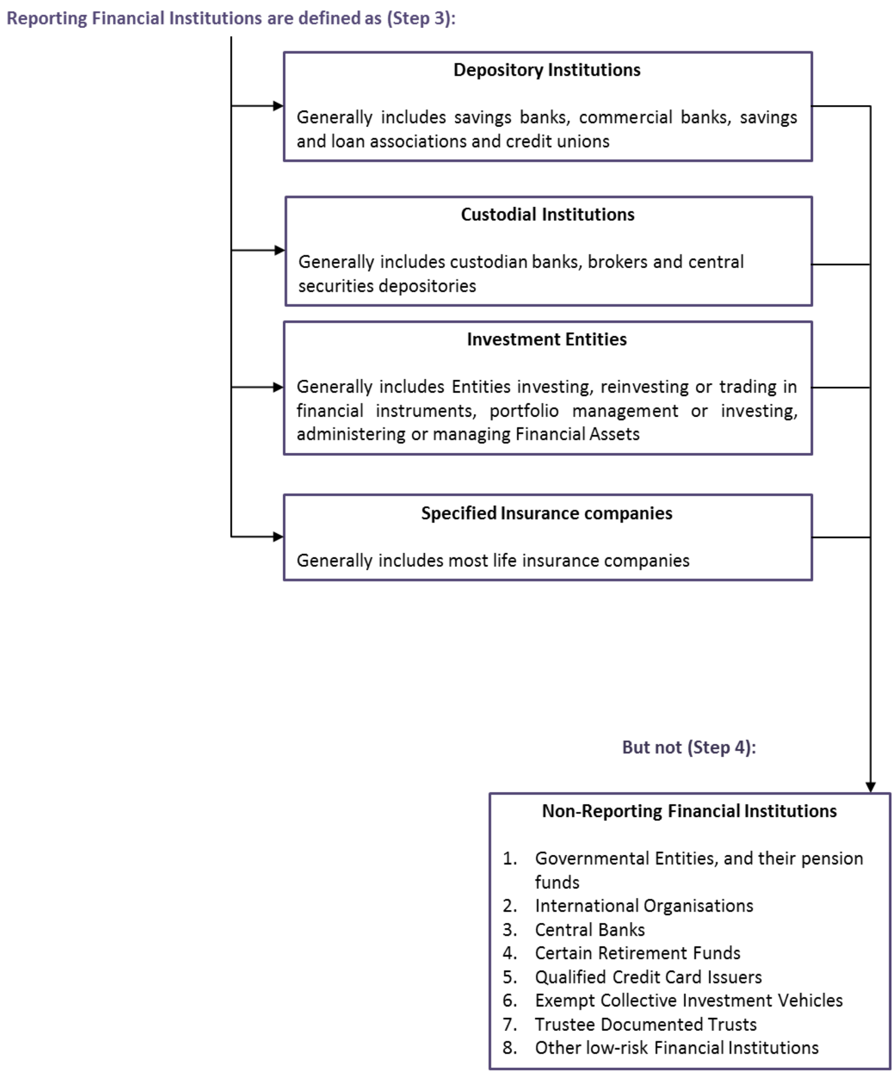
86. Categories of Financial Institutions are then specifically excluded from being required to report information due to posing a low risk of being used to evade tax. These are Non-Reporting Financial Institutions. These are also shown in Figure 7.

CRS p. 45
Com p. 166

87. 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. 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. While the two systems are independent from each other, a starting point for what might be included in the list under the Standard is the Financial Institutions treated as Non-Reporting Financial Institutions with respect to the FATCA IGA.

CRS p. 46
Com p. 170

Figure 7: Financial Institutions that need to report



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CRS p. 44
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Com p. 165

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Com p. 166

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

88. 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

89. 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 Accounts. Table 2 shows which Financial Institution is considered to maintain each type of Financial Account. CRS p. 50 Com p. 175

Table 2: Who maintains the Financial Accounts

Com p. 176

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.

90. 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 Com p.176

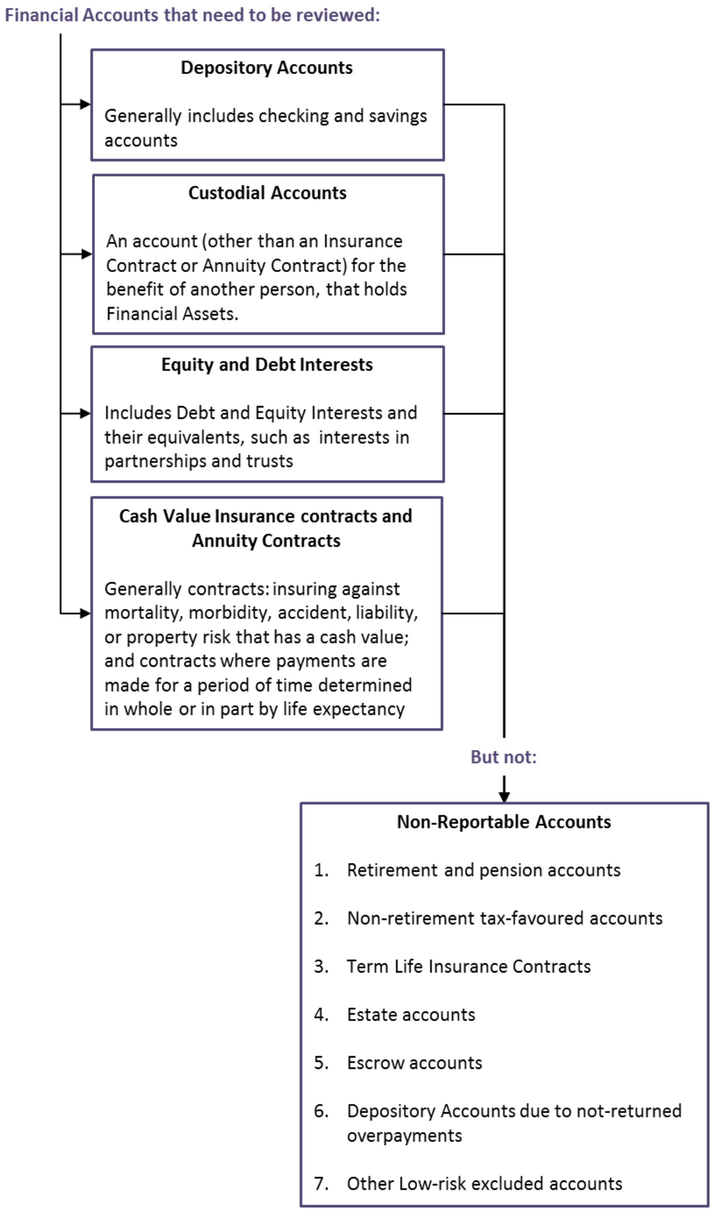
possess all the information to be reported with respect to an account they would generally be treated as maintaining. The Standard contains examples of such scenarios and how they might be dealt with.

Excluded Accounts

91. 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. They include several of the categories of accounts excluded from the definition of Financial Accounts in the FATCA IGA. CRS p.53 Com p.184

92. 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. Examples are contained within the Standard. 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. While the two systems are independent from each other, a starting point for what might be included in the list is the jurisdiction-specific accounts excluded from the definition of Financial Accounts in Annex II of the FATCA IGA.

Figure 8: Accounts which are Financial Accounts



CRS p. 51
Com p. 177

CRS p. 51
Com p. 178

CRS p. 51
Com p. 178

CRS p. 51
Com p. 179

CRS p. 53
Com p. 184

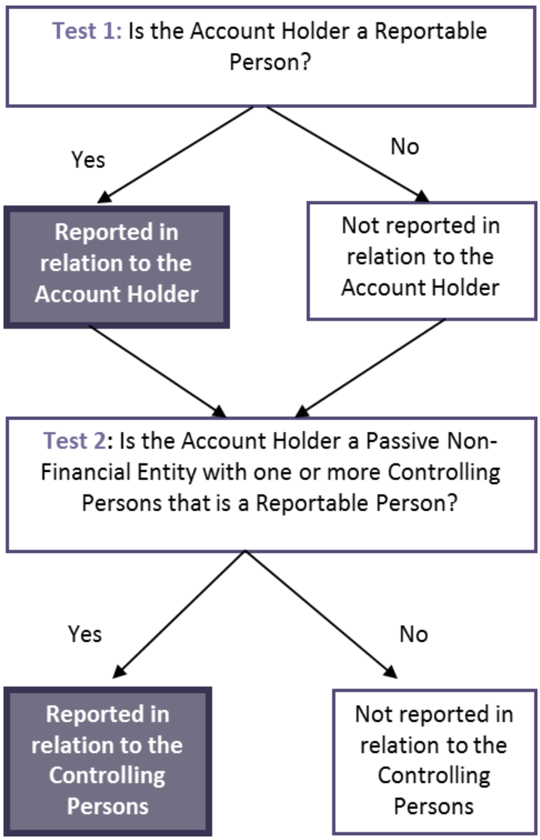
Chapter 3: Financial Accounts which are Reportable Accounts

93. 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. CRS p. 57 Com p. 191

94. 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.

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

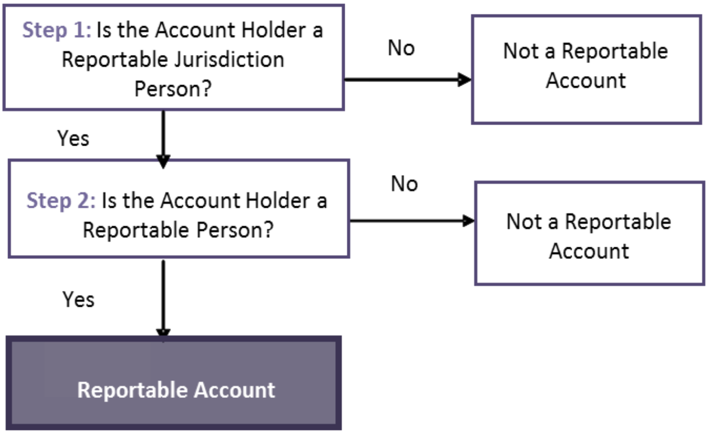
Figure 9: Two tests to determine a Reportable Account



Reportable Accounts by virtue of the Account Holder

96. 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?

97. 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.

CRS p. 57
Com p. 191

98. Chapter 4 of this Handbook sets out the detailed due diligence rules that the Standard requires Financial Institutions follow 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?

99. The Reportable Jurisdiction Person will then be **a Reportable Person unless specifically excluded** from being so. 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).

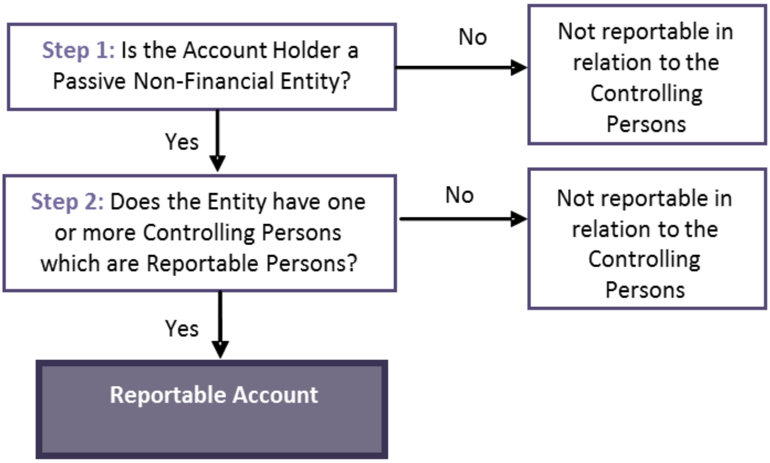
CRS p. 57
Com p. 192

Reportable accounts by virtue of the Account Holders' Controlling Persons

100. 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.

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

Figure 11: Reportable account by virtue of the Controlling Persons[6]



CRS p. 57
Com p. 195

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

102. 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

103. 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 amounts of assets that produce passive income (such as dividends, interest, 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. An exception to this is an Investment Entity that is not a Participating Jurisdiction Financial Institution, which is always treated as a Passive NFE.

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

104. 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?

105. 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.

106. The term Controlling Persons corresponds to the term 'beneficial owner' as described in the Financial Action Task Force (FATF) Recommendations. 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 and control over the Entity may be exercised by direct ownership (or shareholding) or through indirect ownership (or shareholding) of one or more intermediate Entities. For example, Controlling Persons include any natural person that holds directly or indirectly more than 25 percent of the shares or voting rights of an Entity as a beneficial owner. If no such person exists, then any natural person that otherwise exercises control over the management of the Entity (*e.g.,* the senior managing official of the company). For 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.

107. 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 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 generally accepted that a Reporting Financial Institution will not be able to determine the Controlling Persons for CRS purposes.

108. 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.

109. 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 discussed above.

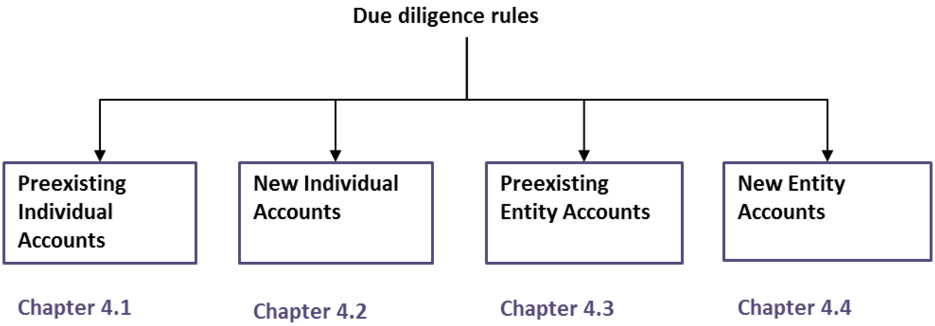
110. The detailed procedures for Financial Institution to follow to establish what is required to be reported are set out in Chapter 4 of this Handbook.

Chapter 4: Due diligence procedures

111. 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.

112. 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



The split between Preexisting Accounts and New Accounts

113. 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.

114. 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.

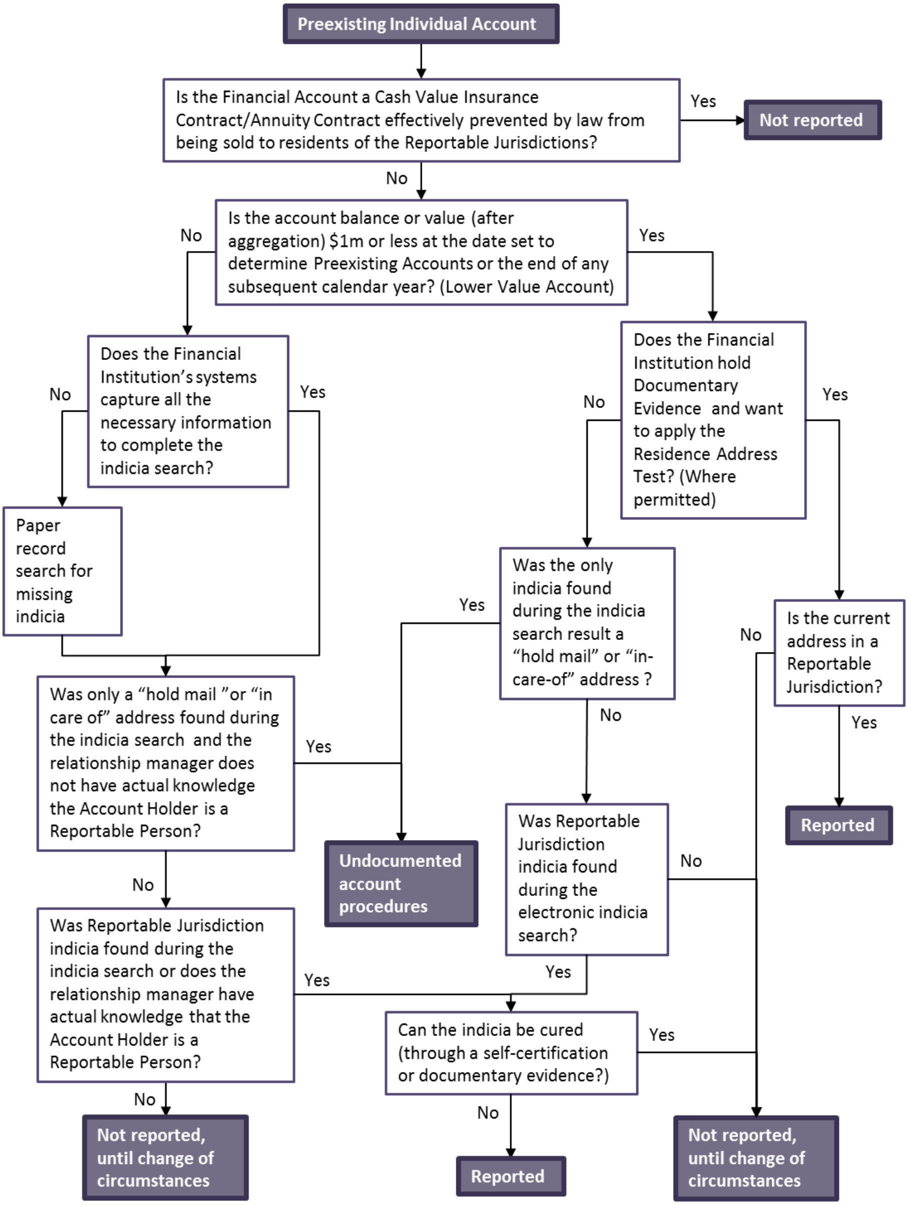
115. As an example, those jurisdictions that have committed to be early adopters of the Standard have selected 1 January 2016 as the date from which the Financial Institutions in their jurisdiction will apply the New Account procedures (with any account open at 31 December 2015 being subject to the procedures in relation to Preexisting Accounts).

Chapter 4.1: Due Diligence for Preexisting Individual Accounts

116. 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.

CRS p. 31
Com p. 110

Figure 13: Due diligence procedure for Preexisting Individual Accounts



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

117. 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). CRS p. 31 Com p. 110

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

118. 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. CRS p. 32 Com p. 111

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

119. 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. CRS p. 32 Com p. 111

120. 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. 149 Com p. 202

121. 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.112

122. 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 Com p.113

address is in the same jurisdiction as identified in the government-issued Documentary Evidence

123. 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.113

124. 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 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). Com p.149 Com p. 115

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

125. Where the indicia search is completed (see below) and the only indicia found is a "hold mail" or "in-care-of" address 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 the tax authority as an undocumented account. CRS p. 33 Com p. 117

Was Reportable Jurisdiction indicia found during the electronic indicia search?

126. 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

1. identification of the Account Holder as a resident of a Reportable Jurisdiction(s); CRS p. 32 Com p. 117

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.

127. 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)?

128. 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. CRS p.33 Com p.120

Instances where the account balance or value (after aggregation) is not $1m or less (High Value Accounts) CRS p. 34 Com p. 121 CRS p. 42 Com p. 154

129. 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.

130. 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? CRS p. 34 Com p. 121

131. 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.

Paper record search for missing indicia

132. 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.

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

133. Where the only indicia found is a "hold mail" or "in-care-of" address 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 the 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. 122

134. 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

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

Additional procedures

Com p. 124

136. 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.

Timing of review

CRS p. 37
Com p. 126

137. 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 Accounts and 24 months for Low Value Accounts.

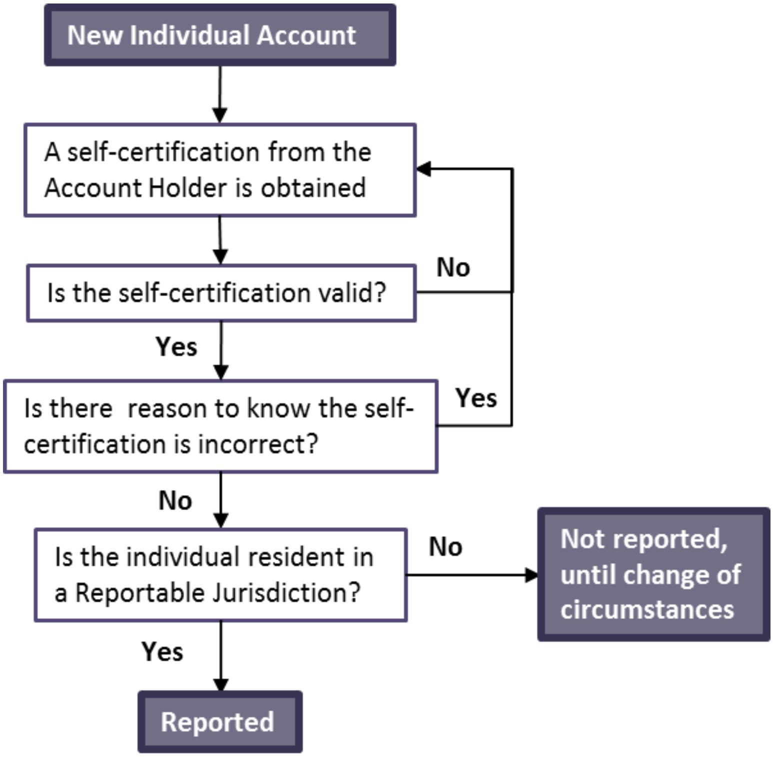
Chapter 4.2: Due diligence for New Individual Accounts

CRS p. 37
Com p. 127

138. 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.

139. 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

Figure 14: Due diligence procedure for New Individual Accounts



A self-certification from the Account Holder is obtained

140. 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. CRS p. 37 Com p. 127

141. Participating Jurisdictions are expected to provide information to assist taxpayers to determine their residence(s) for tax purposes. The OECD will endeavour to facilitate the dissemination of such information.

Is the self-certification valid?

142. 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; Com p. 128

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

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

143. 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).

144. 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

Chapter 4.3: Due Diligence for Preexisting Entity Accounts

CRS p. 38
Com p. 135

145. 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.

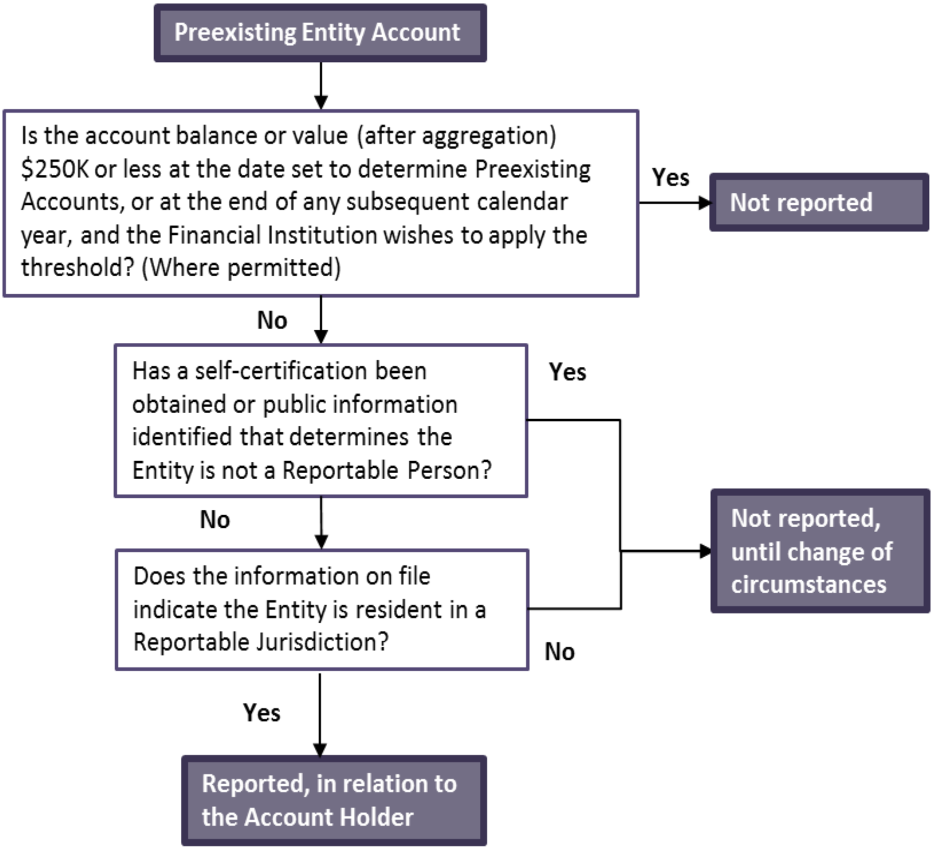
2. Second, for certain Entity Account Holders (Passive NFEs), the Reporting Financial Institution must establish whether the Entity is controlled by a Reportable Person(s).

146. These processes are set out below.

Review procedure to establish whether the Entity is a Reportable Person

147. 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.

Figure 15: Due diligence procedure for Preexisting Entity Accounts[7]



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)

148. 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. CRS p. 38 Com p. 135

[7] Please note that steps 2 and 3 may be taken in either order.

149. 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

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

CRS p. 39 Com p. 138

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

150. 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.137

151. 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.138

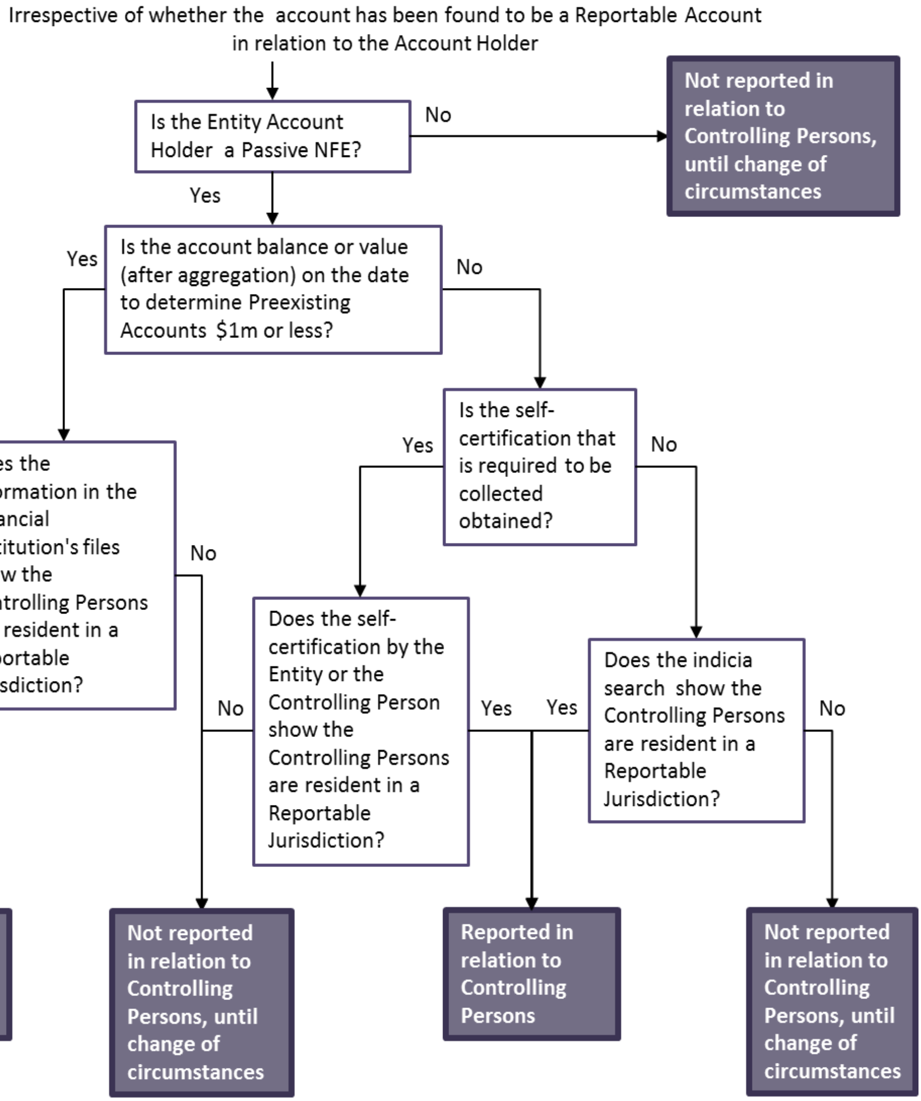
152. The self-certification may also contain information on the Account Holder's status, such as the type of Financial Institution or the type of NFE it is. This could be useful for the rest of the due diligence process for Preexisting Entity Accounts (see the steps below in relation to Controlling Persons).

Review procedure for Controlling Persons

153. Whether or not the account has been identified as a Reportable Account during the first part of the review procedure, the Reporting Financial CRS p. 39 Com p. 139

Institution must carry out the **second 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 the diagram below (Figure 16) with each step subsequently explained in further detail.

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



154. 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?

155. 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, an Investment Entity that is not a Participating Jurisdiction Financial Institution):

CRS p. 39
Com p. 139

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 a standardised industry coding system).

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

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

157. If the Account Holder is a Passive NFE 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

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

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

160. **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). Com p.147

161. 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

162. As with the procedure for Preexisting Entity Accounts, the due diligence procedure for New Entity Accounts has **two parts**: CRS p. 40 Com p. 143

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).

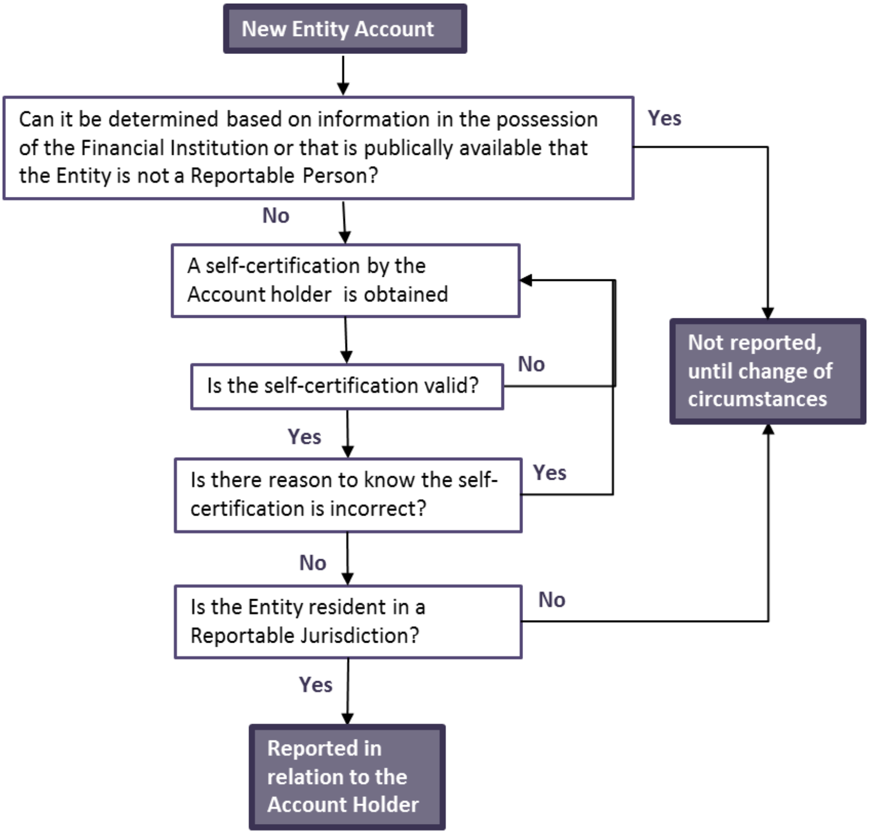
163. These processes are set out below.

Review procedure to establish whether the Entity is a Reportable Person

164. Figure 17 and the associated text below it 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.

165. 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. Com p. 181

Figure 17: Due diligence procedure for New Entity 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?

166. 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 the Entity Account Holder is such an Entity and therefore not a Reportable Person.

CRS p. 41
Com p. 143

A Self-certification by the Account Holder is obtained

167. 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.

168. Participating Jurisdictions are expected to help taxpayers determine their residence(s) for tax purposes. The OECD will endeavour to facilitate the dissemination of such information.

Is the Self-certification valid?

169. 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

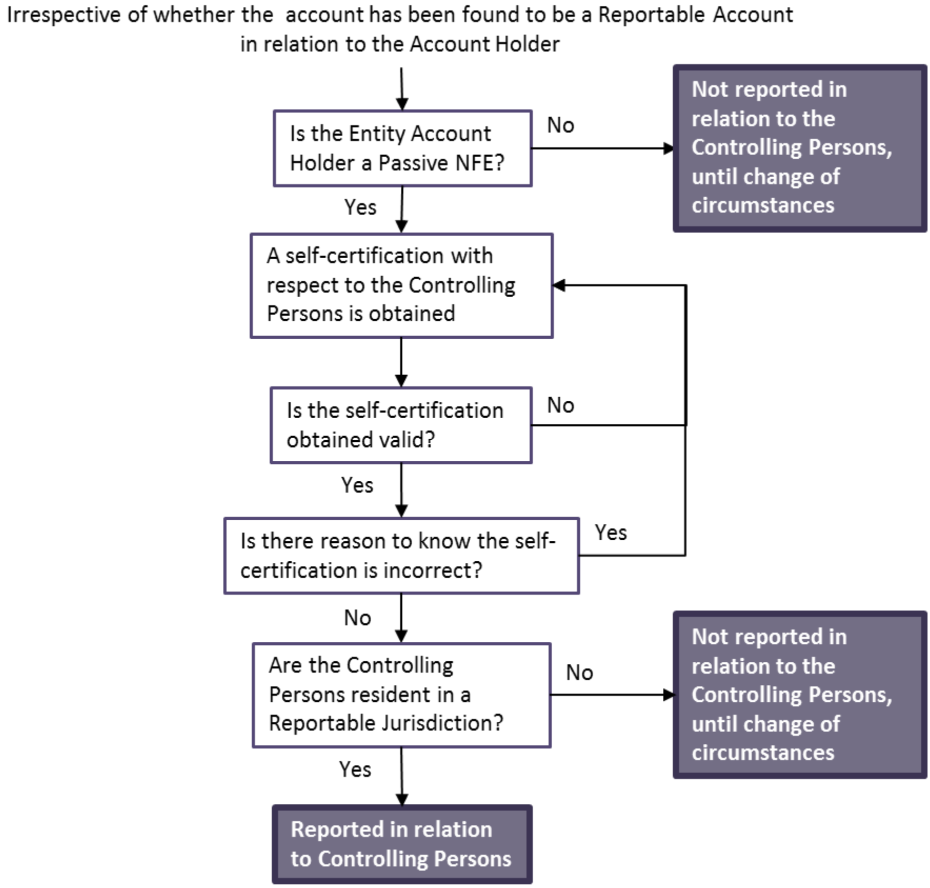
Is there reason to know the self-certification is incorrect?

170. 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

171. 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 lder a Passive NFE?

172. 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, an Investment Entity that is not a Participating Jurisdiction Financial Institution): CRS p. 41 Com p. 147

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).

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

174. 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).

175. 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.

Obtain a Self-certification with respect to the controlling persons

176. 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.

177. 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.

178. 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).

179. 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. Com p. 147

Chapter 4.5: Other definitions and general due diligence rules

Timings

180. 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., 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.

CRS p. 31
Com p. 106

Service providers

181. 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

182. 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). Furthermore, as FATCA provides for the use of service providers, it is likely that most, if not all, Participating Jurisdictions will incorporate this provision.

Alternative procedures for Preexisting Accounts

183. 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

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

Currency translation

185. 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. CRS p. 43 Com p. 156

Other definitions and procedures

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

- Reliance on documentation collected by other persons Com p. 205
- What Documentary Evidence is and when Documentary Evidence and self-certifications can be relied on CRS p. 60 Com p. 202 Com p. 150
- The definition of a Related Entity Com p. 201
- The definition of Controlling Persons Com p. 198
- The account aggregation rules Com p. 154

Chapter 5: The information that gets reported and exchanged

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

188. 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).

189. 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 tables below set out the information to be reported in greater detail.

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).	Com p. 96
Jurisdiction(s) of residence	For Preexisting Accounts this will be based on the residency test or the indicia search and for New Accounts this will be based on a self-certification.	Com p. 96
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).	Com p. 96

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.

Com p. 102

Com p. 104

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.

Com p. 97

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 (i.e. not the balance). 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. This option would likely be most desirable where it is being used for FATCA compliance.

Com p. 98

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. See the optional exception below with respect to the year the information is to be reported.

Com p. 100

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.

Com p. 101

General rules

Reporting period

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

Com p. 99

Joint accounts

191. 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: Com p. 200

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

5. 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

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

Currency

192. 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. Com p. 102

Gross proceeds

Com P.105

193. Jurisdictions are given the option of **phasing in** requirements to report gross proceeds as in certain scenarios it may be more difficult for Reporting Financial Institutions to implement procedures to obtain the total gross proceeds from the sale or redemption of Financial Assets.

194. While this matches the approach taken in FATCA it may not be as desirable in the context of the Standard as procedures will already be in place for FATCA compliance.

Chapter 6: Treatment of trusts in the CRS

195. 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.

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

196. 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

197. 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.

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

199. 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.

200. 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.

201. 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.

202. 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.

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

204. 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 a NFE

205. As a trust is considered to be an Entity in the CRS, it may be a Financial Institution or a nonfinancial 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

CRS p. 44 and 57

CRS p. 44
Com p. 161-164

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.

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

207. 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 (i.e. a jurisdiction with which an agreement is in place pursuant to which it will provide CRS information to the Jurisdiction of the Reporting Financial Institution and which is identified in a published list).

CRS p. 58
Com p. 195
Com p. 159

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

208. 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

209. 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

Com p. 159

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

211. 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. Com p. 159

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

212. 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. CRS p. 51 Com p. 178

213. 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.

214. 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 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 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, 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. Com p. 198

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

215. 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

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

217. Where an Equity Interest (such as the interest held by a settlor or beneficiary) 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 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 AML / KYC procedures. In respect of Preexisting Accounts, Reporting Financial Institutions may rely on the information collected in connection with the 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.

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

(v) Reporting the relevant information

218. 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.

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

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

Com p. 98

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

221. Where an account is closed during the year, the fact of closure is reported. 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 removed. CRS p. 29

222. 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 4. 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	• Value of payments made to the settlor in reporting period (if any)
Beneficiary: mandatory	• Total value of all trust property	• Value of distributions made to the beneficiary in reporting period
Beneficiary: discretionary (in a year in which a distribution is received)	• Nil	• Value of distributions made to the beneficiary in reporting period
Any other person exercising ultimate effective control	• Total value of all trust property	• Value of distributions made to such person in reporting period (if any)
Debt interest holder	• Principal amount of the debt	• Value of payments made in reporting period
Any of the above, if account was closed	• The fact of closure	

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

223. 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 NFE.

224. The same 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

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

226. 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.

227. The account held by a trust will also be reportable if it the trusts has 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

228. 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 (see Interpretive Note

CRS p. 57
Com p. 147

to Recommendation 10, at footnote 31).

229. 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 case the Reporting Financial Institution would only need to report discretionary beneficiaries in the year they receive distributions from the trust. Jurisdictions 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

230. The CRS also includes within the definition of Controlling Person any natural person(s) that exercise ultimate control of an Entity that is a settlor, trustee, beneficiary or protector. For example, where the settlor or beneficiaries are themselves Entities, the Reporting Financial Institution must identify the natural person(s) exercising control of that Entity. Although the natural person may be exercising ultimate control through a chain of ownership, only the ultimate natural controlling person(s) would be treated as a Controlling Person, and not the intermediary Entities in the chain of ownership. The requirement to identify the natural persons will apply consistent with FATF Recommendations. For further guidance on Controlling Persons see paragraphs 106 and 107 above.

Com p. 199

231. 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.

Com p. 199

(ii) Applying the due diligence rules

Com p. 198

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

233. Reporting Financial Institutions may rely on information collected pursuant to AML/KYC procedures to identify the Controlling Persons. In respect of pre-existing Entity Accounts, Reporting Financial Institutions may rely on the information collected in connection with the account pursuant to their AML/KYC procedures. In respect of New Entity Accounts, Reporting Financial Institutions can only rely on AML/KYC procedures to determine the identity of 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.

(iii) Reporting the relevant information

234. 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. 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 Reporting Financial Institution (name and identifying number).

235. In respect of a trust that is a Passive NFE, the Reporting Financial Institution must report the Controlling Persons of the trust. 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

236. 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 below in **Table 8**.

CRS p. 29
Com p. 94

237. Where the financial account held by the trust is closed during the year, the fact of closure is reported rather than the financial activity.

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

Com p. 99

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 [134] on page 199 is exercised)	• Nil	• 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	

238. 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

PART III: THE STANDARD COMPARED WITH FATCA MODEL 1 IGA

239. 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.

240. 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.

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 1 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	While the wording of the definition of Investment Entity may differ between the Model 1 FATCA IGA and the

	Investment Entity in Section VIII, A, 6 of the Standard.	Standard, the Standard was designed to achieve an equivalent outcome to that achieved through the Model 1 FATCA IGA. Jurisdictions should therefore be able to rely on the approach in the Standard for purposes of both the Standard and the Model 1 FATCA IGA.
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 through 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	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.

	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 US Persons to evade US tax and that have similar characteristics to the Entities described in Annex II as of the date of signature of the IGA.	
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 current 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.
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	This difference is due to a policy decision taken when developing the Standard.

	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).	
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 contribution). 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 provision on rollover contributions. 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.
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	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

	additional condition, which is that no new, additional, or amended information is required to be obtained from the Account Holder of the Preexisting Account.	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.
Depository Accounts due to non-returned overpayments	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 certain 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.
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 1 FATCA IGA are agreed through a bilateral discussion. Where an account is described in one of the categories in Annex II to the Model 1 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.
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 of Non-Reportable Persons in the Standard were developed with the categories in the Model 1

	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).	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.
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 1 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.
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	Annex I to the Model 1 FATCA IGA includes indicia for a Preexisting Individual Account in relation to the	Under US tax law, a US tax resident includes US citizens as well as US residents. The Model 1 FATCA IGA

Accounts	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.	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.
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	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

	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).	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.
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 an 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.

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 1 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.
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	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

	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.	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..
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	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.

	be performed within the calendar year following the year in which the account became a High Value account.	
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.
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.

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.

ANNEX I — CRS-RELATED FREQUENTLY ASKED QUESTIONS

SECTION I: GENERAL REPORTING REQUIREMENTS

1. Reporting balance or value

Question

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)?

Answer

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

Question

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

Answer

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

Question

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

Answer

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.

SECTIONS II-VII: DUE DILIGENCE REQUIREMENTS
1. Documentary Evidence
Question 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?
Answer No. A Reporting Financial Institution is not required to retain a paper 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
Question Does the requirement in the Standard to confirm the residence address with the Documentary Evidence on file require accounts to be manually reviewed?
Answer 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
Question Is it possible that after the application of the residence address test it is determined that the Account Holder has two residence addresses?

Answer
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
Question
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?
Answer
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.
5. Obligations of a Financial Institution to establish tax residency
Question
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?
Answer
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.

6. The Validation of TINs

Question

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?

Answer

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.

7. Self-Certification – meaning of "positively affirmed"
Question 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?
Answer 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.
8. Verbal self-certification
Question Does the Standard allow for the gathering of information for a self-certification verbally on account opening under the Standard?
Answer 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.

9. Self-certification with yes/no response
Question Does the Standard allow for a self-certification to solicit a yes/no response to questions about tax residence?
Answer 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.
10. Self-certification provided on the basis of a PoA
Question Does the Standard allow for a self-certification to be provided by third party on the basis of a power of attorney?
Answer 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.
11. Reason to Know
Question 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?
Answer 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.

12. New Accounts of Pre-existing Account Holders

Question

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?

Answer

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.

13. The relationship manager test

Question

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

Answer

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.

14. Reliance on Service Providers

Question

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?

Answer

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.

15. Determination of CRS Status of Entities

Question

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

Answer

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.

SECTION VIII: DEFINITIONS

A. REPORTING FINANCIAL INSTITUTIONS

1. Entities and Cash Pooling Activities

Question

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?

Answer

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
Question In what circumstances, if any, will a holding company or treasury centre of a financial group have the status of Financial Institution under CRS?
Answer 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.
3. Investment Entity
Question 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)?
Answer 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. Indirect Investment in Real Estate

Question

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?

Answer

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.

B. NON-REPORTING FINANCIAL INSTITUTIONS

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

Question

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 Non-Financial Entity (NFE)?

Answer

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

Question

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 Intergovernmental agreements (IGAs) being concluded with the US?

Answer

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).

3. Depository Accounts held by a Central Bank

Question

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?

Answer

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

Question

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?

Answer

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

Question

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?

Answer

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

Question

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?

Answer

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.

D. REPORTABLE ACCOUNT

1. Reporting of certain Controlling Persons

Question

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

Answer

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

Question

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?

Answer

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

Question

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?

Answer

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.

OTHER ISSUES

1. Data Safeguards – ISO-27000

Question

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?

Answer

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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