



REPUBLIC OF CYPRUS
MINISTRY OF FINANCE



ΤΜΗΜΑ
ΦΟΡΟΛΟΓΙΑΣ
TAX DEPARTMENT

Automatic Exchange of Financial Account Information

Guidance Notes

May 2020

**USERS SHOULD READ THE SECTION 'PURPOSE AND
STATUS OF THIS GUIDANCE' BEFORE PROCEEDING
TO THE GUIDANCE MATERIAL**

Automatic Exchange of Information Manual
Table of Contents

Section/ Paragraph	Title	Page
	Purpose and Status of this Guidance	6
A	Introduction	7
1	Background - Automatic Exchange of Financial Account Information	8
2	Background – Foreign Account Tax Compliance Act (FATCA)	8
3	Background – The Common Reporting Standard (CRS)	9
4	Background - EU Directive on Administrative Cooperation (the DAC)	10
5	How the Automatic Exchange Legislation Works	10
6	The Wider Approach	11
B	Timetable: Effective dates for agreements	11
1	Timetable: Reporting: FATCA	12
2	Timetable: Reporting: DAC/CRS	15
C	Financial Institutions	15
1	Financial Institutions: Cyprus Financial Institutions	16
2	Financial Institutions: Custodial Institutions	17
3	Financial Institutions: Custodial Institutions: Execution Only Broker	18
4	Financial Institutions: Custodial Institutions: Securitization Vehicles	18
5	Financial Institutions: Custodial Institutions: Fund Nominees	19
6	Financial Institutions: Depository Institutions	19
7	Financial Institutions: Investment Entities	20
8	Financial Institutions: Investment Entities: Examples	23
9	Financial Institutions: Specified Insurance Company	25
10	Financial Institutions: Partnerships	25
11	Financial Institutions: Personal Investment Company	25
12	Financial Institutions: Non-Reporting Financial Institutions	26
13	Financial Institutions: Non-Reporting Financial Institutions: Owner Documented	26
14	Financial Institutions: Non-Reporting Financial Institutions: Non-Profit Organizations	27
D	Financial Accounts	27
1	Financial Accounts: Reportable Accounts	28
2	Financial Accounts: Depository Accounts	28
3	Financial Accounts: Custodial Accounts	29
4	Financial Accounts: Custodial Accounts: Collateral	29
5	Financial Accounts: Cash Value Insurance Contract	29
6	Financial Accounts: Cash Value Insurance Contract: Examples	30
7	Financial Accounts: Annuity Contracts	31
8	Financial Accounts: Equity or Debt Interest in an Investment Entity	31
9	Financial Accounts: Excluded Accounts	31
10	Financial Accounts: Excluded Accounts: Escrow Accounts	32
11	Financial Accounts: Excluded Accounts: Depository Accounts with Unreturned Overpayments	33
12	Financial Accounts: Excluded Accounts: Low Value Dormant Accounts	33
E	Reportable Information: General Requirements	34
1	Reportable Information: Address	34
2	Reportable Information: Taxpayer Identification Number	35

3	Reportable Information: Jurisdiction	36
4	Reportable Information: Account Number	36
5	Reportable Information: Reporting Financial Institution	37
6	Registration to Ariadne Portal	37
7	Reportable Information: Account Balance or Value	37
8	Reportable Information: Account Balance or Value: Joint Accounts	38
9	Reportable Information: Account Balance or Value: Multiple Jurisdictions	38
10	Reportable Information: Account Closure	38
11	Reportable Information: Place and Date of Birth	39
12	Reportable Information: Custodial Accounts	39
13	Reportable Information: Custodial Accounts: Gross Proceeds	40
14	Reportable Information: Depository Accounts	40
15	Reportable Information: Other Accounts	40
16	Reportable Information: Currency	40
17	Reportable Information: Paper and Electronic Records	40
18	Reportable Information: Reasonable Efforts to Obtain	41
19	Reportable Information: Reportable Jurisdictions and Participating Jurisdictions	42
F	Due Diligence: General Requirements	42
1	Due Diligence: General Requirements: Identifying Reportable Accounts	43
2	Due Diligence: General Requirements: Identifying Reportable Accounts: Examples	44
3	Due Diligence: General Requirements: Date for Determining Balance or Value	44
4	Due Diligence: General Requirements: Thresholds	45
5	Due Diligence: General Requirements: Thresholds: Elections and Processes	45
6	Due Diligence: General Requirements: Date for Determining the Balance or Value	45
7	Due Diligence: General Requirements: Reliance on Service Providers	46
8	Due Diligence: General Requirements: Alternative Procedures for Pre-Existing Accounts	46
9	Due Diligence: Pre-Existing Individual Accounts	47
10	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts	48
11	Due Diligence: Pre-existing Individual Accounts: Lower Value Accounts: Residence Address Test	48
12	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts: Residence Address Definition	49
13	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts: Current Residence Address	49
14	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts: Residence Address: Dormant Accounts	49
15	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts: Residence Address Based on Documentary Evidence	50
16	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts: Electronic Record Search	52
17	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts: Electronic Record Search: Resident of a Reportable Jurisdiction	53
18	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts: Electronic Record Search: Unambiguous United States Place of Birth	53
19	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts: Electronic Record Search: Mailing or Residence Address	53

20	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts: Electronic Records Search: Qualified Intermediaries (FATCA)	54
21	Due Diligence: Pre-Existing Individual Accounts: Lower Value Accounts: Electronic Record Search: Curing Indicia	54
22	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts	55
23	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts: Electronic Record Search	55
24	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts: Paper Record Search	56
25	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts: Paper Record Search: FATCA Exemption	57
26	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts: Paper Record Search: Relationship Manager Enquiry	57
27	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts: Relationship Manager Inquiry: Examples	58
28	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts: Change of Circumstance	58
29	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts: Hold Mail or In-Care-Of Address Only	59
30	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts: Lower Value Account Becomes High Value	59
31	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts: Effect of Finding Indicia	60
32	Due Diligence: Pre-Existing Individual Accounts: High Value Accounts: Undocumented Account	60
33	Due Diligence: New Individual Accounts	60
34	Due Diligence: New Individual Accounts: Self-Certification	61
35	Due Diligence: New Individual Accounts: Self-Certification: Examples	62
36	Due Diligence: New Individual Accounts: Self-Certification: Incorrect or Unreliable	63
37	Due Diligence: New Individual Accounts: Self-Certification: Change of Circumstances	64
38	Due Diligence: Entity Accounts	65
39	Due Diligence: Entity Accounts: Investment Entity with Regularly Traded Securities	67
40	Due Diligence: Entity Accounts: Pre-Existing Accounts	67
41	Due Diligence: Entity Accounts: Pre-Existing Accounts: Threshold Exemption	67
42	Due Diligence: Entity Accounts: Pre-Existing Accounts: Reportable Accounts	69
43	Due Diligence: Entity Accounts: Pre-Existing Accounts: Review Procedure for Account Holders	69
44	Due Diligence: Entity Accounts: Pre-Existing Accounts: Review Procedure for Account Holders: Available Information	70
45	Due Diligence: Entity Accounts: Pre-Existing Accounts: Review Procedure for Account Holders: Self-Certification	70
46	Due Diligence: Entity Accounts: Pre-Existing Accounts: Review Procedure for Account Holders: Self-Certification as a Financial Institution	71
47	Due Diligence: Entity Accounts: Pre-Existing Accounts: Review Procedure for Account Holders: Self-Certification as a NFE	72
48	Due Diligence: Entity Accounts: Review Procedure for Controlling Persons	72
49	Due Diligence: Entity Accounts: New Accounts	74

50	Due Diligence: Entity Accounts: Determining Whether the Entity is a Reportable Person	74
51	Due Diligence: Entity Accounts: Jurisdiction of Residence	77
52	Due Diligence: Entity Accounts: Account held by Passive NFE with one or more Controlling Persons that are Reportable Persons	77
53	Due Diligence: Special Rules: Reliance on Self-Certifications and Documentary Evidence	81
54	Due Diligence: Special Rules: Reliance on Self-Certifications and Documentary Evidence: Limits on Reason to Know	81
55	Due Diligence: Special Rules: Limits on Reason to Know: Examples	82
56	Due Diligence: Special Rules: Alternative Procedures for Cash Value Insurance Contracts and Annuity Contracts	82
57	Due Diligence: Special Rules: Account Balance Aggregation and Currency Rules	83
G	PASSIVE INCOME	84
H	TRUSTS	84
1	Financial Institutions: Custodial Institutions: Trusts	85
2	Financial Institutions: Investment Entities: Trusts	85
3	Financial Institutions: Investment Entity: Trusts: Trusts Managed by a Financial Institution	86
4	Financial Institutions: Non – Reporting Financial Institutions: Trustee Documented Trust	86

Purpose and Status of This Guidance

The CRS is imposed in Europe via the European Directive on Administrative Cooperation (DAC). As a result it is DAC which governs the obligations imposed on Reporting Financial Institutions in Cyprus. The Cyprus guidance on CRS cannot extend or restrict the scope of CRS as implemented by the DAC as to do so would go beyond what the Cyprus Tax Department is permitted to do.

All Reporting Financial Institutions are required to carry out the due diligence processes for identifying Reportable Accounts as set out in the DAC. The DAC draws heavily on the CRS, in that applying the due diligence processes in the DAC will allow a Reporting Financial Institution to identify Reportable Accounts for Account Holders that are resident in CRS Reportable Jurisdictions outside of the EU. This means that for Cyprus reporting purposes it is the application of the DAC that takes precedence over the CRS.

Clause 13 of the DAC states:-

“In implementing this Directive, Member States should use the Commentaries on the Model Competent Authority Agreement and Common Reporting Standard, developed by the OECD, as a source of illustration or interpretation and in order to ensure consistency in application across Member States. Union action in this area should continue to take particular account of future developments at OECD level.”

It follows that should the Courts need to interpret how any element of the DAC applies they will turn to the Commentaries on the Model Competent Authority Agreement and Common Reporting Standard as the primary source of interpretation. This means that if Financial Institutions have doubts about how any element of the DAC applies their first point of reference for guidance should be to the CRS Commentaries. The Cyprus Guidance is secondary to this and assists with using the Commentaries by summarizing and bringing together some of the main issues and to deal with any Cyprus specific areas where the CRS allows for a degree of optionality as well as highlighting differences in approach between the DAC and FATCA reporting regimes.

A. Introduction

Guidance

The Automatic Exchange of Information Manual contains up to date guidance for Cyprus Tax Department staff and customers on key issues on the application of various international agreements and Cyprus legislation on the automatic exchange of financial account information between Cyprus and other tax jurisdictions.

We will continue to expand and update the Manual to include guidance on new legislation, international agreements and litigation which has become final.

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How to use this Manual

Tables of contents

You can use the tables of contents to navigate to the pages you need.

Acknowledgment

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1. Background - Automatic Exchange of Financial Account Information

Globalization of the financial sector now makes it much easier for individuals and entities to hold money and assets outside of their jurisdiction of tax residence. While the great majority complies with their tax obligations there are some who will use the availability of offshore financial structures to evade tax.

Automatic exchange of financial account information is about improving transparency in the fight against tax evasion and in so doing protecting the integrity of the tax systems of the Participating Jurisdictions. Cyprus is a party to a number of international agreements designed to provide tax administrations with details of financial accounts and assets, owned by individuals and entities that are resident for tax purposes in their jurisdiction, but which are held by financial institutions in the other territory.

For this to work the Cyprus Government has introduced legislation that imposes obligations on Cyprus financial sector to review and collect details of accounts held by persons that are tax resident elsewhere and report this to the Cyprus Tax Department for onward transmission under the exchange of information articles in the various treaties and conventions to which Cyprus is party. In return, those jurisdictions supply the Cyprus Tax Department with similar information on Cyprus tax resident individuals and entities holding accounts with their financial institutions.

Cyprus now has legislation in place for automatic exchange of financial account information under three different regimes:

1. The United States Foreign Account Tax Compliance Act – FATCA
2. The Common Reporting Standard developed by the OECD – CRS
3. The EU Directive on Administrative Cooperation in Tax Matters – DAC

All three regimes (FATCA, CRS and DAC) have significant common requirements; this guidance manual will therefore concentrate on the requirements of the DAC and the CRS and highlight the differences that apply under FATCA.

The Cyprus Tax Department is responsible for ensuring that the Cyprus financial institutions comply with their obligations under the relevant legislation. This guidance is intended to provide staff of the Cyprus Tax Department with an understanding of the requirements that Cyprus financial institutions must fulfill to comply with those obligations and to aid businesses that may have responsibilities to review, collect and report information under the regulations. It is also intended as a reference source for Financial Institutions and tax professionals for use alongside the Commentaries to the CRS.

2. Background – Foreign Account Tax Compliance Act (FATCA)

In 2010 the United States of America enacted the Foreign Account Tax Compliance Act provisions (FATCA) which are contained in the HIRE Act 2010. These provisions are aimed at

reducing tax evasion by US citizens and entities.

FATCA requires financial institutions outside the USA to pass information about their USA customers to the US tax administration, the Internal Revenue Service. The legislation allows for a 30% withholding tax to be applied to the US source income of any non-US financial institution that fails to comply with this requirement.

On 2 December 2014 Cyprus and the USA signed a Treaty to implement FATCA in the Cyprus – “Agreement between the Government of the United States and the Government of the Republic of Cyprus to Improve International Tax Compliance and to Implement FATCA” (the US IGA). The US IGA was brought into force by the FATCA Decree 281/2015. The Decree impose obligations on Cyprus financial institutions to identify, maintain and report information to the Tax Department on financial accounts held by US citizens and entities. There is also a requirement under FATCA for Reporting Financial Institutions to report payments to Non-Participating Financial Institutions. Provided these financial institutions comply with the requirements of the legislation they will not be subject to the 30% withholding tax on US source income.

3. Background – The Common Reporting Standard (CRS)

The Common Reporting Standard (CRS) is the result of the drive by the G20 nations to develop a global standard for the automatic exchange of financial account information. Developed by the OECD, the CRS aims to maximize efficiency and reduce costs for financial institutions by drawing heavily on the approach taken to implementing FATCA.

There are, however, some distinct differences between the two systems, driven to a large extent by the multilateral nature of the CRS compared to FATCA and the US specific features of FATCA such as reporting on the basis of citizenship as well as tax residence, compared to only tax residence under the CRS, and the FATCA withholding tax which introduces additional features into the reporting process that are not needed when implementing the CRS.

In October 2014, 45 jurisdictions signed a multilateral competent authority agreement to start exchanging information using the CRS framework from 2017. A further 4 signed the same agreement with a commitment to start exchanging information in 2018. Since then many more jurisdictions have either signed the multilateral competent authority agreement, or made a commitment to automatic exchange. The decree that require Cyprus financial institutions to identify, maintain and report information for exchange with these jurisdictions, came into force on 1st January 2016.(CRS decree 161/2016)

The current list of Participating Jurisdictions for automatic exchange under both the CRS and the DAC can be found at:

http://www.mof.gov.cy/mof/taxdep.nsf/index_gr/index_gr?opendocument

4. Background - EU Directive on Administrative Cooperation (the DAC)

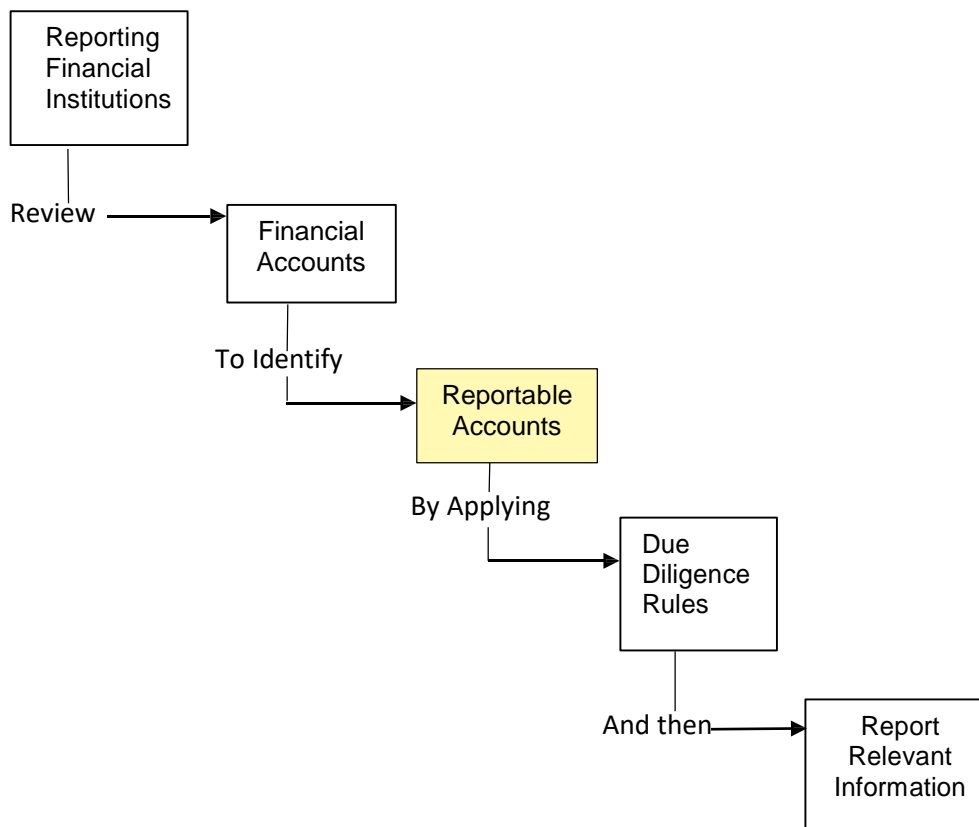
Following publication of the CRS by the OECD in June 2014 the European Union immediately started work on incorporating it into an EU Directive to make automatic exchange of financial account information mandatory between EU Member States.

The CRS contains a number of options that are open to jurisdictions to apply if they choose. The Member States came to agreement on which of those should be incorporated into the DAC and therefore applicable across the EU. In addition, some points that arose in the commentary to the CRS that are considered to be necessary for the effective implementation of the Standard have been incorporated into the DAC.

5. How the Automatic Exchange Legislation Works

The 2016 law (Amending) on Administrative Cooperation in Tax Matters (L. 60(I)/2016) implements the DAC in Cyprus.

Whether the obligations are for the purposes of FATCA, the CRS or the DAC, the basic process is as follows:



Each of these steps is described in the following guidance and the differences in approach under each of the regimes identified.

6. The Wider Approach

The ‘wider approach’ is intended to enable Reporting Financial Institutions to capture and maintain information on the tax residence of Account Holders irrespective of whether or not that Account Holder is a Reportable Person for any given Reportable Period.

The due diligence procedures in each of the agreements governing automatic exchange are designed to identify accounts which are held by the residents of the jurisdictions with which Cyprus is committed to exchange information. However, the number of these jurisdictions is not fixed and there is an expectation that under the CRS more jurisdictions will reach agreement with Cyprus over time. As a result, the Law/decrees applying the due diligence rules have been designed to adopt a wider approach to recording the territory in which a person is tax resident irrespective of whether that territory is a Reportable Jurisdiction at the time that the Law/ Decrees come into force.

Financial institutions are required to identify the territory in which an Account Holder or a Controlling Person is resident for income tax or corporation tax purposes, or for the purposes of any other tax of a similar character that has been imposed by that territory, and to maintain this information for a period of at least 5 years after the end of the period within which the Reporting Financial Institution must report this information. This effectively enables the financial institution to ‘future proof’ their processes such that when a new jurisdiction is added to the list of Reportable Jurisdictions the work in identifying where existing customers are resident has already been carried out. Reducing the number of times that due diligence processes have to be carried out should result in lower costs for the financial institutions in complying with their obligations. Financial Institutions will only need to revisit the determination of tax residence in those cases where there has been a change of circumstance.

The main concern is to provide Financial Institutions with the legal cover they require in the context of data protection law. The law/decrees impose an obligation on Financial Institutions without any discretion on their part to collect this information. In such circumstances it is the legislator that must consider the question of proportionality for Data Protection Act purposes. The obligation to identify the territory in which an Account Holder is tax resident and to maintain that information for at least 5 years after the end of the period within which the Reporting Financial Institution must report this information - provides the necessary data protection cover for Financial Institutions to comply with their obligations.

B. TIMETABLE: EFFECTIVE DATES FOR AGREEMENTS

The various agreements entered into by Cyprus in respect of automatic exchange of information have different dates for when types of account come into scope and when first reporting must be completed.

The table below sets out the dates for each of the regimes.

	FATCA		DAC/CRS
Pre-existing financial accounts to be subjected to due diligence procedures are those in existence as at:	30 June 2014		31 December 2015
New financial accounts requiring self-certification by the customer are those opened on or after:	1 July 2014		1 January 2016
First reporting period ends on:	31 December 2014		31 December 2016
Information to be reported by financial institutions to the Cyprus Tax Department in respect of the first reporting period on or before:	31 August 2015		30 June 2017
Information to be exchanged by the Cyprus Tax Department with partner jurisdictions on or before:	30 September 2015		30 September 2017

Subsequent reporting periods ending on 31 December each year are reportable to the Cyprus Tax Department by the 30 June the following year. Where 30 June falls on a weekend or Bank Holiday then the deadline for submitting reportable information to the Cyprus Tax Department is the next following working day. Data must be sent to the Cyprus Tax Department by this date to enable it to be processed for exchange by 30 September. Not all financial account information is reportable in the first reporting period. Details of what is to be reported under each regime and when can be found at:

Paragraph B1 for FATCA

Paragraph B2 for DAC

1. TIMETABLE: REPORTING: FATCA

The table below sets out the information that is to be reported to the Cyprus Tax Department for each reporting year in respect of the Intergovernmental Agreement between Cyprus and the USA. Reporting is required to the Cyprus Tax Department by 30 June next following the reporting year for which the information is required.

Reporting Year to 31 December	In Respect of	Information to be Reported
2014	Each specified US person either <ul style="list-style-type: none"> • Holding a Reportable Account, or • As a Controlling Person of an entity that is a passive NFFE 	<ul style="list-style-type: none"> • Name • Address • US Tax identification Number (where applicable or Date of Birth for pre-existing accounts)¹. • Account number or functional equivalent. • Name and identifying number of reporting financial institution.
2015 As 2014 plus the items listed aside.	<ul style="list-style-type: none"> • Custodial Accounts 	<ul style="list-style-type: none"> • Total gross amount of interest. • Total gross amount of dividends. • Total gross amount of other income paid or credited to the account.
	<ul style="list-style-type: none"> • Depository Accounts 	<ul style="list-style-type: none"> • The total amount of gross interest paid or credited to the account in the calendar year or other reporting period.
	<ul style="list-style-type: none"> • Other Accounts 	<ul style="list-style-type: none"> • The total gross amount paid or credited to the account including the aggregate amount of redemption payments made to the Account Holder during the calendar year or other
2016 As 2015 plus the items listed aside	<ul style="list-style-type: none"> • Custodial Accounts 	<ul style="list-style-type: none"> • The total gross proceeds from the sale or redemption of property paid or credited to the account.
2017 Onwards		<ul style="list-style-type: none"> • All of the above.

¹ The TIN or, if no TIN is held, the date of birth is not required to be reported for pre-existing accounts with respect to calendar years before 2017 if the Reporting Financial Institution does not already hold the information.

2. For each 2015 and 2016, a Reporting Cyprus FI must also report annually the name of each Nonparticipating Financial Institution to which it has made payments and the aggregate amount of such payments.

New accounts (Opened on 01/01/2016)		
Financial Accounts		Comments
New accounts (opened on 01/01/2016 onwards)		
Individuals and Entities (see Note 1 ¹)		Account balances will be reported annually irrespective of balance
Pre-existing accounts (In existence as at 31/12/2015)		
Individuals		
High-Value	Greater than USD1m as at 31/12/2015	First reporting on 30/06/2017 and remain reportable in all subsequent years until there is a change in circumstances
Low-Value	Lower than USD1m as at 31/12/2015	If the DD is completed in 2016, the account is first reported on 30/06/2017 If the DD is completed in 2017, the account is first reported on 30/06/2018
Excluded	Dormant accounts with balances of less than USD1k	Dormant Accounts of which the balance is below USD1.000 will not be reported. However, if at the end of any subsequent reporting period the balance exceeds USD1.000, the account will become reportable.
Entities (see Note 1)		
Above threshold (if the financial institution elects to apply thresholds)	Greater than USD250k as at 31/12/2015	If the DD is completed in 2016, the account is first reported on 30/06/2017 If the DD is completed in 2017, the account is first reported on 30/06/2018 Once reported the account will remain reportable in all subsequent reporting periods until there is a change in circumstances.
Below threshold (if the financial institution elects to apply thresholds)	Lower than USD250k as at 31/12/2015	Accounts of which the balance is below threshold as at 31/12/2015, are not reportable However, if at the end of any subsequent reporting period the balance exceeds USD250.000, the account will become reportable and will remain as such in all subsequent reporting periods until there is a change in circumstances.
Passive NFE Entity Accounts	One or more controlling person is a Reportable Person Irrespective of whether the account has been found to be a Reportable Account in relation to the Account Holder	If the Entity Account Holder is a Passive NFE with any Controlling Persons who 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. The Financial Account becomes a Reportable Account in relation to the Controlling Persons.

CRS Reportable Information

For all reportable accounts	a) the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence procedures consistent with the Common Reporting Standard, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person; b) the account number (or functional equivalent in the absence of an account number); c) the name and identifying number (if any) of the Reporting Financial Institution; d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
Additional Information for Custodial Account	(1) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and (2) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
Additional Information for Depository Account	the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period;
Additional Information for any account not described above	the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period, with respect to which the Reporting FI is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

Note 1 – Reportable Accounts

2. TIMETABLE: REPORTING: DAC/CRS

The table below sets out the information that is to be reported to the Tax Department for each reporting year in respect of the Directive on Administrative Cooperation governing automatic exchange of information between Cyprus and the other EU Member States. Reporting is required to the Cyprus Tax Department by 30 June following the reporting year for which the information is required. The same reporting requirements apply to exchanges under the CRS.

C. FINANCIAL INSTITUTIONS

The Cyprus legislation for automatic exchange of financial account information impose obligations on Cyprus financial institutions to identify, maintain and report information about individuals and entities tax resident (or citizens in the case of USA) in another jurisdiction for whom they maintain financial accounts. Under the ‘wider approach’ they are required to keep that information in respect of all Account Holders for a period of at least 5 years from the end of

the year to which it refers and to report it to the Cyprus Tax Department to the extent that it is reportable under one of the agreements.

There are four categories of financial institution common to each of the agreements –

- Custodial Institution
- Depository Institution
- Investment Entity and
- Specified Insurance Company

Each category of financial institution is determined by set criteria. Where an entity does not meet the definition of financial institution in any of the categories then it will be classified as non-financial entity (NFE) or, for FATCA purposes, a non-financial foreign entity (NFFE). Throughout this guidance references to NFE should be read as including a reference to NFFE unless otherwise specified.

1. FINANCIAL INSTITUTIONS: CYPRUS FINANCIAL INSTITUTION

The Cyprus legislation for automatic exchange of financial account information imposes obligations on Cyprus financial institutions.

A Cyprus financial institution is any financial institution resident in Cyprus, as well as any branch of a non-resident financial institution located in Cyprus.

In many cases whether or not a financial institution is resident in or located in Cyprus will be clear, but there may be situations where this is less obvious. In these cases, the Cyprus Tax Department will look to determine the entity's status for the various automatic exchanges of information agreements from the tax residence of the entity. If the financial institution is resident for tax purposes in Cyprus, then the Cyprus Tax Department will regard the financial institution as within the scope of the Cyprus Agreement.

For these purposes, resident for tax purposes in Cyprus means the following:

- For a company
 - If the company is incorporated in Cyprus or centrally managed and controlled in Cyprus. For example, a Cyprus incorporated subsidiary of a foreign banking group will be a Cyprus tax resident entity.
- For a company not resident in Cyprus under the above test
 - Where it is within the charge to corporation tax if, and only if, it carries on a trade in Cyprus through a permanent establishment in Cyprus. For example, a Cyprus branch of a foreign bank that trades through a permanent establishment in Cyprus will be a Cyprus tax resident.
- For trusts
 - For DAC purposes, if one or more of the trustees are resident in Cyprus for tax purposes then the trust is a Cyprus resident unless the trust is resident for tax purposes in another jurisdiction with which Cyprus automatically exchanges

financial account information and the trust reports details of Reportable Accounts to that jurisdiction.

- For FATCA purposes a trust will be regarded as resident in Cyprus for reporting purposes where most or all of the trustees are resident in Cyprus for tax purposes. Where some of the trustees, but not all are Cyprus tax resident, then the Trust is also to be treated as a Cyprus resident if the settlor is both resident and domiciled in Cyprus for tax purposes.
- For partnerships

If the control and management of the business of the partnership takes place in Cyprus.

If an entity is dual resident, such that it is resident in Cyprus and also in another country, it will still need to apply the Cyprus legislation in respect of any Reportable Accounts maintained in Cyprus.

Entity Classification Elections (known as check the box elections), made to the IRS, do not determine the residence of an entity. The tests above must be applied to determine the residence of entities making such elections.

Subsidiaries and branches of Cyprus tax resident financial institutions that are located outside Cyprus are not Cyprus financial institutions. However, where such subsidiaries and branches act as introducers of business to a Cyprus financial institution resulting in the financial accounts being held and maintained by the Cyprus financial institution then the Cyprus financial institution will be required to undertake the appropriate due diligence procedures and report the details of the accounts to the Tax Department.

2. FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION

A Custodial Institution is an entity that holds, as a substantial portion of its business, Financial Assets for the account of others.

In this context, a substantial portion is taken as being at least 20% of the entity's gross income that is attributable to holding Financial Assets and providing related financial services in the shorter of:

- its last three accounting periods, or
- the period during which the entity has been in existence.

The term "Financial Asset" includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness) partnership interest, commodity, swap (for example interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option), in a security partnership interest, commodity, swap, Insurance

Contract or Annuity Contract.

The term “Financial Asset” does not include a non – debt, direct interest in real property.

Income attributable to holding Financial Assets and providing related financial services includes the following:

- Custody, account maintenance and transfer fees;
- Commissions and fees earned from executing and pricing securities transactions;
- Income earned from extending credit to customers;
- Income earned from contracts for differences and as the bid-ask spread of Financial Assets;
- Fees for providing financial advice with respect to Financial Assets held (or potentially to be held in) custody by the entity;
- Fees for providing clearance and settlement services.

Entities that safe keep Financial Assets for the account of others, such as custodian banks, brokers, and central securities depositories, would generally be considered Custodial Institutions. Entities that do not hold Financial Assets for the account of others, such as insurance brokers, will not be Custodial Institutions.

In the event where custody business is conducted through a wholly owned subsidiary which is authorized to conduct such a service and the invoices for the custody business are put through and issued by the parent entity (Administrative Service providers-ASPs) rather than the subsidiary there is no requirement to attribute income to the subsidiary and as such subsidiary will not be treated as a Custodial Institution, the parent entity (ASPs) who would be issuing the relevant invoices would be treated as a Custodial Institution provided all other criteria are met.

Where an entity has no operating history at the time its status as a Custodial Institution is being assessed, it will be regarded as a Custodial Institution if it expects to meet the gross income threshold based on its anticipated functions, assets and employees. Consideration must be given to any purpose or function for which the entity is licensed or regulated (includes those of any predecessor).

There may be circumstances where an entity holds Financial Assets for a customer where the income attributable to holding the Financial Assets or providing related financial services either belongs or is otherwise paid to a connected party such as another company in the same group of companies. This may be because the entity holds assets for a customer of a connected party, or simply that any consideration is paid to a connected party, either as an identifiable payment or as one element for a consolidated payment. In that case the attributable income should be taken account of when applying the 20% test.

3. FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION: EXECUTION ONLY BROKER

An execution only broker that simply executes trading instructions or receives and transmits such instructions to another executing broker will not hold Financial Assets for the account of others so will not be a Custodial Institution. However, such a broker may be a financial institution if it falls with the definition of an investment entity.

4. FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION: CENTRAL SECURITIES DEPOSITORY

The Central Securities Depository and Registry of the Cyprus Stock Exchange falls within the definition of a Custodial Institution.

5. FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION: FUND NOMINEES

Distributors in the Chain of Legal Ownership

Distributors that hold legal title to assets on behalf of customers and are part of the legal chain of ownership of interests in Collective Investment Schemes are financial institutions. In most cases they will be Custodial Institutions because they will be holding assets on behalf of others.

Fund nominees, fund intermediaries and fund platforms will nevertheless still be financial institutions because they would otherwise be within the definition of investment entity. In this case the financial accounts will be those maintained by the distributor, and the distributor will be responsible for ensuring it meets its obligations in respect of those accounts.

Fund nominees, fund intermediaries and fund platforms should be treated as Custodial Institutions unless specific factors indicate that their businesses are better characterized as falling within the definition of an investment entity. Normally, the primary business of a fund nominee, fund intermediary or fund platform will be to hold Financial Assets for the account of others.

For the purpose of aggregating accounts to determine whether any pre-existing Custodial Accounts are High Value Accounts, a Custodial Institution will need to consider all the financial accounts held with them by each customer even though the underlying interests are in different Collective Investment Schemes.

6. FINANCIAL INSTITUTIONS: DEPOSITORY INSTITUTION

A Depository Institution is an institution that accepts deposits in the ordinary course of a banking or similar business.

Entities within this definition will include entities that are Authorized Credit Institutions as defined in article 2 of the Business of Credit Institutions Law as amended. However, whether an entity contacts banking or similar business is determined based upon the character of the actual activities of such entity.

Some relevant exclusions are, for example, insurance brokers, insurance agents, insurance advisors and lawyers that would not be expected to fall within this definition. However, in

considering whether an entity is conducting banking or similar business, it will be the actual activities that the entity carries out that will be determinative.

An entity is considered to engage in a banking or similar business if, in the ordinary course of its business it accepts deposits or other similar investments of funds and regularly engages in one or more of the following activities:

- a. Makes personal, mortgage, industrial or other loans or provides other extensions of credit;
- b. Purchases, sells, discounts or negotiates accounts receivable, installment obligations, notes, drafts, cheques, bills of exchange, acceptances or other evidences of indebtedness;
- c. Issues letters of credit and negotiates drafts drawn there under;
- d. Provides trust or fiduciary services;
- e. Finances foreign exchange transactions; or
- f. Enters into, purchases, or disposes of finance leases or leased assets.

Entities that issue payment cards that can be pre-loaded with funds to be spent at a later date, such as a pre-paid credit card or “e-money” may not be Depository Institutions provided certain conditions are met.

Pre-paid credit card issuers may meet the conditions to be a Qualified Credit Card Issuer which will make them a Non-reporting Financial Institution or the payment card account may meet the conditions to be an Excluded Account.

“E-money” providers that are governed by the provisions of the European Union Electronic Money Directive (2009/110/EC) (EMD) are not deposit takers for the purposes of the Banking Consolidation Directive (2006/48/EC). Recital 13 to the EMD specifically states that “The issuance of electronic money does not constitute a deposit-taking activity pursuant to Directive 2006/48/EC”, consequently such providers will not fall within the definition of Depository Institution that requires deposits to be accepted in the ordinary course of a banking or similar business.

Entities that solely provide asset based finance services, such as a factoring or invoice discounting business, or that accept deposits from persons solely as collateral or security pursuant to a sale or lease of property, a loan secured by property or a similar financing arrangement, between such entity and the person making the deposit, will not be Depository Institutions.

Entities that facilitate money transfers by instructing agents to transmit funds (but do not finance the transactions) will not be considered to be engaged in banking or similar business as this is not seen as accepting deposits.

7. FINANCIAL INSTITUTIONS: INVESTMENT ENTITY

An entity will be an investment entity if it meets either one of the following two sets of criteria.

Investment Entity Conducting Business on behalf of Customers

An entity will be an investment entity if it primarily conducts as a business for or on behalf of a customer one or more of the following activities:

- Trading in
 - Money market instruments (cheques, bills, certificates of deposit, derivatives, etc.).
 - Foreign Exchange.
 - Exchange, interest rate and index instruments.
 - Transferable securities.
 - Commodity futures.
- Individual and collective portfolio management.
- Otherwise investing, administering or managing funds or money on behalf of other persons. An entity will be regarded as primarily conducting these activities as a business if its gross income from conducting these activities is at least 50% of its total gross income during the shorter of:
 - The three year period ending on 31 December in the year preceding that in which its status as an investment entity is to be determined; or
 - The period in which the entity has been in existence.

Managed Investment Entity

An entity will be an investment entity if it is investing on its own account, is managed by a financial institution AND meets the Financial Assets test as described below.

An entity is managed by a financial institution if that financial institution performs, either directly or through another service provider, any of the activities described in the section above (Activity Based Investment Entity) on behalf of the entity. An entity is not regarded as managed by a financial institution if that financial institution does not have discretionary authority to manage the entity's assets either in whole or in part (no percentage threshold exists for in part).

An entity may be managed by a mix of other entities and individuals. If one of the entities so involved in the management of the entity is a financial institution within the meaning of the agreements then the entity meets the requirements for being managed by a financial institution.

An entity meets the Financial Assets test if its gross income is primarily attributable to investing, reinvesting or trading in Financial Assets. This is a similar test to that in the section above

requiring that at least 50% of its gross income is attributable to investing, reinvesting or trading in Financial Assets in the shorter of:

- The three year period ending on 31 December in the year preceding that in which its status as an investment entity is to be determined; or
- The period in which the entity has been in existence.

Some examples of how the definition of investment entity is applied are included in this manual at paragraph C8.

For the purpose of the “managed by” test, a distinction should be made between one entity “managing” another and one entity “administering” another. For instance, the following services provided by an entity to another will not (on their own) constitute the latter entity being “managed by” the former:

- Provision of secretarial and/or company secretarial services
- Provision of registered office, registered agent services
- Provision of the services of an authorized representative
- Preparation of financial statements
- Preparation of tax returns
- Provision of bookkeeping services including accounting, budgeting, and cash-flow forecasts and maintenance of books and records
- Provision of nominee shareholder(s)
- Acting as an insurance manager to an entity

A distinction must also be made in relation to the provision of directors to a company. The provision of individual employees or partners of a company services provider to serve as directors of an entity will not usually (on its own) cause the company to fall within the “managed by” test. Further the provision of a corporate director by a company services provider does not usually (on its own) constitute the company being “managed by” the corporate services provider, as such directors would not usually conduct as a business any of the IGA Definition activities. A typical corporate director in its capacity as director of a company does not usually invest, administer or manage funds or money (as a business) on behalf of other persons in its capacity as corporate director; it is the company itself which is doing this acting by its corporate directors. In this capacity, such directors are to be distinguished from a third party investment manager, broker or advisor, engaged by a company to provide professional investment business services to the company inclusive of investing, administering or managing funds or money on behalf of the company. However, a company with individual or corporate directors provided by a corporate services provider may, should it wish to do so, elect to be treated as being managed by such service provider and so be an investment entity itself. Such an election may also be

made under the CRS and US regulations definitions of Investment entity.

The role of a general manager of a limited partnership will typically satisfy the managed by test in that a general partner is a separate legal person which will conduct the business of the limited partnership on behalf of the partners. It will therefore be necessary to consider the role of a general partner on a case by case basis and whether or not the general partner conducts as a business any of the IGA definitions/ Activities.

Certain types of entity can be complex and thus care must be taken when applying the definition of investment entity to them. Additional guidance is available for these at:

- Trusts
- Partnerships
- Personal investment companies
- Securitization vehicles

An entity would generally be considered to fall within one of the categories of investment entity if it functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buy-out fund or any similar investment vehicle established with an investment strategy of investing, reinvesting or trading in Financial Assets.

An entity that primarily conducts as a business investing, administering, or managing non-debt, direct interests in real property on behalf of other persons, such as a real estate investment trust, will not be an investment entity.

8. FINANCIAL INSTITUTIONS: INVESTMENT ENTITY: EXAMPLES

The following examples illustrate the application of the tests described at paragraph C6.

- a. **Investment Advisor** – Advice Co Ltd, provides advice on and discretionary management of securities held by a number of clients. The securities meet the definition for being Financial Assets. Almost 80% of the gross income of Advice Co Ltd for the last three years has come from providing such services. Advice Co Ltd primarily conducts a business of managing Financial Assets on behalf of clients and is, therefore, an investment entity.
- b. **Entity Carrying on Business Managed by a Financial Institution** – Investment Fund X primarily invests in equities on behalf of customers. Fund X is managed by Invest Co Ltd, a financial institution. Fund X was formed two years ago since when it has earned 90% of its income from these activities. Fund X is an investment entity because it primarily conducts as a business one or more of the relevant activities or operations for or on behalf of a customer. It is not relevant that it is managed by a financial institution as it is an Investment Entity by virtue of its business activities.
- c. **Entity Managed by a Financial Institution** – Investment Partnership LLP is a vehicle set up to invest its members' contributions in Financial Assets; it invests in its own

right and has no customers. The LLP is managed by Invest Co Ltd, a financial institution. The LLP has been investing for several years; its income is derived exclusively from its investment activities. As the LLP is managed by a Financial Institution and at least 50% of its income in the last three years is primarily attributable to investing, reinvesting or trading in Financial Assets it will be an Investment Entity.

- d. **Entity Managed by a Foreign Financial Institution** – the facts are the same as in example (c) except that Investment Partnership LLP is managed by Invest Co GmbH, a German financial institution. The fact that the LLP is managed by a financial institution resident in another jurisdiction does not alter its status. It will be an investment entity, because it is managed by a financial institution and more than 50% of its gross income is primarily attributable to investing, reinvesting or trading in Financial Assets.
- e. **Entity Managed by an Individual** – Ben, an individual, runs a business providing advice to clients on investments in Financial Assets and has discretionary authority to manage Financial Assets on behalf of clients. One of his clients is a company, Z Ltd that has earned more than 50% of its gross income in the last three years from investing, reinvesting and trading in Financial Assets. Ben primarily conducts investment-related activities on behalf of clients. Ben is not an investment entity because he is an individual. Z Ltd, however, is nonetheless an investment entity because it primarily conducts as a business one or more of the relevant activities or operations for or on behalf of a customer (note: in practice, it is unlikely that such an entity would appoint an individual to manage its assets).
- f. **Family Trust Managed by an Individual** - see Example 6 above: if Ben managed the assets of a family trust, the trust would not be an investment entity as it is neither primarily conducting as a business one or more of the relevant activities or operations for or on behalf of a customer, and although its gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets, it is not an entity that is managed by a financial institution (because Ben, as an individual, cannot be a financial institution). (Note: in practice, a trust holding assets on behalf of a family arrangement will typically appoint a company or partnership to manage its assets but some family trusts may instead appoint a suitably qualified individual).
- g. **Family Trust with a Corporate Trustee** – The ABC family trust’s gross income is primarily attributable to investing, reinvesting or trading in Financial Assets. The trust was set up on the advice of a law firm and that firm’s own corporate trustee is the trustee of the trust. The corporate trustee acts for the law firm’s clients without itself charging any fees to the clients. Even though the corporate trustee does not charge, it is a Financial Institution as its related entity (the law firm) is charging the clients for these services, it therefore primarily conducts as a business for or on behalf of a customer the prescribed activities. This in turn means that the ABC family trust is also an Investment Entity.
- h. **Indirect Investment in Real Property**- An entity the gross income of which is

primarily attributable to investing, reinvesting or trading in real property is not an investment entity (irrespective of whether it is professionally managed) because real property is not a financial asset. 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 the Investment Entity.

9. FINANCIAL INSTITUTIONS: SPECIFIED INSURANCE COMPANY

A specified insurance company is an entity that is an insurance company, including a holding company in an insurance group that writes products that are classified as Cash Value Insurance Contracts or Annuity Contracts or makes payments with respect to such contracts.

Insurance companies that only provide general insurance or term life insurance will not be specified insurance companies, nor will reinsurance companies that only provide indemnity reinsurance contracts.

An insurance intermediary that sells cash value insurance or Annuity Contracts on behalf of insurance companies is part of the payment chain and will not be a specified insurance company unless obliged to make payments to the Account Holder under the terms of the Cash Value Insurance Contract or Annuity Contract.

10. FINANCIAL INSTITUTIONS: PARTNERSHIPS

Partnerships are treated as entities by all of the agreements for automatic exchange of information. A partnership can be either a financial institution or a NFE. In determining the status of the partnership it should first consider whether or not it meets any of the definitions of financial institution. If it does not it will be a NFE.

11. FINANCIAL INSTITUTIONS: SECURITIZATION VEHICLES

Securitization structures are typically legally remote from the entity in relation to which the risks and rewards of the structure are associated. Typically, a securitization structure will include an issuing entity, funding entity, seller, mortgage trustee and often counterparties.

The common principles as to whether an entity meets the definition of a financial institution should be applied to all entities within a securitization structure. More specifically, the expectation would be that issuing entities are likely to be classified as investment entities on the basis of their activities, trusts should be considered in accordance with the guidance at paragraph C11 and holding and funding entities will likely be treated as financial institutions in their own right.

A securitization vehicle that is a financial institution will need to consider if it has any financial

accounts that may be reportable.

Example of a securitization programme.

Cash flows:

- a. Mortgage customer makes their regular monthly mortgage payment to bank A plc.
- B .Bank A plc identifies the appropriate SPV that the cash belongs to and pays the cash to that entity, say a trust.
- c. Once a month on the distribution date the trust pays cash to the funding entity.
- d. The funding company pays cash on payments date to Bank B.
- e. Bank B passes the cash to Euroclear or Clear Stream, the exchanges on which the bonds are held.
- f. Euroclear and Clear Stream pass the cash to the custodian bank who the credits the bondholders' accounts. Bondholders then draw on their cash at the custodian bank.

The above scenario provides the following reporting obligations:

- Mortgages are not within the financial account definition so there is no financial account with Bank A Plc and therefore no reporting requirement in relation to them.
- Step 3-5 involve payments made between financial institutions and as such there is no need for any of these payments to be reported unless a Financial Institution that receives a payment is a Non-Participating Financial Institution for FATCA purposes. The trust though may have reporting requirements if any of its Account Holders are Reportable Persons.
- In step 6 the custodian will have financial accounts in which the bonds are held and as such the custodian will need to identify if it has any Reportable Accounts. Where it does, it must perform the necessary reporting.

12. FINANCIAL INSTITUTIONS: NON-REPORTING FINANCIAL INSTITUTIONS

All of the automatic exchange of information regimes excludes certain financial institutions from being reporting financial institutions. Such financial institutions are not required to identify, maintain or report information about Reportable Persons.

These institutions are identified in Annex II of the IGA with the USA for FATCA purposes and in paragraph B of Section VIII of the Common Reporting Standard on Reporting and Due Diligence for Financial Account Information.

For the purposes of the DAC (which is implemented in Cyprus by the 2016 Amending Law on Administrative Cooperation in Tax Matters (L. 60(I)/2016), and which is applicable for reporting by Cyprus financial institutions) the only Non-reporting Financial Institutions are those defined in Annex I Section VIII ,B of L.60(I)2016.

13. FINANCIAL INSTITUTIONS: NON-REPORTING FINANCIAL INSTITUTIONS: OWNER-DOCUMENTED FINANCIAL INSTITUTION

The Owner Documented Financial Institution (ODFI) is a concept found in the US FATCA Regulations (s 1.1471-5(f) (3)) which can be used for FATCA purposes where it is beneficial for the Financial Institution.

In general, ODFI classification is intended to apply to closely held passive investment vehicles that are Investment Entities by virtue of being managed by a Financial Institution, where meeting the obligations under the US Agreement would be onerous given the size of the entity. It is, however, quite limited in its effect as it is necessary for all Reportable Accounts of the ODFI to be maintained by the ODFI. The single largest benefit to the ODFI is that they do not have to register with the IRS to obtain a Global Intermediary Identification Number (GIIN) as the Financial Institution managing the Investment Entity can report for the ODFI using its own GIIN.

ODFI is not a Non-reporting Financial Institution category under the DAC regime. However, a similar outcome can be obtained where the ODFI for FATCA purposes employs the Financial Institution undertaking the ODFI's reporting obligations under FATCA as a third party service provider. This service provider can carry out the ODFI's reporting obligations under the DAC regime.

14. FINANCIAL INSTITUTIONS: NON-REPORTING FINANCIAL INSTITUTIONS: NON-PROFIT ORGANIZATIONS

Where a non-profit organization is a financial institution, which is most likely to happen if it falls within the definition of investment entity by virtue of having its Financial Assets managed by a Financial Institution, it is potentially in scope as a reporting financial institution for DAC/CRS reporting.

Under FATCA, such non-profit organizations are deemed compliant financial institutions and are not required to register with the IRS or report to the Cyprus Tax Department.

Under DAC such non-profit organizations are required to carry out due diligence processes to identify and report on any Reportable Persons. Where the non-profit organization is not a financial institution it will be a NFE. Under all two regimes the effect is to treat the NFE as active. They are specifically defined as active under FATCA and DAC.

D. FINANCIAL ACCOUNTS

A financial account is an account maintained by a financial institution. Only accounts that fall within any of the 5 categories of financial account defined by the various automatic exchange of information agreements need to be reviewed. Where such an account is held by a Reportable Person it becomes a Reportable Account.

The 5 categories of financial account that need to be reviewed are:

Accounts	Financial Institution that is Generally Considered to Maintain Them
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Depository Accounts	The financial institution that is obligated to make payments with respect to the account (excluding an agent of the financial institution).
Custodial Accounts	The financial institution that holds custody over the assets in the account.
Equity and debt interests in investment entities.	The issuer of the equity or debt interest maintained by the investment entity.
Cash Value Insurance Contracts	The financial institution that issues or, if different, is obligated to make payments with respect to the contract.
Annuity Contracts	The financial institution that issues or, if different, is obligated to make payments with respect to the contract.

Certain financial accounts are seen to be low-risk of being used to evade tax and are specifically excluded from needing to be reviewed. Details of these Excluded Accounts are at the FATCA and CRS Agreements, the relevant decrees and also in DAC and its implementing legislation in Cyprus. (L. 60(I)/2016). (See paragraph D9).

1. FINANCIAL ACCOUNT: REPORTABLE ACCOUNT

Once a financial institution has identified the financial accounts it maintains, it needs to review all those accounts to identify the territory in which the Account Holder is tax resident and maintain the information for future use. This is the wider approach. To the extent that any of the Account Holders are identified as tax resident in one or more Reportable Jurisdictions the account will be a Reportable Account which must be reported to the Cyprus Tax Department.

A Reportable Account is an account held by one or more Reportable Persons or by a passive NFE with one or more Controlling Persons that is a Reportable Person.

2. FINANCIAL ACCOUNT: DEPOSITORY ACCOUNT

A Depository Account includes any commercial current, savings, time or thrift account, or any account evidenced by a certificate of deposit, investment certificate, thrift certificate, certificate of indebtedness, or other similar instrument maintained by a financial institution in the ordinary course of a banking or similar business. Being engaged in a banking or similar business is explained at paragraph C6.

A Depository Account does not have to be an interest bearing account.

A Depository Account will include a credit balance on a credit card, for example where a purchase has been refunded, provided the credit card has been issued by a credit card company engaged in banking or a similar business.

Credit cards will not be reportable as Depository Accounts if the credit card issuer meets the conditions to be a qualified credit card issuer and is therefore a Non-reporting Financial Institution. Similarly, where a financial institution does not satisfy the requirements to be a qualified credit card issuer, but accepts deposits when a customer makes a payment in excess

of a balance due with respect to a credit card or other revolving credit facility, it may still not have to report the account as a Depository Account if it qualifies as an Excluded Account.

3. FINANCIAL ACCOUNT: CUSTODIAL ACCOUNT

A Custodial Account is an account (other than an insurance contract or Annuity Contract) that holds one or more Financial Assets for the benefit of another person.

A Cash Value Insurance Contract or an Annuity Contract is not considered to be a Custodial Account, but these could be assets held in a Custodial Account. Where they are assets in a Custodial Account, the insurer will only need to provide the custodian with the balance or value of the Cash Value Insurance Contract.

A Custodial Account does not include financial instruments or contracts (for example, a share or stock in a corporation) held in a nominee sponsored by the issuer of its own shares, which are in every other respect analogous to those held on the issuer's share register.

4. FINANCIAL ACCOUNT: CUSTODIAL ACCOUNT: COLLATERAL

Collateral accounts are accounts which are maintained for the benefit of another, or arrangements pursuant to which an obligation exists to return cash or assets to another.

Transactions which include the collection of margin or collateral on behalf of a counterparty may fall within the definition of Custodial Account. The exact terms of the contractual arrangements will be relevant in applying this interpretation. However, if collateral is provided on a full title transfer basis, so that the collateral holder becomes the full legal and beneficial owner of the collateral during the term of the contract, this will not constitute a Custodial Account for the purposes of the automatic exchange agreements.

5. FINANCIAL ACCOUNT: CASH VALUE INSURANCE CONTRACT

A Cash Value Insurance Contract is an insurance product that has an element of life insurance attached to it. The life insurance element is often small compared to the investment element of the contract. General insurance products, such as term life insurance, property or motor insurance, that do not carry any investment element are not financial accounts.

A Cash Value Insurance Contract is an insurance contract that has a cash value. Examples of the type of insurance products that do or do not qualify as cash value insurance contracts can be found at paragraph D6. The cash value of such a contract is the greater of:

- i. The amount that the policyholder is entitled to receive on the surrender or termination of the contract without reduction for any surrender charge or loans outstanding against the policy, for example, where the policyholder receives an annual statement of the value of the policy that will be the cash value in that year, and
- ii. The amount the policyholder can borrow against or with regard to the policy. Note that the policyholder does not need to have pledged the account as collateral for borrowing for this second test to apply. It is the amount that the policyholder could

expect to borrow against the Cash Value Insurance Contract should they choose to use it as collateral for a loan.

The cash value does not include any amount payable under an insurance contract:

- a) Solely by reason of the death of an individual insured under a life insurance contract;
- b) As a personal injury, sickness or other benefit providing indemnification of an economic loss arising from an event that has been insured against;
- c) As a refund of premium under an Insurance Contract (other than an investment – linked life insurance or annuity contract) due to the cancellation or termination of the contract, a reduction in the amount insured or a correction of a posting or similar error in relation to the premium
- d) As a policyholder dividend, other than a termination dividend, provided that the insurance contract pays only the benefits in b) above. A policyholder dividend is the return of premium, under the terms of the policy, resulting from an excess of income over losses and expenses.
- e) As a return of an advance premium or premium deposit for an insurance contract where the premium is payable at least annually. In this case the advance premium or premium deposit must not exceed the amount due as the next annual premium payable under the contract.

6. FINANCIAL ACCOUNT: CASH VALUE INSURANCE CONTRACT: EXAMPLES

The type of Cyprus insurance products that are most likely to be cash value insurance products are:

- Single premium unit linked contracts
- Regular premium unit linked contracts
- Endowment assurances
- Whole life assurances

Cash Value Insurance Contracts do **not** include:

- Indemnity insurance contracts between insurance companies.
- Term life insurance contracts.
- Policies indemnifying against economic loss arising from specified circumstances, for example personal injury, theft, etc.
- Micro insurance contracts that do not have a cash value
- Annuity contracts
- Class 7 occupational pension schemes

7. FINANCIAL ACCOUNT: ANNUITY CONTRACTS

An Annuity Contract is a contract under which the issuer agrees to make payments for a period of time, determined in whole or in part by reference to the life expectancy of one or more individuals.

The following are not considered to be reportable Annuity Contracts for automatic exchange of information purposes:

- Pension annuities – these are excluded products,

Reinsurance of Annuity Contracts between insurance companies is not annuities.

8. FINANCIAL ACCOUNT: EQUITY OR DEBT INTEREST IN AN INVESTMENT ENTITY

Equity and debt interests are financial accounts if they are interests in an investment entity.

Where an entity is an investment entity solely because it (a) renders investment advice to and acts on behalf of, or (b) manages portfolios for and acts on behalf of a customer by investing, managing or administering Financial Assets in the name of the customer, the debt and equity interest in the investment entity is not considered a Financial Account.

An equity interest may vary depending on the nature of the investment entity. In the case of an investment entity that is a partnership an equity interest is either a capital or profits interest in the partnership.

In the case of an investment entity that is a trust, an equity interest is any interest held by a person who is treated as a settlor or beneficiary of all or any part of the trust, or any other natural person exercising ultimate effective control over the trust.

- A Reportable Person will be treated as being a beneficiary of a trust if such a person has the right to receive a mandatory distribution from the trust. This distribution can be received either directly or indirectly, for example through a nominee; or
- receives a discretionary payment from the trust. Again this receipt can be either directly or indirectly from the trust.

9. FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS

All three regimes for automatic exchange of information allow for various categories of account to be excluded from being reportable financial accounts. These are excluded because they have been identified as carrying a low risk of use for tax evasion, generally because of the regulatory regimes under which they function.

In the intergovernmental agreement between Cyprus and the USA, the Excluded Accounts are listed in Annex II of the agreement. In addition certain other excluded accounts are mentioned

in paragraph 3 of the FATCA Decree.

In CRS the excluded accounts are listed in Section VIII, C17of CRS.

In the case of DAC implemented in Cyprus by the 2016 Amending Law on Administrative Cooperation in Tax matters the excluded accounts are listed in Annex I, Section VIII, C17of L 60(I)/2016.

For reporting under the DAC and CRS, the only product that is specifically excluded by Cyprus domestic legislation is a pre-existing account(other than an Annuity Contract)with an annual balance that does not exceed USD1000, that is a dormant account in accordance with the definition provided for in the Commentary on Section III of Common Reporting Standard. The agreements for automatic exchange provide for the list of Excluded Accounts to be updated, either to allow for other low risk products to be added or to remove products that are no longer regarded as low risk.

10. FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: ESCROW ACCOUNTS

An escrow account is an account held by a third party on behalf of the beneficial owner of the money in the account. Such accounts maintained in Cyprus are Excluded Accounts where they are established in connection with any of the following:

- a. A court order, judgment or other legal matter on which the third party is acting on behalf of the underlying beneficial owner for example, an account held by an individual or an entity appointed by a District Court to look after the affairs of a vulnerable person.
- b. A sale, exchange, or lease of real or personal property where it also meets the following conditions:
 - The account holds only the monies appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a Financial Asset that is deposited in the account in connection with the transaction. The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property.
 - The account is established and used solely to secure the obligation of the parties to the transaction purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
 - The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the parties when the transaction is completed.
 - The account is not a margin or similar account established in connection with a

sale or exchange of a Financial Asset; and

- The account is not associated with a credit card account or with a revolving credit facility.
- c. An obligation of a financial institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
- d. An obligation of a financial institution solely to facilitate the payment of taxes at a later time.

11. FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: DEPOSITORY ACCOUNTS WITH UNRETURNED OVERPAYMENTS

A financial institution that does not satisfy the requirements to be a qualified credit card issuer but which accepts deposits when a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility may treat such Depository Accounts as Excluded Accounts if the following criteria are met:

1. The account exists solely because a customer makes a payment in excess of the outstanding balance due with respect to a credit card or other revolving credit facility and does not immediately return the overpayment to the customer; and
2. The financial institution has implemented policies and procedures either to prevent a customer from making an overpayment in excess of US\$50,000 or to ensure that any customer overpayment in excess of US\$50,000 is refunded to the customer within 60 days.

The policies and procedures have to be implemented on or before the following dates:

- For FATCA – 30 June 2014
- For DAC/CRS – 31 December 2015.

12. FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: LOW VALUE DORMANT ACCOUNTS (CRS/DAC)

Dormant Accounts are defined for the purposes of the residence address test for pre-existing lower value individual accounts. A subset of Dormant Accounts is also included in the list of Excluded Accounts meaning that accounts with less than an amount equivalent to US\$1,000 do not need to be subjected to any due diligence procedures until they are reactivated in some way. The definition is narrower than the definition for the residence address test in that it only permits Dormant Accounts to be included where there has been no activity on that account or any other account held by the account holder in the past three years and no contact from the account holder in the past six years.

E. REPORTABLE INFORMATION: GENERAL REQUIREMENTS

The agreements for automatic exchange of information require specific information to be reported in respect of Account Holders who are identified by financial institutions as holding Reportable Accounts.

Under all of the agreements the following information is required from financial institutions in respect of any person identified as holding Reportable Accounts:

- Name
- Address
- Taxpayer Identification Number(s) (TIN)
- Jurisdiction(s) of residence
- The account number (or a functional equivalent in the absence of an account number)
- The name and identifying number of the reporting financial institution
- The account balance or value as of the end of the calendar year or other appropriate period.

For the DAC/CRS, financial institutions may also be required to report date and place of birth of individuals subject to certain conditions (see paragraph E10).

There are also additional reporting requirements depending on the type of account that is being reported on.

The timelines for reporting information under the various regimes can be found at:

For FATCA Article 3 of US IGA

For CRS Article 37 of Decree 161/2016

For DAC, Article 7(5) of the Administrative Cooperation in Tax Matters Laws 2012 - 2016

1. REPORTABLE INFORMATION: ADDRESS

Individual Account Holders

Where the Reportable Person is an individual who is an Account Holder or is a Controlling Person of an entity, the address to be reported is the individual's current residence address. If the financial institution does not hold this address in its records then it should report the mailing address it has on file for that person.

In general, an 'in-care-of' address or a post office box is not a residence address. A post office box that forms part of an address that also includes details such as a street, apartment or suite number or a rural route such that a place of residence can be clearly identified can be accepted

as a residence address. In special circumstances such as that of military personnel an ‘in-care-of’ address may constitute a residence address.

Entity Account Holders

Where the Reportable Person is an entity the address to be reported is the mailing address that the financial institution holds on file for that entity.

2. REPORTABLE INFORMATION: TAXPAYER IDENTIFICATION NUMBER

The taxpayer identification number (TIN) is the unique identifier assigned to the Account Holder by the tax administration in the Account Holder’s jurisdiction of tax residence. It is a unique combination of letters and/or numbers used to identify an individual or entity for the purposes of administering the tax laws of that jurisdiction.

Any identifier assigned by a jurisdiction of source, for example, for identifying a person whose income has been subject to withholding tax at source, should not be reported.

Some jurisdictions do not issue a TIN, or do not issue a TIN to all residents, and where no TIN has been issued there will be nothing to report unless they use other high integrity numbers with an equivalent level of identification. For individuals these include:

- Social security number
- National insurance number
- Citizen or personal identification code or number
- Resident registration number

For entities, jurisdictions may use a business/company registration code or number where no TIN has been issued.

Some jurisdictions that issue TINs have domestic law that does not require the collection of the TIN for domestic reporting purposes, Australia for example. There is a standard approach in international tax treaties that stops the sending jurisdiction from requesting information from local sources if the receiving jurisdiction could not ask for under its own domestic rules. The reporting financial institution is not required to collect the TIN for those jurisdictions. Details of the jurisdictions where this applies are published on the OECD website.

The TIN must be reported for all new accounts. For pre-existing accounts the TIN is reportable to the extent that it is already held in records maintained by the reporting financial institution or the reporting financial institution is otherwise obliged to collect it. Where the TIN is not held in respect of pre-existing accounts the reporting financial institution must use reasonable efforts to obtain it by the end of the second calendar year following the year in which the accounts are identified as Reportable Accounts.

As Reportable Persons may be resident in more than one jurisdiction they may have two or more TINs that the financial institution must report.

US Agreement

The TIN to be reported for FATCA purposes is the US Federal Taxpayer Identification Number.

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. This includes among the other information on the self-certification, the TIN in relation to a Reportable Jurisdiction.

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 i.e. on the Automatic Exchange Portal(OECD) indicates that Reportable Jurisdiction issues TINs to all Tax residents. The Tax Department does not require a Reporting Financial Institution to confirm the format and other specifications of a TIN with the information provided on any automatic exchange Portal. However Reporting Financial Institutions may nevertheless wish to do so in order to enhance the quality of the information collected and minimize 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.

3. REPORTABLE INFORMATION: JURISDICTION

The Cyprus legislation applies the wider approach that requires financial institutions to retain data on the jurisdiction of residence of Account Holders irrespective of whether or not that jurisdiction is a Reportable Jurisdiction.

Financial institutions must carry out the due diligence procedures required and where a person is identified as a Reportable Person include the jurisdiction of residence in the return of information to the Cyprus Tax Department. Where a Reportable Person is identified as having more than one Reportable Jurisdiction of residence the financial institution is required to report all of the identified Reportable Jurisdictions to the Cyprus Tax Department.

Reportable Account data is to be sent to the Cyprus Tax Department where the Account Holder is a US specified person or otherwise a resident of a Reportable Jurisdiction. A list of Reportable Jurisdictions can be found at paragraph E18.

4. REPORTABLE INFORMATION: ACCOUNT NUMBER

The account number to be reported is the unique identifying number or code that the reporting financial institution has assigned to the Reportable Account. This will include identifiers such as bank account numbers and policy numbers for insurance contracts as well as other non-traditional unique identifiers. The unique identifier should be sufficient to enable the financial institution to identify the Reportable Account in future.

Where there is not a unique identifying number or code the financial institution should report any functional equivalent that they use to identify the account. This may include non-unique identifiers that relate to a class of interests, which, along with the name of the Account Holder, enable the account to be identified.

Exceptionally, if the Reportable Account does not have any form of identifying number or code the financial institution should report a description of the account sufficient to identify the

account held by the named Account Holder in future.

5. REPORTABLE INFORMATION: REPORTING FINANCIAL INSTITUTION

The reporting financial institution must report its name and identifying number. This is to enable the jurisdiction receiving the information to easily identify the source of it in the event that they have any follow-up questions in respect of the data reported.

All Cyprus financial institutions that are in scope for FATCA are required to register with the US Internal Revenue Service and obtain a Global Intermediary Identification Number (GIIN). The GIIN will be required as an identifying number for FATCA reporting. Where a financial institution is reporting under any of the other automatic exchange of information agreements it must either report a GIIN or confirm it does not hold one.

6. REGISTRATION TO ARIADNE PORTAL

In order for an FI to submit a file, it should first register to Ariadne portal and it must have its profile approved at a Government Office in order for its registration to be activated. After the approval, the FI must register to the FATCA/ CRS e-service. The Cyprus Tax Department will examine the registration and, if all the information of registration is correct, will send an approval e-mail.

This does not need to be carried out every year, only once.

For more information please go to the following link:

[http://www.mof.gov.cy/mof/taxdep.nsf/all/58539683CFB82796C2257FE1003B12DD/\\$file/20160628_FATCA%202016_Registration%20and%20Data%20Submission%20User%20Guide%20V1_F.pdf?openelement](http://www.mof.gov.cy/mof/taxdep.nsf/all/58539683CFB82796C2257FE1003B12DD/$file/20160628_FATCA%202016_Registration%20and%20Data%20Submission%20User%20Guide%20V1_F.pdf?openelement)

7. REPORTABLE INFORMATION: ACCOUNT BALANCE OR VALUE

The reporting financial institution must report the balance or value of reportable financial accounts as of the end of the reporting period for each calendar year. This will be 31 December in each year unless it is not possible or usual to value an account at that date. If that is the case then that value at the normal valuation point for the account that is nearest to 31 December should be used. The value of the account should be reported in the currency in which the account is denominated.

In general, the balance or value to be reported is that which the financial institution calculates for the purpose of reporting to the Account Holder. Where the balance or value of an account is nil or a negative amount, for example where an account is overdrawn, the financial institution must report the balance or value as nil.

For Cash Value Insurance Contracts or Annuity Contracts the amount to be reported is the cash value or surrender value of the contract.

For an equity interest in an investment entity the amount to be reported is the value calculated by the financial institution for the purpose that requires the most frequent determination of value.

For a debt interest in an investment entity the balance or value is the principal amount of the debt. The balance or value of an account must not be reduced by any liabilities or obligations incurred by an Account Holder with respect to the account or any of the assets held in the account and is not to be reduced by any fees penalties or other charges for which the Account Holder may be liable upon terminating, transferring, surrendering, liquidating or withdrawing cash from the account.

8. REPORTABLE INFORMATION: ACCOUNT BALANCE OR VALUE: JOINT ACCOUNTS

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 account.

For example, where a jointly held account has a balance or value of €60,000 and one of the Account Holders is resident in Greece, the amount attributable to that person in the report to Greece will be €60,000.

If both Account Holders in the above example were resident in Greece then each would be attributed €60,000 in the report to Greece.

9. REPORTABLE INFORMATION: ACCOUNT BALANCE OR VALUE: MULTIPLE JURISDICTIONS

Where a Reportable Person is either an Account Holder or the Controlling Person of a passive NFE/NFFE and is identified as having more than one jurisdiction of residence, the entire balance or value of the Reportable Account, as well as the entire amount paid or credited to the Reportable Account must be reported to each jurisdiction of residence of the Account Holder or Controlling Person.

10. REPORTABLE INFORMATION: ACCOUNT CLOSURE

An account is regarded as closed according to the normal operating procedures of the reporting financial institution that are consistently applied for all accounts that it maintains. For example, an equity interest in an investment entity would be considered closed upon termination, transfer, surrender, redemption, cancellation or liquidation.

The information to be reported when an account is closed depends on the regime under which the report is made.

An account with a balance or value equal to zero or which is negative will not be a closed account solely by reason of such a balance or value.

FATCA Reporting

The process for closing accounts will differ between institutions and between different products and accounts. The intention is to capture the amount withdrawn from the account in connection

with the closure process, as opposed to the account balance at the point of closure given there is an expectation the balance will be reduced prior to point of closure. For these purposes it is acceptable for the Financial Institution to:

- record the balance or value immediately before closure. Any reportable amounts paid or credited to the account in the reporting period up to the date of closure (e.g. interest, gross proceeds etc) remain reportable.

DAC Reporting

When an account is closed the reporting financial institution must report the fact of the closure but is not required to report the balance or value of the account before or at closure. Any reportable amounts paid or credited to the account in the reporting period up to the date of closure (e.g. interest, gross proceeds etc) remain reportable.

11. REPORTABLE INFORMATION: PLACE AND DATE OF BIRTH

Place of Birth

The place of birth to be reported is the country of birth of the Account Holder. The place of birth is not required to be reported unless the Reporting Financial Institution is required to obtain and report it either under Cyprus domestic law or under a European Union legal instrument in effect or that was in effect on 1 January 2016 being the date that the DAC came into force for automatic exchange of financial account information.

Date of Birth

The date of birth is reportable for all new accounts. It is only reportable for pre-existing accounts to the extent that it is already held in records maintained by the reporting financial institution or the reporting financial institution is otherwise obliged to collect it. Where the date of birth is not held in respect of pre-existing accounts the reporting financial institution must use reasonable efforts to obtain it by the end of the second calendar year following the year in which the accounts are identified as Reportable Accounts.

12. REPORTABLE INFORMATION: CUSTODIAL ACCOUNT

In addition to the general reporting requirements, where the Reportable Account is a Custodial Account the information to be reported for each reporting period is:

- The total gross amount of interest paid or credited to the account,
- The total 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 total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account.

13. REPORTABLE INFORMATION: CUSTODIAL ACCOUNTS: GROSS PROCEEDS

A Custodial Institution is required to report the total gross proceeds from the sale or redemption of Financial Assets held in a Custodial Account during the reporting period. This is without regard to whether or not the Account Holder would be subject to tax in Cyprus on the sale or redemption of the Financial Asset.

The total gross proceeds from the sale or redemption of a Financial Asset is the total amount credited to the account of the person entitled to the payment without regard to any sums netted off against the payment to satisfy outstanding liabilities. For example, a loan used to fund acquisition of the asset may be repaid from the proceeds of sale. This must not be deducted from the amount reportable.

Commissions and fees paid with respect to the sale or redemption of the asset may be taken account of in arriving at the gross proceeds of sale.

Where the Financial Asset that is sold or redeemed is an interest bearing debt obligation the gross proceeds should include any interest that has accrued between interest payment dates.

14. REPORTABLE INFORMATION: DEPOSITORY ACCOUNTS

In addition to the general reporting requirements, where the Reportable Account is a Depository Account the information to be reported for each reportable period is the gross amount of interest paid or credited to the account during that period.

15. REPORTABLE INFORMATION: OTHER ACCOUNTS

In addition to the general reporting requirements, in the case of any account other than a Depository Account or a Custodial Account the information to be reported for each reporting period is the total gross amount of income paid or credited to the Account Holder in the reporting period with respect to which the reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the reporting period.

16. REPORTABLE INFORMATION: CURRENCY

All amounts to be reported by the reporting financial institution must identify the currency in which they are denominated.

17. REPORTABLE INFORMATION: PAPER AND ELECTRONIC RECORDS

The records of a financial institution include both paper and electronic records that the financial institution maintains for the purpose of keeping Account Holder information available for use in the business. This includes information such as the customer master file necessary to maintain contact with the Account Holder and information for satisfying AML/KYC procedures.

Information is not regarded as maintained by the financial institution if it has been archived and

is not used by the business, for example there may be regulatory requirements that documents are kept for a minimum period before they can be destroyed but are otherwise not used by the business. Only when such information is retrieved by the financial institution from the archive so that it can be used by it will the information be regarded as maintained.

Electronic records are available for use by the financial institution to the extent that they are electronically searchable. This means information maintained by the financial institution that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data or files are not electronically searchable merely because they are stored in an image retrieval system such as portable document format (pdf.) or as scanned documents.

Financial institutions should rely on the IT systems they have in place at the time the electronic searches are carried out, they are not expected to build systems to carry out electronic searches solely for the purpose of reporting under their automatic exchange of information obligations.

18. REPORTABLE INFORMATION: REASONABLE EFFORTS TO OBTAIN

Where a financial institution does not hold information on either the Account Holder's taxpayer identification number or date of birth for a pre-existing account in its records and is not otherwise required to collect such information under the domestic law, it is expected to make reasonable efforts to obtain the information by the end of the second calendar year following the year in which the account is identified as reportable, unless one of the exceptions in paragraph E2 applies with respect to the TIN and it is not required to be reported. Such attempts must be made at least once a year.

Reasonable efforts require genuine attempts to obtain the information and would include all or any of the following:

- Contacting the Account Holder by mail, in-person or telephone and could include requests made as part of other documentation;
- Electronic contact such as facsimiles or e-mail;
- Reviewing electronically searchable information maintained by a related entity in accordance with the aggregation principles.

Reasonable efforts do not require the closing, blocking or transferring of an account, nor conditioning or otherwise limiting its use, simply because the Account Holder does not comply with a request for this information.

Reasonable efforts may continue to be made after the above mentioned period if the financial institution so chooses.

If the TIN and / or US TIN cannot be obtained despite reasonable efforts, the financial institution should also be considered to be FATCA and CRS compliant, even if the account is not closed.

The absence of the TIN and / or US TIN should therefore not lead to administrative offense or loss of compliance status.

19. REPORTABLE INFORMATION: REPORTABLE JURISDICTIONS AND PARTICIPATING JURISDICTIONS

The following territories are the Reportable Jurisdictions for each of the regimes.

FATCA

United States of America

DAC

All EU member states, plus Switzerland¹, San Marino, Andorra, Liechtenstein and Monaco.

Note that the term Reportable Jurisdictions has relevance for determining for whom reporting financial institutions must report financial account information to the Cyprus Tax Department. With regard to the DAC/CRS, Cyprus and over 100 other jurisdictions to date have signed the Multi-Lateral Competent Authority Agreement (MCAA) for CRS purposes (the OECD maintained list can be found at <http://www.oecd.org/tax/exchange-of-tax-information/MCAA-Signatories.pdf>). The MCAA, and other competent authority agreements as appropriate, together with formal agreements between Cyprus and other jurisdictions that we agree to exchange financial account information with will result in additions to the number of Reportable Jurisdictions over the coming months and a list will be published in good time to enable financial institutions to make their first reports by 30 June 2017.

CRS

You can find the list of participating jurisdictions with which Cyprus has contracted for the automatic exchange of information in tax matters at [http://www.mof.gov.cy/mof/taxdep.nsf/all/33CE83C3C6E9E213C2257F7A0030B942/\\$file/List%20of%20Participating%20Jurisdictions%20-%20012017\(CRS\).pdf?openelement](http://www.mof.gov.cy/mof/taxdep.nsf/all/33CE83C3C6E9E213C2257F7A0030B942/$file/List%20of%20Participating%20Jurisdictions%20-%20012017(CRS).pdf?openelement)

F. DUE DILIGENCE: GENERAL REQUIREMENTS

Due diligence requirements apply for ‘new’ accounts and ‘pre-existing’ accounts.

The Regulations for all the automatic exchange of information of financial account regimes require financial institutions to identify maintain and report information on the tax residence of Account Holders, and for FATCA purposes whether they are US citizens, irrespective of whether or not they are tax resident in a Reportable Jurisdiction. This is referred to as the ‘wider approach’. Financial institutions are required to carry out due diligence procedures on financial accounts that they hold in order to establish if the person holding the account is tax resident in a jurisdiction with which Cyprus has agreed to automatically exchange information. For automatic exchange with the USA under FATCA the financial institution must establish whether the person is tax resident in the USA or, for individuals, is a citizen of the USA

¹ Switzerland entered into an agreement with the EU on 27 May 2015 to exchange information, starting in 2018, equivalent to that required under the DAC

irrespective of where they are resident.

If the Account Holder or a controlling person of a passive NFE or a NFFE is identified as being tax resident in any of the jurisdictions with which Cyprus has agreed to exchange information on a reciprocal basis then they are a Reportable Person and the account is a Reportable Account.

An account is treated as a Reportable Account as of the date it is identified as such pursuant to the due diligence procedures that financial institutions must follow. The requirement to apply due diligence procedures for pre-existing accounts is subject to certain options that financial institutions may elect to apply such that accounts below de minimis thresholds are not subject to review.

1. DUE DILIGENCE: GENERAL REQUIREMENTS: IDENTIFYING REPORTABLE ACCOUNTS

An account is treated as a Reportable Account from the date it is identified as such pursuant to the due diligence procedures that the financial institution is required to follow. Information must be reported annually to the Cyprus Tax Department on that account in the calendar year following the year to which the reportable information relates.

Once an account has been identified as a Reportable Account it remains so until there is a change that takes the account out of the definition of Reportable Account. This can happen in a number of ways:

- The Account Holder ceases to be a Reportable Person.
- The account is closed or transferred to another financial institution in its entirety (where it may become a Reportable Account by that business).
- The account becomes an Excluded Account.
- The reporting financial institution becomes a Non-reporting Financial Institution.

While the account remains a Reportable Account it must be reported even where the balance or value of the account is zero or negative (the latter are treated as ‘zero’ balances). It also remains reportable where nothing has been credited to or in respect of the account during the appropriate reportable period. An account once identified as reportable remains so in the following years despite the fact that its year-end balance may be below any defined thresholds.

When an account ceases to be a Reportable Account it no longer needs to be reported, but where the account is closed information with respect to that account must be reported until the date of closure in accordance with the rules of each regime (see paragraph E10).

2. DUE DILIGENCE: GENERAL REQUIREMENTS: IDENTIFYING REPORTABLE ACCOUNTS: EXAMPLES

The following examples illustrate the circumstances where an account becomes or ceases to be Reportable Account.

- a. **Account becomes reportable** – a financial institution carries out due diligence procedures on lower value pre-existing accounts as at 31 December 2015 for DAC/CRS purposes between 1 January 2016 and 31 December 2017. On 22 March 2017 the financial institution identifies an account that belongs to an individual resident in Italy. The account is a Reportable Account from that date. Information on that account is reportable for the full calendar year 2017, the first report being made in 2018 and annually thereafter.
- b. **Account reportable after change of circumstance** – a new account is opened by an individual on 20 June 2016. The self-certification provided by the individual on opening the account shows that he is tax resident in Cyprus. The account is not a Reportable Account. On 13 September 2018 the individual notifies the financial institution that he has moved to Germany to work and will be tax resident there for the foreseeable future. The account becomes a Reportable Account from that date and is reportable for the full calendar year 2018, the first report being made in 2019 and annually thereafter.
- c. **Account ceases to be reportable** – the Account Holder of the account in example 1 above notifies the financial institution that they have moved permanently to Cyprus and are resident there (and nowhere else) for tax purposes with effect from 17 April 2019. As a result, the individual ceases to be a Reportable Person. As the account ceases to be a Reportable Account in the calendar year 2019 no report from the financial institution is required in 2020 or any subsequent calendar year unless the account becomes reportable once again.
- d. **Account is closed** – a Reportable Account is closed by the Account Holder on 14 August 2018. The financial institution must report in 2019 that the account has been closed along with information in respect of that account for the period from 1 January 2018 to the date of closure. The amount of information will depend on the regime under which reporting occurs.
- e. **Account ceases to be reportable and is then closed** – the Account Holder in example 3 above closes the account with the financial institution on 11 October 2019. As the closure occurred after the account ceased to be reportable, information with respect to the closure of the account is not required to be reported in 2020.

3. DUE DILIGENCE: GENERAL REQUIREMENTS: DATE FOR DETERMINING BALANCE OR VALUE

The balance or value of a Reportable Account is part of the reportable information that is to be automatically exchanged. It is also relevant for other purposes such as the due diligence procedures for pre-existing entity accounts and the account aggregation rules.

The balance or value of the Reportable Account is to be determined as of the last day of the calendar year. If the balance or value of the account requires conversion from one currency to

another the guidance at paragraph C of Section VII of the CRS should be considered.

If the balance or value of the account is negative it should be reported as a zero balance or value.

4. DUE DILIGENCE: GENERAL REQUIREMENTS: THRESHOLDS

The intergovernmental agreements with the USA allow for certain thresholds to apply below which due diligence on relevant accounts does not need to be carried out. With one exception, that of pre-existing entity accounts, such thresholds do not apply to the due diligence requirements under the DAC/CRS.

The way this works is that the Cyprus legislation requires all accounts to be the subject of due diligence and possible reporting but give financial institutions the option to elect to apply the thresholds to exempt certain accounts from this requirement. This election can be made in respect of some or all the relevant categories of financial account and can also be applied to clearly identifiable groups of accounts such as line of business or by reference to the location where the accounts are maintained.

5. DUE DILIGENCE: GENERAL REQUIREMENTS: THRESHOLDS: ELECTIONS AND PROCESS

The exemptions may be applied by the financial institution making an election. The effect of the election is that the financial institution is not required to review any of its accounts within the de minimis threshold(s) or, where the election instead provides, a clearly identifiable group of such accounts (for example, accounts held by a particular line of business).

If a financial institution chooses not to make an election to apply a particular threshold exemption it will need to review all relevant accounts (subject to any other elections made) in order to identify Reportable Accounts.

Where an election has been made to apply the de minimis threshold as at 30 June 2014 to an account (new account due diligence procedures apply to accounts opened after that date), the FATCA agreement state that the account must then be reviewed again at 31 December 2015 and annually thereafter and if it has become a High Value Account it must then be reviewed, and reported if applicable. However, this has been overtaken by subsequent developments and the introduction of the DAC/CRS— see below.

6. DUE DILIGENCE: GENERAL REQUIREMENTS: DATE FOR DETERMINING THE BALANCE OR VALUE FOR THRESHOLDS

Thresholds may apply in a number of circumstances. For example, under the DAC/CRS it is necessary to determine whether the aggregate value of accounts held by an individual exceed an amount equivalent to US\$1 million or the value of accounts held by an entity exceed US\$250,000.

The threshold is applied on the last day of the calendar year that is the subject of the report. The balance or value on the account that is to be used for determining if the threshold has been exceeded is that on the last day of the appropriate reporting period ending in that year.

Where a financial institution values financial accounts at regular points during the year, the balance or value on the last such valuation in the appropriate reporting period may be used for this purpose.

7. DUE DILIGENCE: GENERAL REQUIREMENTS: RELIANCE ON SERVICE PROVIDERS

Reporting financial institutions may use third party service providers to fulfill some or all of their due diligence obligations under the various automatic exchange of information regulations (FATCA, and CRS) but the obligations remain the responsibility of the financial institution. Any failure by a third party service provider would be regarded as a failure by the financial institution.

For example, where an independent financial adviser (IFA) has the customer relationship for introducing business to a financial institution, such as Cash Value Insurance Contracts, the IFA is often best placed to obtain the self-certification needed to carry out the due diligence process on the new account. The financial institution may rely on the IFA to obtain the self-certifications on its behalf.

Similarly, when a financial institution engages a third party to run AML/KYC processes it may not hold the original documents or certified copies of them. If the Cyprus Tax Department requires sight of documents in these circumstances, the financial institution must be able to obtain originals or certified copies should that be necessary.

8. DUE DILIGENCE: GENERAL REQUIREMENTS: ALTERNATIVE PROCEDURES FOR PRE-EXISTING ACCOUNTS

Under DAC and CRS Reporting financial institutions may apply

- i. The due diligence procedures for new accounts to pre-existing accounts,
- ii. The due diligence procedures for High Value Accounts to Lower Value Accounts

Where a financial institution chooses to apply one or both of these alternatives it may do so with respect to all its pre-existing accounts or, separately, to any clearly identified group of such accounts. A group of accounts may, for example, be those maintained by a particular line of business or those maintained in a particular location.

Where a financial institution chooses to apply the new account procedures to pre-existing accounts the rules that otherwise apply to pre-existing accounts continue to apply. For example, the financial institution can still rely on the exception for reporting a TIN or date of birth if it is not in its records. Similarly it may rely in the residence address test if applying new account procedures to pre-existing Lower Value Accounts.

9. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS

Pre-existing accounts are those in existence at the point that the various automatic exchange

of information regimes ‘switch on’ under the timelines for due diligence and reporting.

Pre-existing individual accounts are all accounts maintained as of the relevant cut-off date and held by an individual. These are split between High Value Accounts and Lower Value Accounts and there are different due diligence procedures for each type. High value pre-existing individual accounts are defined as accounts with an aggregate balance or value that exceeds an amount equivalent to US\$1 million as at the end of the calendar year under the DAC/CRS, and as of June 30 2014, or December 31 of 2015 or any subsequent year under FATCA. Thus for reporting in 2017 under the DAC/CRS the accounts in scope are those Reportable Accounts in existence as at 31 December 2015.

Lower value pre-existing individual accounts are those with an account balance or value that does not exceed an amount equivalent to US\$1 million at the end of the calendar year under the DAC/CRS, and as of June 30 2014, or December 31 of 2015 or any subsequent year under FATCA.

As well as differences in the amount of due diligence required for the two types of pre-existing individual account, financial institutions have longer to carry out their due diligence on Lower Value Accounts compared to High Value Accounts . However, to the extent that Lower Value Accounts are identified as Reportable Accounts in a calendar year they are reportable for that calendar year. Under the DAC/CRS financial institutions have until 31 December 2017 to carry out due diligence on Lower Value Accounts in existence at 31 December 2015 thus all such accounts must be reported no later than 2018 but if any Reportable Accounts are identified on or before 31 December 2016 they must be reported in 2017.

It is expected that more jurisdictions will become Reportable Jurisdictions over time. Under the wider approach Financial Institutions will have identified the territory of tax residence of all pre- existing Account Holders as at 31 December 2015 and will be capturing information for all new accounts opened from 1 January 2016. Any changes of tax residence as a result of a change of circumstances thereafter will be captured when the change is recognized by the Financial Institution. Where new Reportable Jurisdictions are added to the list Financial Institutions will already have identified tax residents of those jurisdictions. Financial Institutions will therefore be able to contact relevant Account Holders to acquire any further information they may need for reporting purposes, for example a Tax Identification Number or Date of Birth following the process detailed at F28.

For FATCA reporting financial institutions have the option to apply a threshold exemption of USD 50.000 or as otherwise specified in the Intergovernmental Agreement between Cyprus and the USA to Lower Value Accounts that take them out of the scope for carrying out due diligence processes.

10. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS

In determining whether an Account Holder of a Lower Value Account is a Reportable Person for DAC/CRS purposes financial institutions have two options for making such a determination.

They can apply either:

- i. A residence address test,
or
- ii. An electronic record search.

In the event that the financial institution applies the residence address test and this does not determine the residence of the individual Account Holder then it must also apply the electronic record search.

Financial institutions can apply the residence address test to all Lower Value Accounts or, separately, to any clearly identified group of such accounts. A group of accounts may, for example, be those maintained by a particular line of business or those maintained in a particular location.

Financial institutions may also opt to go straight to an electronic record search for indicia of tax residence without first applying the residence address test.

As FATCA reporting requires the financial institution to search for indicia of US citizenship the residence address test is not appropriate thus for FATCA only the electronic record search is permitted.

11. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS TEST

The due diligence procedures are for the purpose of identifying whether or not an Account Holder is a Reportable Person. If an Account Holder is identified as a Reportable Person the financial institution will then have to collate reportable information for the purpose of reporting to the Cyprus Tax Department.

In determining whether an Account Holder of a Lower Value Account is a Reportable Person for DAC/CRS purposes financial institutions may apply the residence address test.

Where the financial institution has policies and procedures in place to verify the residence address of an Account Holder based on Documentary Evidence , a person will be regarded as resident for tax purposes in the jurisdiction in which an address is located if:

- a) The financial institution has in its records a residence address for the Account Holder;
- b) The residence address held is current; and
- c) The residence address is based on Documentary Evidence.

12. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS DEFINITION

The residence address held by a financial institution must be sufficiently detailed to identify

where the Account Holder resides and will generally be in a form that identifies the street and the town, city or area where the individual lives in sufficient detail for the financial institution to determine the jurisdiction in which the residence is located.

In general, an “in-care-of” address or a post office box is not a residence address. However, a post office box can be part of a residence address where the address also contains a street, an apartment or suite number, or a rural route and thus clearly identifies the actual residence of the Account Holder.

An “in-care-of” address is unlikely to provide sufficient detail to identify the residence of the Account Holder as the address is that of the person receiving mail on behalf of the Account Holder. Exceptionally, an “in-care-of” address may be relied on where it is clear that the Account Holder is military personnel and the “in-care-of” address is a standard address of the type used for individuals residing on military bases. Additionally, an “in-care-of” address may be relied on where the address relates to a care or residential home.

13. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: CURRENT RESIDENCE ADDRESS

The residence address held by a reporting financial institution must be current. A residence address is considered to be current where it is the most recent address that the financial institution has recorded for the Account Holder. Such an address will not be regarded as current if it has been used for mailing purposes and mail has been returned undeliverable-as-addressed other than due to an error and the account has a ‘flag’ on it to that effect.

If mail has been returned and the account (other than an Annuity Contract) is dormant then the residence address may continue to be regarded as current in certain circumstances.

14. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS: DORMANT ACCOUNTS

A residence address associated with an account (other than an Annuity Contract) may be considered current even though mail has been returned undeliverable-as-addressed and the account is regarded as dormant.

An account is considered to be dormant for this purpose if:

- i. The Account Holder has not initiated a transaction in the past three years on that account or any other account he or she holds with the financial institution; and
- ii. The Account Holder has not communicated in the past six years with the financial institution that maintains the account regarding that account or any other account he or she holds with the financial institution; or
- iii. The account is considered to be dormant under the normal operating procedures of the financial institution that are applied for all accounts maintained by it provided these procedures are substantially similar to the requirements in (i) and (ii) above.

There is an additional requirement for Cash Value Insurance Contracts to be regarded as dormant: as well as the tests above, the financial institution has not communicated with the Account Holder in the past six years regarding the account or any other account he or she holds with the financial institution.

An account ceases to be dormant on the earliest of any of the following events occurring:

- i. The Account Holder initiates a transaction on the dormant account or any other account he or she holds with the financial institution;
- ii. The Account Holder communicates with the financial institution about the dormant account or any other account he or she holds with it; or
- iii. The account ceases to be a dormant account under the normal operating procedures of the financial institution.

15. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS BASED ON DOCUMENTARY EVIDENCE

The current residence address in the Reporting Cyprus Financial Institution's records must be based on Documentary evidence. This requirement is satisfied if the Reporting Cyprus Financial Institution's policies and procedures ensure that the current residence address in its records is the same address, or in the same jurisdiction, as that on the Documentary Evidence (e.g. identity card, driving license, voting card, or certificate of residence). This requirement is also met if the Reporting Cyprus Financial Institution's policies and procedures ensure that where it has government-issued Documentary Evidence but such Documentary Evidence does not contain a recent residence address or does not contain an address at all (e.g. certain passports), the current residence address in the Reporting Cyprus Financial Institution's records is the same address, or in the same jurisdiction, as that on recent documentation issued by an authorized government body or a utility company, or on a declaration of the individual account Holder under penalty of perjury. Acceptable documentation issued by utility companies relates to supplies linked to a particular property and includes a bill for water, electricity, telephone (landline only), gas, or oil. A declaration of the individual Account Holder under penalty of perjury is acceptable only if (i) the Reporting Financial Institution has been required to collect it under domestic law for a number of years; (ii) it contains the Account Holder's residence address; and (iii) it is dated and signed by the individual Account Holder under penalty of perjury. In such circumstances, the standards of knowledge applicable to Documentary Evidence would also apply to the documentation relied upon by the Reporting Financial Institution. Alternatively a Reporting Cyprus Financial Institution can meet this requirement if its policies and procedures ensure that the jurisdiction in the residence address corresponds to the jurisdiction of issuance of Government-issued Documentary evidence.

There may be also accounts opened at a time when there were no AML/KYC requirements and the reporting Financial therefore did not review any Documentary Evidence in the initial

on-boarding process. The FATF Recommendations which set out the international Standards on money laundering and include the requirement to verify the identity of the customers on the basis of reliable independent sources, were first issued in 1990 and subsequently revised in 1996, 2003 and 2012. Even for accounts opened before the introduction of such requirements and “grandfathered” under the rules, there is requirement to apply customer due diligence measures to existing customers on the basis of materiality and risk. In addition with respect to Reportable Accounts, Reporting Financial Institutions are already required to use reasonable efforts and contact their customers to obtain TIN and date of birth (subject to the application of paragraphs 9(3)(a) and 9(3)(b) of the CRS Decree.

It would be expected that such a contact would also be used to request Documentary Evidence. As a result, such instances of accounts without Documentary evidence should be exceptional, relate to low risk accounts, and affect accounts opened prior to 2004. In such instances, the third requirement contained in subparagraph 11(a) of the CRS Decree may also be satisfied if the Reporting Financial Institution’s policies and procedures ensure that current residence address in its records is in the same jurisdiction –

- (i) as that of the address on the most recent documentation collected by such Reporting Financial Institution (e.g. a utility bill, real property lease, or declaration by the individual Account Holder under penalty of perjury); and
- (ii) as that reported by the Reporting Financial Institution with respect to the individual Account Holder under any other applicable tax reporting requirements (if any).

Alternatively, to meet the third requirement in the abovementioned circumstances, in the case of a Cash Value Insurance Contract, a Reporting Financial Institution may rely on the current residence address in its records until –

- (i) there is a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that such residence address is incorrect or unreliable, or
- (ii) the time of pay-out (full or partial) maturity of the Cash Value Insurance Contract. The pay-out or maturity of such contract will constitute a change in circumstances and will trigger the relevant procedures (see paragraph below)

If the Reporting Financial Institution has relied on the residence address test described in Para 11(a) of the CRS Decree and there is a change of circumstances that causes the Reporting Financial Institution to know or have reason to know that the original documentary evidence (or other documentation as described above) is incorrect or unreliable, the Reporting Financial Institution must, by the later of the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder.

If the Reporting Financial institution cannot obtain the self-certification and new

documentary evidence by such date, the Reporting Financial Institution must apply the electronic record procedure described in Para 11(b)-(f) of the CRS decree,

16. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH

Where a reporting financial institution fails to establish the residence of an individual with a Lower Value Account from the residence test, or chooses not to apply the residence address test, it must review its electronically searchable data for indicia of the individual's residence (and citizenship for US reporting under FATCA). For FATCA reporting an electronic search may not be necessary if the financial institution has already established an Account Holder's status in order to meet its obligations as a qualified intermediary.

The Account Holder will be regarded as a resident of a Reportable Jurisdiction if any of the indicia below apply:

- a) The Account Holder is identified as resident of a Reportable Jurisdiction or as a US citizen or resident.
- b) For FATCA only, there is an unambiguous indication of a US place of birth.
- c) The current mailing or residence address (including a post office box) of the Account Holder is in a Reportable Jurisdiction.
- d) There are one or more current telephone numbers in a Reportable Jurisdiction (and, for DAC/CRS, no telephone number in the jurisdiction of the reporting FI).
- e) Standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction (other than a Depository Account in the case of the DAC/CRS)
- f) A current effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction.
- g) A "hold mail" instruction or an "in-care-of" address in a Reportable Jurisdiction if the reporting financial institution does not have any other address on file for the Account Holder.

If none of the above indicia are discovered through an electronic search, no further action is required in respect of Lower Value Accounts unless and until there is a subsequent change of circumstance that results in one or more of the above indicia being associated with the account or the Account Holder. Where such indicia arise the account becomes a Reportable Account unless the financial institution takes steps to cure or repair the indicia. Only where the indicia remain in place after the cure or repair is completed will the account become a Reportable Account.

In addition, where a number of the above indicia are present but provide contradictory evidence the financial institution may take steps to cure or repair the indicia. For example, if the indicia, with the exception of a current telephone number in France, all point to the individual being resident in Cyprus, the financial institution can seek information from the

individual to confirm where he or she is resident for tax purposes before treating the account as belonging to a French Reportable Person.

A financial institution will not be treated as having reason to know that an Account Holder's status is incorrect because it retains information or documentation that may conflict with its review of the Account Holder's status if it was not necessary to review them under the procedures for the electronic record search.

**17. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS:
ELECTRONIC RECORD SEARCH: RESIDENT OF A REPORTABLE JURISDICTION**

Where the indicia found during the electronic search indicates that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, or for FATCA purposes is a US citizen or resident, the account will be a Reportable Account subject to applying the curing procedure for this indicator.

**18. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS:
ELECTRONIC RECORD SEARCH: UNAMBIGUOUS UNITED STATES PLACE OF BIRTH**

Where the indicia found during the electronic search shows unambiguously that the Account Holder was born in the USA, the account will be a Reportable Account subject to applying the curing procedure for this indicator.

**19. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS:
ELECTRONIC RECORD SEARCH: MAILING OR RESIDENCE ADDRESS**

Where the indicia found during the electronic search indicates a current mailing or residence address (including a post office box) in a Reportable Jurisdiction the account will be a Reportable Account subject to applying the curing procedure for this indicium.

A mailing or residence address is considered to be current for this purpose where it is the most recent address recorded by the financial institution with respect to the Account Holder. Where the account is a dormant account the mailing or residence address attached to the account can be considered as 'current' during the period of dormancy.

Where the financial institution has recorded two or more mailing or residence addresses in different Reportable Jurisdictions, the Account Holder and details of the account are potentially reportable to multiple jurisdictions. However, where one or more of those addresses is for a service provider of the Account Holder, for example, an asset manager, investment advisor or lawyer, the financial institution is not required to treat the service provider's address as an indication of residence.

20. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: QUALIFIED INTERMEDIARIES (FATCA)

A Cyprus financial institution that has previously established an Account Holder's FATCA status in order to meet its obligations under a qualified intermediary, withholding foreign partnership or withholding foreign trust agreement, or to fulfill its reporting obligations as a US payer under Chapter 61 of the US Code, can rely on that status for the purposes of the US agreement where the Account Holder has received a reportable payment under those regimes. The financial institution is not required to perform the electronic record search with respect to lower Value Accounts or the electronic search/paper record search with respect to High Value Accounts. It will however have to apply the appropriate due diligence procedures to all other pre-existing individual accounts it maintains.

21. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: CURING INDICIA

There may be occasions when the electronic record search gives indications of residence in a Reportable Jurisdiction that the financial institution considers may be incorrect. In such circumstances the financial institution may take steps to 'cure' the information before treating the Account Holder as a Reportable Person.

Where the financial institution holds information about the Account Holder that includes any of:

- a. a current residence or mailing address in a Reportable Jurisdiction,
- b. one or more telephone numbers in a Reportable Jurisdiction (and, for DAC/CRS, no telephone number in the jurisdiction of the reporting FI),
- c. standing instructions, to transfer funds to an account maintained in a Reportable Jurisdiction (other than a Depository Account in the case of the DAC/CRS), or
- d. a currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction, then

the financial institution must obtain for (a) to (c) above a self-certification from the Account Holder to establish the jurisdiction of residence and for (d) either a self-certification form or Documentary Evidence. The financial institution can rely on self-certifications it has previously reviewed and maintained a record of, but in either case the self-certification must be supported by Documentary Evidence. If the self-certification supported by Documentary Evidence establishes that the Account Holder is not a Reportable Person then the financial institution is not required to treat the Account Holder as resident in a Reportable Jurisdiction.

The self-certification obtained as part of the curing procedure does not need to contain an express confirmation that an Account Holder is not resident in a particular jurisdiction. Provided the self-certification positively identifies the jurisdictions where the Account Holder

is resident it can be taken that the Account Holder is not resident in any other jurisdiction.

Under CRS, where a financial institution has contacted an Account Holder for a self-certification but the Account Holder has not responded, the account should be treated as undocumented 90 days after initiating contact. The 90 day period is to allow the Account Holder sufficient time to respond to the request for information. In such circumstances, the financial institution must contact the Account Holder at least annually to obtain the self-certification.

The information in (d) above may arise in circumstances where the Account Holder does not provide a self-certification. In such a case the financial institution may rely on Documentary Evidence that establishes the Account Holder's non-reportable status.

22. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS

High value pre-existing accounts are accounts with an aggregated balance or value that exceeds \$1million at the date that the pre-existing accounts first need to be reviewed or at any 31 December following the initial review date.

The aggregated amount is that across all accounts held by the individual with the financial institution and includes accounts held by related entities of the financial institution.

When an account is identified as a High Value Account the residence address test may not be used to establish the residence jurisdiction of the Account Holder.

The financial institution must start with the electronic record search and then continue, where appropriate, with a paper record search and a relationship manager inquiry.

The financial institution may choose to apply the new account procedures and seek self-certifications from Account Holders rather than carry out the due diligence for pre-existing High Value Accounts.

23. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH

For High Value Accounts a financial institution must review its electronically searchable data [§E17] for indicia of the individual's residence (and, in addition, citizenship for US reporting under FATCA).

The Account Holder will be regarded as a resident of a Reportable Jurisdiction if any of the indicia below apply:

- a) The Account Holder is identified as resident of a Reportable Jurisdiction or as a US citizen or resident
- b) For FATCA only, there is an unambiguous indication of a US place of birth.
- c) The current mailing or residence address (including a post office box) of the Account Holder is in a Reportable Jurisdiction.

- d) There are one or more current telephone numbers in a Reportable Jurisdiction (and, for DAC/CRS, no telephone number in the jurisdiction of the reporting FI).
- e) Standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction (other than a Depository Account in the case of the DAC/CRS)
- f) A current effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction.
- g) A “hold mail” instruction or “in-care-of” address in a Reportable Jurisdiction if the reporting financial institution does not have any other address on file for the Account Holder.

To the extent that the financial institution’s electronically searchable databases do not include fields for the above or do not otherwise capture this information a paper record search will be required. Where the electronically searchable databases include fields for the required information but are left blank a paper record search will be required unless the financial institution has policies and procedures in place that mean that a field is only left blank when the information is not in the financial institutions records. For example, a blank field in respect of (f) above would indicate positively that the financial institution does not hold a power of attorney or other signatory authority for the Account Holder.

24. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: PAPER RECORD SEARCH

A financial institution must carry out a paper record search to the extent that the information on residence of an Account Holder is not captured by the electronic search.

For example, where the electronically searchable databases contain all the required information except for details of standing instructions to transfer funds, the paper record search will only be required to look for that information.

The paper record search should include a review of the current master file and, to the extent that they are not contained in the current master file, the following documents associated with the account and obtained by the financial institution within the last 5 years.

- The most recent Documentary Evidence collected with respect to the account;
- The most recent account opening contract or documentation;
- The most recent documentation obtained by the financial institution for AML/KYC procedures or other regulatory purposes;
- Any power of attorney or signatory authority currently in effect; and
- Any standing instructions to transfer funds currently in effect (other than for a Depository Account in the case of the DAC/CRS).

These should be reviewed for any of the indicia of residence detailed in paragraph F23.

A financial institution can rely on the review of High Value Accounts by third party service

providers where there is a contract obliging the service provider to perform the review.

25. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: PAPER RECORD SEARCH: FATCA EXCEPTION

A financial institution does not need to carry out the paper record search for determining a person's non-US status where it has retained a withholding certificate and acceptable Documentary Evidence.

Withholding certificates issued by the IRS such as the W-8 and W-9 series are acceptable in establishing an Account Holder's status. A financial institution may rely upon a pre-FATCA W-8 form in lieu of an updated version of the form until such time that the W-8 is required to be renewed.

26. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: PAPER RECORD SEARCH: RELATIONSHIP MANAGER INQUIRY

The relationship manager enquiry is required for high value individual accounts in addition to the electronic search and the paper record search. The financial institution must consider whether any relationship manager associated with an account, which includes any accounts aggregated with such an account, has actual knowledge that would identify the Account Holder as a Reportable Person.

A relationship manager is an employee or officer of the financial institution who has been assigned responsibility for specific Account Holders on an ongoing basis. A relationship manager will provide advice to Account Holders regarding their accounts as well as recommending and arranging for the provision of financial products, services and other related assistance.

Relationship management must be more than ancillary or incidental to a person's job role. Thus a person with some contact with Account Holders, but whose functions are administrative or clerical nature, is not considered to be a relationship manager.

The relationship manager also has an important role in identifying any change of circumstance in relation to a high value individual account. A financial institution must ensure that it has procedures in place to capture changes that are made known to the relationship manager in respect of the Account Holder's reportable status.

27. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: RELATIONSHIP MANAGER INQUIRY: EXAMPLES

The following examples illustrate when an employee of financial institution would be regarded as a relationship manager:

- a. An individual holds a Custodial Account with a financial institution. The value of the

account at the end of the appropriate reporting period is an amount equivalent to US\$1,350,000. An employee of the financial institution has a role that requires them to manage the account on an ongoing basis and maintain the financial institution's relationship with the individual Account Holder. As the account has a value in excess of US\$1million, the employee will be a relationship manager with respect to this account.

- b. An individual holds a Custodial Account with a financial institution with a value at the end of the appropriate reporting period of an amount equivalent to US\$780,000. In addition, the individual also has a Depository Account with the financial institution with a balance at the same date of an amount equivalent to US\$427,000. The financial institution's internal systems link the accounts to the same Account Holder thus the accounts must be aggregated, the aggregate balances exceed US\$1million so belong to a High Value Account Holder. The relationship with the Account Holder is managed in a similar way to that in example 1 above. The employee with that role will be a relationship manager in respect of the accounts held by this Account Holder.
- c. The facts are the same as in example 2 except that the employee has no direct contact with the Account Holder simply performing an administrative role in relation to the accounts. Here the employee is not a relationship manager.

28. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: CHANGE OF CIRCUMSTANCE

Once the due diligence procedures have been completed the Account Holder will be identified as either a non-Reportable Person or reportable to one or more jurisdictions with which Cyprus has agreements to exchange information. That status will not change until such time as a change of circumstance is identified by the financial institution.

A change of circumstance includes any change to, or addition of, information in relation to an Account Holder's status and includes details of any addition, substitution or other change of an Account Holder as well as information in respect of any accounts associated with the Account Holder, that is, accounts associated through the aggregation rules or where a new account has been treated as a pre-existing obligation for due diligence purposes.

A change of circumstance is only relevant if the new information affects the status of the Account Holder for the purposes of the exchange of information agreements, whether that is based on the due diligence procedures or from a self-certification. For example, a person who has been identified as reportable to Cyprus provides the financial institution with details of a change of residential address to a property in France. That is evidence that there has been a change of circumstance affecting the reportable status of the Account Holder. If, however, the new address had also been in Cyprus the reportable status established earlier would not be affected and no further action would be required on the part of the financial institution.

Once a change of circumstance has been identified the financial institution must request a self-certification or other documentation from the Account Holder to establish whether the individual is a Reportable Person and, if so, to which jurisdiction the reportable information

should be sent. If the Account Holder fails to respond to the request the financial institution should treat the Account Holder as reportable to each jurisdiction for which it holds indicia unless it can apply the curing procedure described at paragraph F21.

29. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: HOLD MAIL OR IN-CARE-OF ADDRESS ONLY

If a hold mail instruction or in-care-of address is discovered in the enhanced review of High Value Accounts, and no other address or indicia of residence are identified for the Account Holder, the financial institution must request a self-certification or other Documentary Evidence from the Account Holder to establish the jurisdiction of tax residence of the Account Holder.

If the financial institution cannot obtain a self-certification or Documentary Evidence from the Account Holder the financial institution is required to treat the Account Holder as:

- A US Reportable Account for FATCA, and
- An undocumented account for DAC/CRS

30. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: LOWER VALUE ACCOUNT BECOMES HIGH VALUE

If a pre-existing individual account at the point that the various automatic exchange agreements ‘switch-on’ is a Lower Value Account it will need to be monitored at the end of each subsequent reporting period to see if it has become a High Value Account.

If the balance or value of the account on the last day of the appropriate reporting period, after taking account of any aggregation, exceeds an amount equivalent to US\$1million, the financial institution must complete the enhanced review for High Value Accounts (at §F22 onwards) within the calendar year following the year that the account becomes a High Value Account. This will apply to all three reporting regimes, FATCA, and DAC/CRS.

If, as a result of the enhanced review, the account is identified as a Reportable Account following this review it is reportable with respect to the year in which it is so identified and remains reportable in all subsequent years unless and until the Account Holder ceases to be a Reportable Person.

31. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: EFFECT OF FINDING INDICIA

Where the enhanced due diligence procedures for high value individual accounts have been carried out and any of the indicia (listed at §F16) are found, the account must be treated as a Reportable Account unless the Financial Institution elects to cure the information (F21). The account will be a Reportable Account for each Reportable Jurisdiction identified from the due

diligence procedure.

Where the information arising from the due diligence procedures contains potentially conflicting information, for example, the electronic search identifies a residential address in Italy but the relationship manager has knowledge of an address France, the financial institution may attempt to cure the information by seeking a self-certification from the Account Holder.

If no indicia of residence in a Reportable Jurisdiction are found in any of the enhanced due diligence procedures then no further action is required unless and until there is a change in circumstances.

32. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: UNDOCUMENTED ACCOUNT

An undocumented account exists where the conditions (at §F29) exist, that is, the only indicia that the financial institution hold are a hold mail or in-care-of address and the financial institution has been unable to obtain a self-certification or other documentary evidence from the Account Holder to cure the information held.

Where the financial institution has identified and reported an account as an undocumented account the financial institution must repeat the enhanced review for high value individual accounts annually until the account ceases to be undocumented.

33. DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS

New accounts are those opened on or after the date that the various automatic exchange of information regimes ‘switch on’ under the timelines for due diligence and reporting purposes. New Individual Accounts are accounts where the account holder is an individual.

The due diligence procedures for New Individual Accounts require that a self-certification is obtained from the Account Holder.

If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction or is a US citizen, then the Reporting Financial Institution must treat the account as a Reportable Account.

The wider approach that requires Financial Institutions identify the territory in which a person is tax resident, irrespective of whether or not that territory is a Reportable Jurisdiction apply to new accounts as well as pre-existing accounts. The self-certification process can be used for this purpose. This information must be maintained by the Reporting Financial Institution for a period of 6 years from the end of the period in which the territory is identified.

The procedures applying for the purposes of identifying Reportable Accounts among New Individual Accounts are described in the following pages.

34. DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION

Upon account opening, the reporting financial Institution must obtain a self-certification.

It is expected that financial institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening, whether that process is done face-to-face, online or by telephone. There may be circumstances where, exceptionally, it is not possible to obtain a self-certification on 'day one' of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market.

In such circumstances, the self-certification should be both obtained and validated as quickly as feasible, and in any case within a period of 90 days. Financial institutions must make proper endeavors to obtain the self-certification in these circumstances including issuing follow up letters, before the expiry of the 90 days.

If an Account Holder fails to respond then, the Financial Institution must proceed with the closure or freezing of the account after the expiry of 90 days. In case that the Tax Department finds out that the Financial Institution didn't apply the appropriate measures to obtain a valid self-certification then it has the right to impose the penalties provided by the law on the Financial Institution.

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

There is no prescribed format for a self-certification but it may, for example, form part of the account opening documentation. Whatever form it takes, it must allow the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and whether s/he is a US citizen, and confirm the reasonableness of such self-certification based on the information obtained by the reporting financial institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

The self-certification must also include the Account Holder's tax identification number and date of birth.

A self-certification must be signed by the Account Holder (or a person authorized to do so for her/him under domestic law), or in the case of an account opened by telephone or the internet the self-certification must be positively affirmed – that is, the Account Holder must confirm the information provided. The self-certification must be dated no earlier than the date the Account Holder received the form; undated self-certifications may be date stamped by the receiving financial institution on receipt and that date will be taken as the date of signature.

Self-certifications may take a two-stage process so that, if it is established that an Account Holder is a Cyprus tax resident and not tax resident elsewhere or a US citizen, then it will not be necessary to gather further information beyond the first three bullet points below. Otherwise, self-certifications must include all of the following information for the Account Holder –

- name;
- residence address;
- jurisdiction(s) of residence for tax purposes
 - TIN with respect to each Reportable Jurisdiction (see above); and
- date of birth.

The self-certification may be pre-populated by the reporting Financial Institution to include the Account Holder’s information, except for the jurisdiction(s) of residence for tax purposes, to the extent already available in its records.

The self-certification may be provided in any manner and in any form, for example it can be in paper or electronic format. If the self-certification is provided electronically, the Financial Institution must have systems in place to ensure that the information provided is that of the Account Holder and it must be able to provide a hard copy of all such self-certifications to the Cyprus Tax Department on request.

Where an Account Holder provides a paper self-certification a Financial Institution may retain an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the self-certification. Any documentation that is stored electronically must be made available by the financial institution in hard copy form to the Cyprus Tax Department upon request.

35. DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION: EXAMPLES

The following examples illustrate how a self-certification may be provided:

Example 1

Individual A completes an online application to open an account with reporting financial institution K. All the information required for self-certification is entered by A on an electronic application (including a confirmation of A’s jurisdiction of residence for tax purposes). A positively confirms the information provided as part of the application.

A’s information, as provided in the electronic self-certification, is confirmed by K’s service provider to be reasonable based on the information it has collected pursuant to AML/KYC procedures.

A’s self-certification is valid.

Example 2

Individual B makes an application in person to open an account with bank L. B produces his passport as proof of identification and provides all the information required for self-certification to an employee of L who enters the information into L’s systems.

The application is subsequently signed by B. B’s

self-certification is valid.

36. DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION INCORRECT OR UNRELIABLE

A self-certification remains valid unless the Reporting Financial Institution knows, or has reason to know, that the original self-certification is incorrect or unreliable. This might be the case either at the time a new account is opened by an existing customer, or as a result of a change of circumstances reported by the Account Holder, for example, a change of address.

Whatever the cause, where the reporting financial institution cannot rely on the original self-certification it must obtain either –

- (i) a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder, or
- (ii) a reasonable explanation and documentation (as appropriate) supporting the validity of the original self-certification (and retain a copy or a notation of such explanation and documentation).

A reporting financial institution may have reason to know that a self-certification or Documentary Evidence is unreliable or incorrect. It may have information in its possession that suggests different facts pertaining to the Account Holder than those on the self-certification. This will include the knowledge of the relevant relationship managers. If a reasonably prudent person in the position of the reporting financial institution would question the information provided then that is reason to know that the information may be incorrect or unreliable.

A reporting financial institution also has reason to know that a self-certification or Documentary Evidence is unreliable or incorrect if there is information in the documentation or in the reporting financial institution's account files that conflict with the person's claim regarding its status.

In addition, a Reporting Financial Institution is expected to notify any person providing a self-certification of the person's obligation to notify the Reporting Financial Institution of a change of circumstances.

Standards of knowledge applicable to self-certifications and Documentary Evidence

A reporting financial institution has reason to know that a self-certification provided by a person is unreliable or incorrect if:

- the self-certification is incomplete with respect to any item on the self-certification that is relevant to the claims made by the person,
- the self-certification contains any information that is inconsistent with the person's claim, or
- the reporting financial institution has other account information that is inconsistent

with the person's claim.

A reporting financial institution that relies on a service provider to review and maintain a self-certification is considered to know or have reason to know the facts within the knowledge of the service provider.

A reporting financial institution may not rely on Documentary Evidence provided by a person if the Documentary Evidence does not reasonably establish the identity of the person presenting it.

A reporting financial institution may not rely on Documentary Evidence if it contains information that is inconsistent with the person's claim as to its status, the reporting financial institution has other account information that is inconsistent with the person's status, or the Documentary Evidence lacks information necessary to establish the person's status.

A financial institution may choose to treat a person as having the same status that it had prior to the change in circumstances until the earlier of 90 calendar days from the date that the self-certification became invalid due to the change in circumstances, the date that the validity of the self-certification is confirmed, or the date that a new self-certification is obtained. A financial institution may rely on a self-certification without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

If the financial institution cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during such 90-day period, the Reporting Financial Institution must treat the Account Holder as resident of the jurisdiction in which the Account Holder claimed to be resident in the original self-certification and the jurisdiction in which s/he may be resident as a result of the change in circumstances.

37. DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION: CHANGE OF CIRCUMSTANCES

A self-certification can become invalid as a result of a change of the Account Holder's circumstances [§F28]. Reporting financial institutions need to have procedures to ensure that any change that constitutes a change in circumstances is identified.

A reporting financial institution is expected to notify any person providing a self-certification of the person's obligation to notify the reporting financial institution of a change in circumstances.

A change in circumstances affecting the self-certification provided to the reporting financial institution will invalidate the self-certification with respect to the information that is no longer reliable until the information is updated.

A self-certification becomes invalid as soon as the reporting financial institution knows or has reason to know that circumstances affecting the correctness of the self-certification have changed. However, a reporting financial institution may treat the status of the Account Holder as unchanged until the earlier of –

- 90 calendar days from the date that the self-certification became invalid due to the

change in circumstances;

- the date that the validity of the self-certification is confirmed (where appropriate); or
- the date that a new self-certification is obtained.

A reporting financial institution may rely on a self-certification without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

If the reporting financial institution cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during the 90-day period, the financial institution must continue to treat the Account Holder as resident in the jurisdiction identified in the original self-certification and must also treat the Account Holder as resident in the jurisdiction indicated by the change of circumstance.

38. DUE DILIGENCE: ENTITY ACCOUNTS

An entity for the purposes of the various exchange of information regimes is a legal person or legal arrangement. It covers accounts held by any person other than in the capacity of an individual.

For reporting purposes an entity will either be a financial institution or a non-financial entity (NFE).

Controlling persons

This term corresponds to the term “beneficial owner” as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force recommendations (as adopted in February 2012), and must be interpreted in a manner consistent with such Recommendations, with the aim of protecting the international financial system from misuse including with respect to tax crimes.

For an Entity that is a legal person, the term “Controlling Persons” means the natural person(s) who exercise control over the Entity.

“Control over an Entity” is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the entity. A “control ownership interest” depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk-based approach (in Cyprus, any person(s) owning more than 25% of the legal person).

Where no natural person(s) exercises control through ownership interests, the Controlling person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no such natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.

In the case of trust, the term “Controlling persons” means 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. The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as controlling persons of trust, regardless of whether or not any of them exercises control over the trust.

In addition, any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership) must also be treated as a Controlling person of a trust.

With a view to establishing the source of funds in the account(s) held by the trust, where the settlor(s) of a trust is an Entity, Reporting Financial Institutions must also identify the Controlling person(s) of the settlor(s) and report them as Controlling Person(s) of the trust. For beneficiary(ies) of trusts that are designated by characteristics or by class, Reporting Financial Institutions should obtain sufficient information concerning the beneficiary(ies) to satisfy the Reporting Financial Institution that will be able to establish the identity of the beneficiary(ies) at the time of the pay-out or when the beneficiary(ies) intends to exercise vested rights. Therefore, that occasion will constitute a change of circumstances and will trigger the relevant procedures. Cyprus allows Reporting Financial Institutions to align the scope of the beneficiary(ies) of a trust treated as reportable persons of a trust that is a Financial Institution.

In the case of a legal arrangement other than a trust, the term “Controlling Persons” means persons in equivalent or similar positions as those that are controlling persons of a trust. Thus, taking into account the different forms and structures of legal arrangements, Reporting Financial Institutions should identify and report persons in equivalent or similar positions, as those required to be identified and reported for trusts.

In relation to legal persons that are functionally similar to trusts (e.g. foundations) Reporting Financial Institutions should identify Controlling Persons through similar customer due diligence procedures as those required for trusts, with a view to achieving appropriate levels of reporting.

Where a Reporting Financial Institution relies on information collected and maintained pursuant to AML/KYC Procedures for purposes of determining the Controlling Persons of an Account Holder of a New Entity Account such AML/KYC Procedures must be consistent with Recommendations 10 and 25 of the FATF Recommendations (as adopted in February 2012), including always treating the settlor(s) of a trust as a Controlling person of the trust and the founder(s) of a foundation as a Controlling Person of the foundation. For purposes of determining the Controlling of an Account Holder of a Preexisting Entity Account, a Reporting Financial Institution may rely on information collected and maintained pursuant to the Reporting Financial Institution’s AML/KYC Procedures.

39. DUE DILIGENCE: ENTITY ACCOUNTS: INVESTMENT ENTITY WITH REGULARLY TRADED SECURITIES

A difference between the DAC/CRS and the other regimes is that for FATCA the definition of Financial Account excludes equity and debt interests in an Investment Entity where those interests are regularly traded on an established securities market. That means that equity and debt interests in certain listed Investment Entities, for example Investment Trust Companies (ITC), are in scope under the DAC/CRS.

40. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS

Pre-existing accounts are those in existence at the point that the various automatic exchange of information regimes ‘switch on’ under the timelines for reporting.

41. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: THRESHOLD EXEMPTION

For all three regimes there is an optional threshold exemption that can be applied to pre-existing entity accounts where the account balance or value does not exceed an amount equivalent to \$250,000. The exemption is applied by the financial institution making an election. The effect of the election is that the financial institution is not required to review any of its pre-existing entity accounts within the de minimis threshold or, where the election instead provides, a clearly identifiable group of such accounts (for example, accounts held by a particular line of business).

If a financial institution chooses not to make an election to apply the threshold exemption it will need to review all pre-existing entity accounts in order to identify Reportable Accounts.

Where an election has been made to apply the de minimis threshold to an account, the financial institution must review the account balance at 31 December each year to determine if the balance has exceeded the relevant threshold (subject to the review dates for each regime). Where the threshold is exceeded for an account it becomes reviewable (that is, the due diligence procedures for pre-existing entity accounts must be applied). Where the account is identified as a Reportable Account, it is reportable from the year in which it was so identified. This is explained further below.

Accounts becoming reviewable

For DAC/ CRS, accounts become reviewable once the balance has been established as exceeding \$250,000 at a review date. As all accounts exceeding that threshold must be subjected to due diligence and the process is the same under all the regimes, the benefit of the \$1million threshold for review under FATCA is effectively lost where the review under one regime identifies US Specified Persons for FATCA as these accounts become reportable once identified as such.

	Date \$250,000 de minimis election applies from	First account balance review date	Subsequent account balance review dates	Threshold at which account becomes reviewable
FATCA	30/06/2014	31/12/2015	31 December annually	\$1,000,000

DAC/CRS	31/12/2015	31/12/2017	31 December annually	\$250,000
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The deadline for completing account balance reviews in all cases above is –

- for FATCA, 30 June following the account balance review date
- for DAC/CRS, 31 December following the account balance review date.

In practice, financial institutions may apply the 31 December 2015 deadline for FATCA as there is no difference in applying that or 30 June in terms of the first year from when an account may be identified as exceeding the threshold and potentially becoming reportable.

Example

Bank A has applied the thresholds for pre-existing entity accounts for all three regimes. The bank holds a Depository Account for Entity X, which has a balance at the relevant dates as follows:

30 June 2014	\$187,000
31 December 2015	\$208,000
31 December 2016	\$312,000
31 December 2017	\$623,000

At 31 December 2015 (the first account balance review date for FATCA) the balance does not exceed \$1,000,000 and so would not be reviewable for FATCA.

At 31 December 2016, the balance exceeds \$250,000 but is still below \$1,000,000 so is not reviewable for FATCA.

At 31 December 2017, the first review under the DAC/CRS, the balance exceeds \$250,000. As a result, all accounts with a balance over \$250,000, including this one, must be subjected to the due diligence procedures in the DAC. As a result, Entity X is identified as a US Specified Person and the account, having been so identified, is reportable for FATCA in respect of the 2017 reportable year.

42. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REPORTABLE ACCOUNTS

A pre-existing entity account is a Reportable Account where the review procedures identify the account as held by one or more entities that are Reportable Persons or which are passive NFEs with one or more Controlling Persons that are Reportable Persons.

For example, the XYZ Partnership is a passive NFE resident in Cyprus. It has three individuals who are identified as Controlling Persons of the partnership. Two of these are Cyprus tax resident but the third is tax resident in France which is a Reportable Jurisdiction. As a result any accounts held by the partnership with a Cyprus financial institution will be Reportable Accounts by virtue of the entity having a Controlling Person that is a Reportable Person.

43. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS

Financial institutions are required to determine whether a pre-existing account is held by one or more entities that are Reportable Persons or which are passive NFEs with one or more Controlling Persons that are Reportable Persons. Such entity accounts will be Reportable Accounts.

The financial institution must review information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) to determine where the entity is tax resident [§F51], unless residence can be reasonably determined through the use of publicly available information. The entity will be reportable if the information indicates that the entity is tax resident in a Reportable Jurisdiction. Such information will include, but is not limited to:

- A place of incorporation or organization in a Reportable Jurisdiction;
- An address in a Reportable Jurisdiction; or
- Where the entity is a trust, an address of one or more of the trustees in a Reportable Jurisdiction.

As the definition of entity goes beyond corporate structures to include fiscally transparent vehicles such as trusts and partnerships, the address of the entity should be interpreted widely so will include the registered office, principal office and/or the place of effective management.

The existence of a permanent establishment (including a branch) in a Reportable Jurisdiction is not, in isolation, an indication of residence for this purpose.

Although there is no exemption from a paper record search for pre-existing entity accounts, such a search is not required in areas where all the information is electronically searchable (for example, information held for AML/KYC purposes).

If the information indicates that the Account Holder is tax resident in a Reportable Jurisdiction then the account is a Reportable Account unless the financial institution obtains a self-certification from the Account Holder, or determines, based on information in its possession or which is publicly available, that the Account Holder is not a Reportable Person.

44. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: AVAILABLE INFORMATION

Where the financial institution has carried out the review of regulatory and customer relationship information and has indications that the Account Holder is resident in a Reportable Jurisdiction it may take into account information in its possession, or which is publicly available, which reasonably determines that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

Such information will include the following:

- Information published by an authorized government body of a jurisdiction. For example, the list of Foreign Financial Institutions published by the US tax administration;

- Information in a publicly accessible register maintained or authorized by an authorized government body of a jurisdiction;
- Information disclosed on an established securities market;
- Information previously recorded in the files of the financial institution;
- A publicly accessible classification based on a standardized industry coding system. This will include any coding system employed by the financial institution which is based on such a standardized industry coding system.

Where the financial institution relies on such information it must retain a notation of the type of information reviewed and the date the review was carried out.

45. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: SELF-CERTIFICATION

Where the financial institution has carried out the review of regulatory and customer relationship information and has indications that the Account Holder is resident in a Reportable Jurisdiction it may obtain a self-certification from the Account Holder which reasonably determines that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

A self-certification for an entity must be signed (or otherwise positively affirmed) by the person with authority to sign on behalf of the entity. This will include:

- An officer or director of a corporate entity;
- A partner of a partnership;
- A trustee of a trust;
- Any person holding an equivalent title to any of the above; and
- Any other person with written authorization from the entity to sign documentation on behalf of the entity.

The self-certification must also be dated at the latest at the date of receipt by the financial institution and must contain the following information in respect of the entity:

- The name;
- The address;
- The jurisdiction(s) of residence for tax purposes; and
- The TIN with respect to each Reportable Jurisdiction.

The financial institution may also request the Account Holder entity to include its status in the self-certification as either a financial institution or a NFE. When requesting this information from an Account Holder the financial institution is expected to provide the Account Holder with sufficient information to enable it to determine its status. Financial institutions may produce

their own guidance for this purpose or they may refer to this guidance manual,, the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, or the Intergovernmental Agreements for FATCA reporting as appropriate.

The requirements for the validity of such a self-certification are the same as for those for self-certification of New Individual Accounts at paragraph F34 to F37.

46. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: SELF-CERTIFICATION AS A FINANCIAL INSTITUTION

The financial institution may request the Account Holder entity to include its status in the self-certification as either a financial institution or a NFE. When requesting this information from an Account Holder the financial institution is expected to provide the Account Holder with sufficient information to enable it to determine its status.

If the Account Holder entity falls within the definition of a financial institution, no further review, identification or reporting will normally be required.

The exception to this under the FATCA regime is where there is significant non-compliance by the financial institution which has not been rectified. In such circumstances the entity will be classified as a non-participating financial institution.

Where the financial institution is a non-participating financial institution for FATCA, then reports on certain payments made to such entities will be required.

The exception to this under the DAC/CRS regime is where the financial institution is a managed investment entity resident in a jurisdiction that is not a Participating Jurisdiction. In that case the entity is deemed to be a passive NFE for reporting purposes.

When seeking a self-certification from an entity the categories that may be recorded for a financial institution for DAC/CRS purposes are:

1. An investment entity as described in subparagraph A(6)(b) of Section VIII of the DAC/CRS (a managed investment entity).
2. Financial institution other than in 1 above.

For FATCA purposes they are:

1. Participating financial institution.
2. Non-participating financial institution.

47. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: SELF-CERTIFICATION AS A NFE

The financial institution may request the Account Holder entity to include its status in the self-certification as either a financial institution or a NFE. When requesting this information from an Account Holder the financial institution is expected to provide the Account Holder with sufficient information to enable it to determine its status.

If the Account Holder entity falls within the definition of a NFE then the information to be

reported will depend on whether the entity is an active NFE or a passive NFE.

48. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR CONTROLLING PERSONS

When a financial institution has determined that an Account Holder is a NFE it must carry out review procedures to determine:

- a. Whether the Account Holder is a passive NFE;
- b. If so, the Controlling Persons of that passive NFE; and
- c. Whether any of the Controlling Persons is a Reportable Person.

Is the Account Holder a passive NFE?

The financial institution must obtain a self-certification from the Account Holder unless it has information in its possession, or that is publicly available, based on which it can reasonably determine the status of the Account Holder as an active NFE or a financial institution (other than a managed investment entity resident in a non-Participating Jurisdiction). If the financial institution cannot determine the status of the Account Holder as an active NFE or a financial institution then the financial institution must presume the Account Holder to be a passive NFE.

Identifying Controlling Persons.

To identify the Controlling Persons, the financial institution may rely on information collected and maintained pursuant to AML/KYC procedures.

Example:

Company ABC is a passive NFE (or NFFE-FATCA), has 3 shareholders holding equal shares. The three shareholders are:(1) a physical person, (2)a state-owned company, (3) a company who is a public company.

The physical person is a controlling person because owns more than 25% of the share capital.

The state-owned company cannot be considered as a controlling person because is not a natural person, so the controlling persons in this case are the persons who hold the highest management position.

The public company cannot be considered as a controlling person because is not a natural person. The FATF recommendations do not require the determination of controlling persons in the case of public companies.

Are any of the Controlling Persons a Reportable Person?

If the account balance or value does not exceed an amount equivalent to \$1million, the financial institution may rely on information collected and maintained pursuant to AML/KYC procedures to determine whether the Controlling Person is a Reportable Person or it may

choose to obtain a self- certification from the Account Holder or the Controlling Person.

If the account balance exceeds an amount equivalent to \$1million the financial institution must obtain a self-certification from either the Account Holder or the Controlling Person. This may be provided in the same self-certification as the one provided by the Account Holder to determine its own status. The self-certification requirements are the same as for New Individual Accounts.

If a self-certification is required but is not obtained the financial institution must rely on the electronic record search for pre-existing individual accounts to determine if there are indicia present that can be used to determine the reportable status of the Controlling Person. If none is present in its records, the financial institution need take no further action unless and until there is a change of circumstance with respect to the controlling person.

It is noted that under CRS, a Reporting FI would only need to report discretionary beneficiaries of Passive NFE trusts as Controlling Persons in the year they receive distribution from the Passive NFE trust, provided that the FI has appropriate procedures in place to identify when a distribution is made to a discretionary beneficiary of the trust in a given year. This option is not available under DAC.

If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Financial Institution to know, or have reason to know that the self-certification or other documentation associated with the account is incorrect or unreliable the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph 22 of the CRS decree. The standards of knowledge applicable to Documentary Evidence also apply to any other documentation relied upon pursuant to the procedures set forth in paragraph 22 of the CRS decree. In such case, a Reporting Financial Institution must apply the following procedures by the later of the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of the change of circumstances:

1. with respect to the determination whether the account holder is a Reportable Person: A Reporting Financial Institution must obtain (i) a self- certification or (ii) a reasonable explanation and documentation (as appropriate) supporting the reasonableness of the original self-certification or documentation (and retain a copy or a notation of such explanation and documentation). If the Reporting Financial Institution fails to either obtain a self-certification or confirm the reasonableness of the original self-certification or documentation, it must treat the Account Holder as a Reportable Person in respect to both jurisdictions.
2. With respect to the determination whether the Account Holder is a Financial Institution, Active NFE or Passive NFE: a Reporting Financial Institution must obtain additional documentation or a self-certification (as appropriate) to establish the status of the Account Holder as an Active NFE or Financial Institution. If the Reporting Financial Institution fails to do so, it must treat the Account Holder as a Passive NFE.
3. With respect to the determination whether the controlling person of a passive NFE is a Reportable Person: A Reporting Financial Institution must obtain either (i) a self-certification or (ii) a reasonable explanation and documentation (as appropriate) supporting the reasonableness of a previously collected self-certification or documentation (and retain a copy or a notation of such explanation and

documentation). If the Reporting Financial Institution fails to either obtain a self-certification or conform the reasonableness of the previously collected self-certification or documentation, it must rely on the indicia described in subparagraph 11b-f of the CRS decree it has in its records for such Controlling Person to determine whether it is Reportable Person.

49. DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS

The due diligence procedures for New Entity Accounts are broadly the same as those for Pre-existing Entity Accounts except that there is no de minimis threshold. Reporting Financial Institutions must determine:

- whether a New Entity Account is held by one or more Entities that are Reportable Persons; and
- whether a New Entity Account is held by one or more Entities that are Passive NFEs with one or more Controlling Persons who are Reportable Persons.

The following review procedures must be applied in order to determine this.

50. DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS: DETERMINING WHETHER THE ENTITY IS A REPORTABLE PERSON

Where a New Entity Account is held by one or more Entities that are Reportable Persons, then the account must be treated as a Reportable Account.

Self-certification

To determine this, financial institutions must obtain a self-certification as part of the account opening procedure and confirm the reasonableness of such self-certification based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. In practice, this means 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 must be obtained. Financial institutions are not, however, expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification. Paragraph 14 of the Commentary on Section VI of the DAC/CRS contains examples illustrating the application of the “reasonableness” test.

The self-certification must allow determining the Account Holder’s residence(s) for tax purposes (see §F51).

With respect to New Entity Accounts, a self-certification is valid only if it complies with the requirements for the validity of self-certifications for Pre-existing Entity Accounts.

Timing of self-certification

It is expected that financial institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening, whether that process is done face-to-face, online or by telephone. There may be circumstances, however, where it is not possible to obtain a self-certification on 'day one' of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market.

In such circumstances, it is expected that the self-certification should be obtained within a period of 90 days. Financial institutions must make proper endeavors to obtain and validate the self-certification in these circumstances, including issuing follow up letters before the expiry of the 90 days.

If an Account Holder fails to respond then, the Financial Institution must proceed with the closure or freezing of the account after the expiry of 90 days. In case that the Tax Department finds out that the Financial Institution didn't apply the appropriate measures to obtain a valid self-certification then it has the right to impose the penalties provided by the law on the Financial Institution.

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

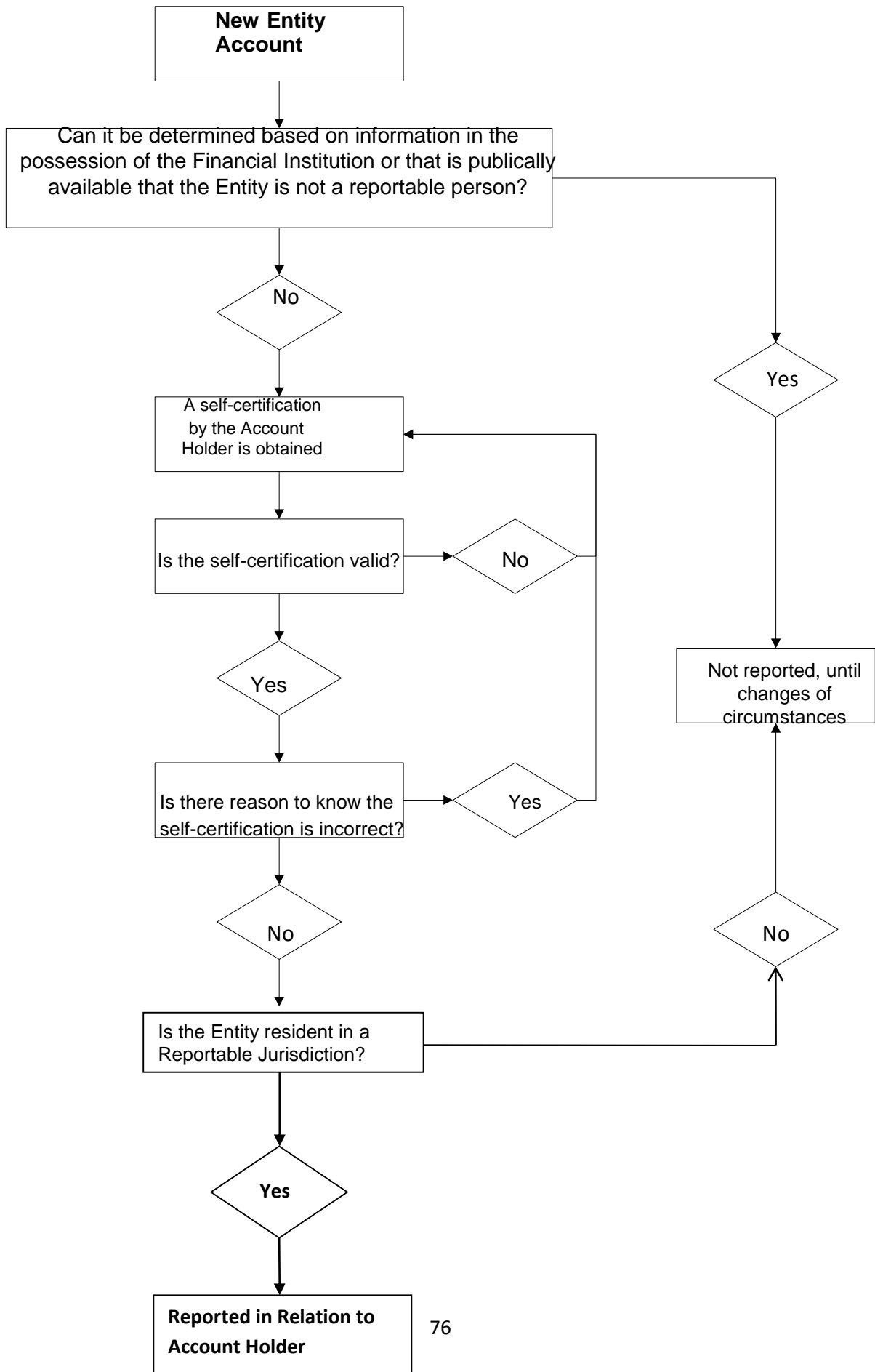
Information in the financial institution's possession or that is publicly available

For FATCA the due diligence procedures provide an exception to the requirement to obtain a self-certification where the financial institution can reasonably determine based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person. For example, such information may show that the entity is in fact a corporation that is publicly traded or a Governmental Entity.

Where a self-certification is obtained and it indicates that the Account Holder is resident in a Reportable Jurisdiction, the financial institution must treat the account as a Reportable Account. For DAC/CRs again, an exception applies where the financial institution can reasonably determine, based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

Note that financial institutions are not obliged to rely on these exceptions and they may insist on self-certifications being provided.

This can be summarized in the following diagram (© OECD).



51. DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS: DETERMINING WHETHER THE ENTITY IS A REPORTABLE PERSON: JURISDICTION OF RESIDENCE

The domestic laws of the various jurisdictions lay down the conditions under which an entity is to be treated as fiscally resident.

Generally, an Entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction, it is liable to tax by reason of its domicile, residence, place of management or incorporation, or any other criterion of a similar nature. Generally an entity will only be tax resident in one jurisdiction, although that may not always be the case. Dual resident Entities may rely on the tiebreaker rules contained in tax conventions (if applicable) to solve cases of double residence for determining their residence for tax purposes.

Where an entity such as a partnership, limited liability partnership or similar legal arrangement has no residence for tax purposes it shall be treated as resident in the jurisdiction in which its place of effective management is situated or, in the case of a trust, the jurisdiction(s) in which the trustee(s) is/are resident.

Entities may find examples illustrating how an entity's residence for tax purposes may be determined in Paragraph 8 of the Commentary on Section VI of the DAC/CRS, concerning due diligence for New Entity Accounts, helpful.

52. DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS: ACCOUNT HELD BY PASSIVE NFE(S) WITH ONE OR MORE CONTROLLING PERSONS WHO ARE REPORTABLE PERSONS

Financial institutions must determine whether a New Entity Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If so, then the account must be treated as a Reportable Account. In making this determination the financial institution must follow the guidance below but may do so in the order most appropriate under the circumstances.

Determining whether the Account Holder is a Passive NFE

A financial institution may obtain a self-certification from the Account Holder to establish its status, or instead may use:

- information in its possession (such as information collected pursuant to AML/KYC procedures); or
- information that is publicly available (such as information published by an authorized government body or standardized industry coding system) based upon which it can reasonably determine that the Account Holder is an Active NFE or a financial institution.

Note though that under DAC/CRS a professionally managed investment entity resident in a non-Participating Jurisdiction is always treated as a Passive NFE, notwithstanding that it would be treated as a financial institution if it were resident in a Participating Jurisdiction (this ensures that it is not possible for Controlling Persons to avoid reporting by setting up such entities in non-Participating Jurisdictions).

Determining Controlling Persons

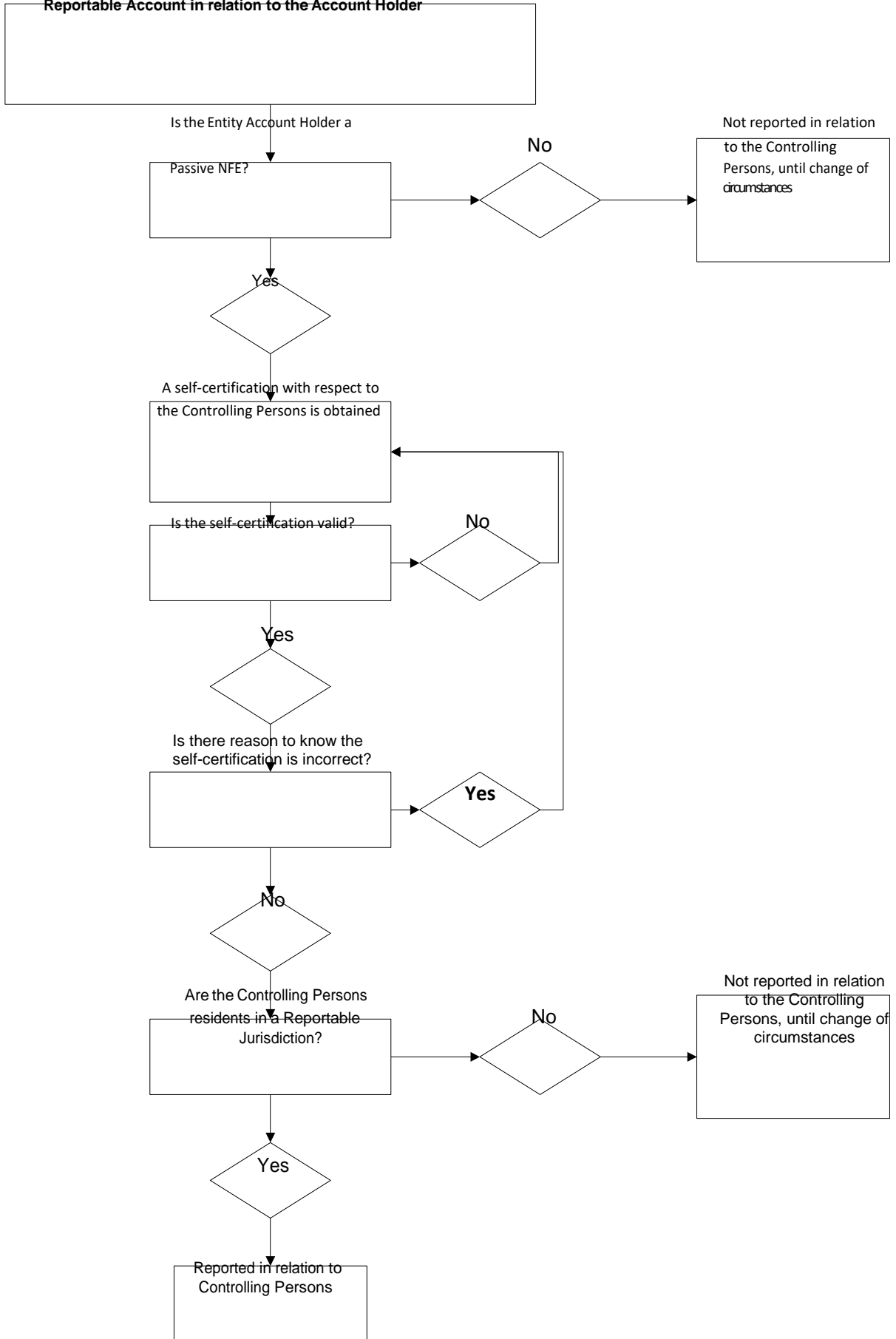
For the purposes of determining the Controlling Persons of an Account Holder, a financial institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

Determining whether a Controlling Person is a Reportable Person

For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a financial institution may **only** rely on a self-certification from either the entity Account Holder or the Controlling Person.

This can be summarized in the following diagram (© OECD).

Irrespective of whether the account has been found to be a Reportable Account in relation to the Account Holder



If there is a change in circumstances with respect to a New entity account 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 in accordance with the procedures in paragraph F 48- of Guidance notes-pages75-76

53. DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: RELIANCE ON SELF-CERTIFICATIONS AND DOCUMENTARY EVIDENCE

Where information already held by a financial institution, including knowledge about the customer held by a relationship manager, conflicts with any statements or self-certification, or the financial institution has reason to know that the self-certification or other Documentary Evidence is incorrect, it may not rely on that evidence or self-certification.

A Financial Institution will be considered to have reason to know that a self-certification or other documentation associated with an account is unreliable or incorrect if, based on the relevant facts, a reasonably prudent person would know this to be the case (see §F45).

54. DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: RELIANCE ON SELF-CERTIFICATIONS AND DOCUMENTARY EVIDENCE: LIMITS ON REASON TO KNOW

Pre-existing entity accounts

For the purposes of determining whether a financial institution that maintains a pre-existing entity account has reason to know that the status applied to the Entity is unreliable or incorrect, the financial institution is only required to review information that may contradict the status claimed if such information is contained in:

- the most recent self-certification and Documentary Evidence;
- the current customer master file;
- the most recent account opening contract; and
- the most recent documentation obtained for AML/KYC procedures or for other regulatory purposes.

Multiple accounts

A financial institution that maintains multiple accounts for a single Account Holder will have reason to know that a claimed status for the person is inaccurate based on account information for another account held by the person only to the extent that the accounts are either required to be aggregated or because of any other ‘reason to know’; for example, knowledge of a relationship manager.

Change of address within same jurisdiction

A change of address in the same jurisdiction as that of the previous address is not a reason to know that the self-certification or Documentary Evidence provided is inaccurate.

Conflicting indicia

A financial institution does not know or have reason to know that a self-certification or Documentary Evidence is unreliable or incorrect solely because it discovers any of the following indicia and such indicia conflicts with the self-certification or Documentary Evidence:

- one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution; or
- standing instructions (other than with respect to a Depository Account in the case of the

- DAC/CRS) to transfer funds to an account maintained in a reportable jurisdiction, or;
- currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction.

55. DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: RELIANCE ON SELF-CERTIFICATIONS AND DOCUMENTARY EVIDENCE: LIMITS ON REASON TO KNOW: EXAMPLES

The following examples illustrate the application of the limits on the standards of ‘reason to know’:

Example 1: Reporting financial institution bank ‘A’ maintains a Depository Account for individual Account Holder ‘P’

P holds a pre-existing Depository Account with A. A has relied on the address in its records for P, as supported by his passport and a utility bill collected upon opening of the account, to determine that P is resident for tax purposes in jurisdiction X (application of the residence address test).

Five years later, P provides a power of attorney to his sister, who lives in jurisdiction Y, to operate his account. The fact that P has provided such power of attorney is not sufficient by itself to give A reason to know that the Documentary Evidence relied upon to treat P as a resident of jurisdiction X is unreliable or incorrect.

Example 2: Reporting Financial Institution insurance company ‘B’ has entered into a Cash Value Insurance Contract with individual Account Holder ‘D’

The contract is a New Individual Account. B has obtained a self-certification from D and confirmed its reasonableness on the basis of the AML/KYC documentation collected from D. The self-certification confirms that D is resident for tax purposes in jurisdiction V.

Two years after B entered into the contract with D, D provides a telephone number in jurisdiction T to B. Although B did not previously have any telephone number in its records for D, the sole receipt of a telephone number in jurisdiction T does not in itself constitute a reason to know that the original self-certification is unreliable or incorrect.

56. DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: ALTERNATIVE PROCEDURES FOR CASH VALUE INSURANCE AND ANNUITY CONTRACTS

Individual beneficiary of a Cash Value Insurance Contract or an Annuity Contract

A financial institution can treat an individual beneficiary (other than the owner) who receives a death benefit under a Cash Value Insurance Contract or an Annuity Contract as a non-Reportable Person unless the financial institution has knowledge or reason to know that the beneficiary is in fact a Reportable Person. A financial institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected and associated with the beneficiary contains indicia as described in paragraph B of Section III of the CRS.

Group Cash Value Insurance Contracts or group Annuity Contracts

A Financial Institution can treat an account that is a group Cash Value Insurance Contract or a group Annuity Contract, and that meets the requirements set out below, as a non-Reportable Account until the date on which an amount is payable to an employee/certificate holder or beneficiary (for FATCA, this is subject to a requirement that the financial institution obtains a certification from the employer that no employee/certificate holder (Account Holder) is a US Person).

A financial institution is not required to review all the account information collected by the employer to determine if an Account Holder's status is unreliable or incorrect.

The requirements are that:

- the group Cash Value Insurance Contract or group Annuity Contract is issued to an employer and covers twenty-five or more employees/certificate holders; and
- the employee/certificate holders are entitled to receive any contract value; and to name beneficiaries for the benefit payable upon the employee's death; and
- the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed \$1,000,000.

57. DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: ACCOUNT BALANCE AGGREGATION AND CURRENCY RULES

Aggregation of individual accounts and entity accounts

Identical rules apply to aggregation for individual and entity accounts.

An account held by one or more individuals as a partner(s) of a partnership is treated as an entity account and is not treated as an individual account.

Financial institutions are required to aggregate all financial accounts maintained by it or by a related entity, but only to the extent that the financial institution's computerized systems link the financial accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated.

Each joint holder of a financial account must be attributed the entire balance or value of the account for purposes of applying the aggregation requirements.

Special aggregation rule applicable to relationship managers – all accounts

In determining the aggregate balance or value of financial accounts held by a person to determine whether a financial account is a High Value Account, a financial institution is also required to aggregate all accounts held by that person which a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by that person.

Paragraph 18 of the Commentary to Section VII of the Common Reporting Standard contains examples that may be helpful.

Amounts read to include equivalent in other currencies

Where accounts are denominated in a currency other than US dollars then the threshold limits must be converted into the currency in which the accounts are denominated before determining if they apply.

This should be done using a published spot rate for the 31 December of the year being reported or in the case of an insurance contract or Annuity Contract, the date of the most recent contract valuation.

In the case of closed accounts the spot rate to be used is the rate on the date the account was closed.

G. PASSIVE INCOME

Passive income would generally be considered to include the portion of gross income that consists of:

- a) Dividends;
- b) Interest;
- c) Income equivalent to interest
- d) Rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE.
- e) Annuities;
- f) The excess of gains over losses from the sale or exchange of financial assets that gives rise to the passive income described previously.
- g) The excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any financial assets;
- h) The excess of foreign currency gains over currency losses;
- i) The net income from swaps; or
- j) Amounts received under Cash Value Insurance Contracts.

Notwithstanding the foregoing passive income will not include, in the case of a NFE that regularly acts as a dealer in financial Assets, any income from any transaction entered into in the ordinary course of such dealer's business as such a dealer.

H. TRUSTS

1. FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION: TRUSTS

Trusts are treated as entities by all of the agreements for automatic exchange of information.

A trust can be either a financial institution or a NFE. Where a trust meets one of the definitions for being a financial institution it is most likely to be an investment entity and its financial accounts would usually be the equity and debt interests in the trust itself. It may, alternatively, meet the requirements for being a Custodial Institution.

For example, shares held in trust may be in a Custodial Account maintained by the trust and therefore subject to reporting by the trust as the Custodial Institution that maintains the account. This may be the case where a trust such as an Employee Benefit Trust continues to hold Financial Assets, such as shares, for an employee after they have been granted.

Where an Employee Benefit Trust holds shares for the future benefit of employees, but the shares are not allocated, then under most circumstances this right to a future allocation would not fall to be a Custodial Account. Similarly, when shares are allocated and the trustee is directed to transfer the assets as soon as reasonably possible to the beneficiary, a broker, a custodian, etc., then the trust will not be treated as maintaining a financial account for the duration of time it takes to complete the transfer.

2. FINANCIAL INSTITUTIONS: INVESTMENT ENTITY: TRUSTS

Trusts are treated as entities by all of the agreements for automatic exchange of information.

A trust can be either a financial institution or a NFE. Where a trust meets one of the definitions for being a financial institution it is most likely to be an investment entity but it may, alternatively, meet the requirements to be a Custodial Institution. A trust is unlikely to be regarded as an investment entity by virtue of investing as a business because trusts generally do not carry on businesses for or on behalf of customers unless they are collective investment schemes. A trust may be an investment entity however where its gross income is primarily derived from investing, reinvesting or trading in Financial Assets and it is managed by a financial institution.

The test of being managed by a financial institution will be met where the trust or its activities are being managed by a Financial Institution. A trust is managed by a Financial Institution where either one or more of the trustees is a financial institution or the trustees have appointed a discretionary fund manager who is a financial institution to manage the trust's assets.

If the trust is not managed by a Financial Institution in this way, and does not meet any of the other definitions of financial institution, it will be a non-financial entity. For example, where the trustees of a trust are individuals (and therefore not financial institutions) and the trust holds only a Depository Account or other investments with a financial institution, and that financial institution does not have discretion to manage the account or the assets in the account, then the trust will not be an investment entity.

3. FINANCIAL INSTITUTIONS: INVESTMENT ENTITY: TRUSTS: TRUST MANAGED BY A FINANCIAL INSTITUTION

A trust is typically regarded as being managed by a Financial Institution where either one or more of the trustees is a financial institution or the trustees have appointed a financial institution, such as a discretionary fund manager, to manage the trust's assets or to manage the trust.

Does a Financial Institution Manage the Trust?

A financial institution will manage the trust where it has been appointed by the trustees to carry out the day to day functions of the trust on behalf of the trustees. This goes beyond managing the investment of the trust's assets and includes other management functions that the trustees have to perform but which are contracted to the financial institution.

Does a Financial Institution Manage the Financial Assets of the Trust?

A financial institution manages the Financial Assets of the trust where it has discretion to manage the investments or investment strategy for the assets. This will usually be where the trust has appointed a discretionary fund manager to manage their portfolio or a part thereof. The appointment of a discretionary fund manager will be evidenced by an agreement between the parties that provides for discretionary management.

Where the trustees of a trust invest in retail investments the arrangement will not amount to discretionary management where the trustees make the decision on what investments to make, even though advice may be taken on investing and third party brokers used to buy, hold or sell the investments.

4. FINANCIAL INSTITUTIONS: NON-REPORTING FINANCIAL INSTITUTIONS: TRUSTEE-DOCUMENTED TRUST

A trustee-documented trust is a trust that is a financial institution where the trustee of the trust is itself a reporting financial institution and reports all the information required in respect of the Reportable Accounts of the trust. The trustee in such a case must report the information that the trustee-documented trust would have reported but for its status as a Non-reporting Financial Institution and must identify, when reporting, the trustee-documented trust in respect of which it fulfills the reporting and due diligence obligations.