# Automatic Exchange of Information

## Vanuatu Competent Authority - Exchange of Tax Information

## Guide for Reporting Financial Institutions

Version 3.0

Current as at 27/06/2024

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*Information about this Guide.*

This Guide is issued by the Vanuatu Competent Authority to assist compliance with the obligations imposed under the Tax Administration Act No. 37 of 2018 (TAA) and the Tax Administration Act Regulations Order No. 154 of 2019 (TAA Regulations), as amended that require automatic exchange of information.

*Using the Guide*

The Guide is not a Public Ruling.

This guide provides general advice and does not cover all possibilities. If you follow if these guidelines, and it the information is subsequently found to be inaccurate. we must still apply the law correctly but we will not charge you a penalty or make you pay late payment interest.

You should consult professional advice to ensure you understand how these rules apply in your individual circumstances. Please contact the Vanuatu Competent Authority on VCA@vanuatu.gov.vu if you think there is an error or omission in this Guide. Your assistance to improve our service is greatly appreciated.

### *Updates in this Version*

The Guide is the second published Guide issued by the Director of Customs and Inland Revenue in the capacity of Vanuatu Competent Authority is current as at 27 June 2024.

#### 4.11 Due diligence – settlors of trusts

Commentary was updated to require trustees to identify settlors in self-certifications.

The requirements to identify the settlor of a trust have been revised following advice from the Global Forum on Exchange of Information for Tax Purposes that allowing RFIs to rely on a self-certification by a trustee, on behalf of the settlors of the trust, based only on the information that is already known by the trustee, does not meet the required international standards relating to Automatic Exchange of Tax Information. Accordingly, the guidance has been updated to ensure that trustee self-certifications must identify the controllers of the trust and certify the tax residence of those persons.

RFIs should, as soon as possible (but before 30 June 2021), review self-certifications made by trustees on behalf of settlors to ensure all settlors are identified and their tax residency status provided in accordance with the Applied Common Reporting standard in line with the current guidelines.

### 6. Compliance

Chapter 6 has been updated to update record retention requirements and penalties to reflect amendments made by the Tax Administration Regulation (Amendment) Order No. 156 of 2020

Minor typographical and grammatic errors have been corrected.

Previous version(s) of this document may be found here.

The Guide may be updated from time to time.

Contents

***Updates in this Version*** ..... ii
THE COMMON REPORTING STANDARD (CRS) FOR AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION IN TAX MATTERS ..... 1
1 OVERVIEW ..... 1
1.1 General Introduction ..... 1
1.2 Core Documents and Links ..... 2
1.3 The Vanuatu Competent Authority (VCA) ..... 2
1.4 Domestic Law ..... 2
1.5 Wider Approach to Reporting ..... 2
1.6 Notification and Reporting to the Tax Information Authority ..... 3
1.7 Key Timelines ..... 3
1.7.1 Nil Returns to be filed ..... 3
1.8 Purpose of these Guide Notes ..... 4
1.9 Confidentiality ..... 4
1.10 Applied CRS options ..... 4
1.11 Structure of this guide ..... 4
2 FINANCIAL INSTITUTIONS ..... 6
2.1 Financial Institutions – General Features ..... 6
2.1.1 Members of groups of entities ..... 6
2.2 Vanuatu financial institutions ..... 6
2.2.1 Notification of Reporting Requirement ..... 8
2.3 Custodial institution ..... 8
2.4 Depository institution ..... 9
2.5 Investment entity ..... 9
2.6 Specified insurance company ..... 10
2.7 Financial institutions – trusts ..... 10
2.7.1 Reporting exception for certain types of trusts ..... 11
2.8 Financial institutions – ‘managed by’ another financial institution ..... 11
2.9 Non-Reporting Financial Institutions ..... 11
2.10 Financial institutions – holding companies and other entities ..... 12
2.11 Financial institutions – providers of asset-based finance services ..... 12
2.12 Financial institutions – investment advisers and investment managers ..... 12
2.13 Financial institutions – deceased estates and testamentary trusts ..... 13
2.14 Financial institutions – Qualified Credit Card Issuers ..... 13
2.15 Financial institutions – not-for-profits ..... 14
3 FINANCIAL ACCOUNTS ..... 15

3.1 Depository Accounts ..... 15
3.2 Depository accounts – overpayment of credit or loan facilities ..... 16
3.3 Depository accounts – payment cards or pre-loaded cards ..... 16
3.4 Custodial Accounts ..... 16
3.5 Equity or debt interests in investment entities ..... 17
3.6 Equity or debt interests regularly traded on an established securities market under the Applied CRS ..... 17
3.7 Cash value insurance contracts ..... 18
3.8 Annuity contracts ..... 18
3.9 Excluded accounts ..... 18
3.9.1 Retirement and pension accounts ..... 19
3.9.2 Escrow accounts ..... 19
3.9.3 Term life insurance contracts and pure risk insurance products ..... 19
3.9.4 Deceased estates ..... 20
3.10 Dormant accounts ..... 21
3.11 Collateral and derivative arrangements – custodial accounts ..... 21
3.12 Not-for-profits – Financial Accounts ..... 22
4 DUE DILIGENCE ..... 23
4.1 AML/KYC procedures ..... 23
4.1.1 Self-Certification Forms ..... 23
4.2 Alternative procedures and elections ..... 24
4.3 New account treated as a pre-existing account – the Applied CRS ..... 24
4.3.1 Treatment of the accounts as a single account ..... 24
4.3.2 New, additional or amended customer information ..... 25
4.3.3 Joint account holders opening a new account ..... 27
4.4 Identifying the account holder of a financial account ..... 27
4.4.1 Accounts held by trusts, estates, partnerships and other legal arrangements treated as entity accounts ..... 27
4.4.2 Joint accounts ..... 28
4.4.3 Children's accounts ..... 28
4.5 Due diligence – pre-existing individual accounts, lower value accounts ..... 28
4.5.1 Residence address test ..... 28
4.5.2 Electronic records search ..... 29
4.5.3 Effect of finding indicia ..... 30
4.6 Due diligence – pre-existing individual accounts, high value accounts ..... 31
4.6.1 Electronic record search ..... 31
4.6.2 Paper record search ..... 31

4.6.3 Relationship manager ..... 31
4.6.4 Effect of finding indicia ..... 32
4.6.5 Curing procedures for high value accounts ..... 32
4.7 Due diligence – self-certification for new individual accounts ..... 32
4.8 Due diligence – pre-existing entity account thresholds ..... 34
4.9 Due diligence – pre-existing entity accounts ..... 34
4.9.1 Account holder as a reportable person ..... 35
4.9.2 Account holder as a financial institution ..... 35
4.9.3 Passive NFE controlling persons ..... 35
4.10 Due diligence – New entity accounts ..... 36
4.10.1 Account holder as a reportable person ..... 36
4.10.2 Passive NFE controlling persons ..... 37
4.11 Due diligence – settlors of trusts ..... 38
4.11.1 Pre-existing Entity Account ..... 38
4.11.2 New entity account ..... 39
4.12 Beneficiaries of trusts – controlling persons ..... 39
4.13 Beneficiaries of a trust that is an RFI – equity interests ..... 40
4.14 Validity and reasonableness of a self-certification ..... 41
4.15 Validity of Documentary Evidence ..... 42
4.16 Finalising due diligence before reporting ..... 43
4.17 Change in circumstances ..... 44
4.17.1 Re-determining the status of an Entity account ..... 45
4.18 Account balance aggregation rule ..... 46
4.18.1 Special aggregation rule applicable to relationship managers ..... 46
4.18.2 CRS Participating and Reporting Jurisdictions ..... 46
4.18.3 Participating Jurisdictions List ..... 46
4.18.4 Reportable Jurisdictions ..... 46
5 REPORTING ..... 47
5.1 Reportable accounts ..... 47
5.2 Nil Reports ..... 47
5.3 Reportable persons ..... 47
5.4 Reportable information for reportable accounts ..... 47
5.4.1 Information for every report ..... 48
5.4.2 Information for every reportable account ..... 48
5.4.3 Information dependent on the type of account ..... 48
5.4.4 Information for each reportable person ..... 48
5.4.5 Information to be reported for each Reportable Person ..... 48

5.5 Account balance or value ..... 48
5.6 Taxpayer Identification Numbers (TINs) and date of birth ..... 49
5.6.1 Validity and reasonableness of TINs ..... 50
5.7 Closed accounts ..... 50
5.8 Undocumented accounts – Applied CRS ..... 50
5.8.1 Identification as reportable ..... 51
5.9 Transitional period for pre-existing individual accounts – Applied CRS ..... 51
5.10 Transitional period for pre-existing entity accounts – Applied CRS ..... 52
5.11 Currency reporting and related issues ..... 52
5.11.1 Reporting ..... 52
5.11.2 Thresholds ..... 52
5.12 How to report for Applied CRS ..... 52
6 COMPLIANCE ..... 53
6.1 Failure to obtain a self-certification – Applied CRS ..... 54
6.2 Collaboration on compliance and enforcement ..... 55
6.2.1 Offences and Penalties ..... 55
6.2.2 Anti-Avoidance ..... 55
6.2.3 Undocumented accounts – Applied CRS ..... 56
7 FREQUENTLY ASKED QUESTIONS ..... 57
8 REFERENCES AND LINKS ..... 58
9 OUR COMMITMENT TO YOU ..... 59
10 APPLIED CRS – MODIFIECATIONS ..... 60
11 END NOTES ..... 65

**Common terms used in this document**

| | |
|---|---|
| TAA Regulations | Tax Administration Act Regulation Order No. 154 of 2019 (as amended). |
| Applied CRS | The Common Reporting Standard with modifications made by Vanuatu |
| CRS | Common Reporting Standard, including the Commentary |
| Director | Director of Customs and Inland Revenue (Also performs functions of VCA) |
| ITC Act | International Tax Cooperation Act No.7 of 2016 *(repealed 1 January 2020)* |
| RFI | Reporting Financial Institution |
| TAA | Tax Administration Act No.37 of 2018 |
| VCA | Vanuatu Competent Authority |
| VFI | Vanuatu Financial Institution |

# THE COMMON REPORTING STANDARD (CRS) FOR AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION IN TAX MATTERS

## 1 OVERVIEW

### 1.1 General Introduction

The Common Reporting Standard (CRS), developed in response to the G20 request and approved by the OECD Council on 15 July 2014. It calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It is the global standard for the automatic exchange of financial account information for tax purposes. The CRS builds on the intergovernmental approach adopted by many jurisdictions for the implementation of the United States Foreign Account Tax Compliance Act (FATCA) and is designed to maximise efficiency and minimise costs.

The CRS sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

Vanuatu has adopted the Common Reporting Standard[i] and made changes as allowed by the Standard. References to the Vanuatu Standard is the Applied CRS.

From 1 January 2020, the TAA and TAA Regulations are the relevant legislation governing the exchange of tax information. The TAA replaces the International Tax Cooperation Act No.7 of 2016 (ITC Act) with effect from 1 January 2020. In addition, from 1 January 2020, the Director of Customs and Inland Revenue, has been appointed by the Minister of Finance and Economic Management to perform the functions of the Vanuatu Competent Authority.

Automatic Exchange of information will be undertaken in accordance with the TAA, TAA Regulations (through the Applied CRS in Schedule 2 of the TAA Regulations). The requirements are consistent with the Convention on Mutual Administrative Assistance in Tax Matters (the Convention). The Applied CRS must be interpreted in accordance with the Commentaries on the Convention and the CRS[ii].

Vanuatu is not, at this time, participating in automatic exchange under FATCA. That scheme applies to U.S citizens. Currently, Financial Institutions will generally report relevant income to the U.S Internal Revenue Service under voluntary arrangements. Vanuatu may exchange under require alternative exchange arrangements in the future.

This guide explains AEOI obligations from 30 June 2017, the date on which the Applied CRS commenced in in Vanuatu. This guide note is not legally binding.

For the purposes of the TAA Regulations, the Commentary to the Common Reporting Standard, which is any explanatory material made and published by the Organization for Economic Co-Operation and Development for the purpose of assisting with the interpretation of the Common Reporting Standard, is an integral part of the Common Reporting Standard and accordingly applies for the purposes of the automatic exchange of financial account information and application of the Applied CRS.

This guide material may be updated from time to time.

## 1.2 Core Documents and Links

The Applied CRS consists of the following core elements that are relevant for Financial Institutions:

- The Applied CRS that contains the due diligence and reporting rules for Financial Institutions (this is the OECD Common Reporting Standard with Vanuatu modifications). This is contained in the Part 2 of Schedule 2 of the TAA Regulations.
- The Commentary on the CRS, which is an integral part of the CRS and is intended to illustrate or interpret its provisions. It applies to interpretation of the Applied CRS.
- The OECD has developed a comprehensive OECD Automatic Exchange Portal that is the principal source for CRS materials and resources. In particular, Financial Institutions should consult the following resources which have been issued by the OECD as aids to applying the CRS:
    - CRS Implementation Handbook
    - CRS-related FAQs
    - The CRS XML Schema User Guide.

Vanuatu will exchange tax information in accordance with the Convention on Mutual Assistance on Tax Matters (the Convention) and the Multilateral Competent Authority Agreement (MCAA) made under that Convention.

The MCAA contains the rules on the methods and procedures of the exchange between the Vanuatu Competent Authority and partner jurisdiction Competent Authorities. It also contains representations on confidentiality, safeguards and the existence of the necessary infrastructure for an effective exchange relationship.

## 1.3 The Vanuatu Competent Authority (VCA)

With effect from 1 January 2020, the Minister of Finance and Economic Management, has appointed the Director of Customs and Inland Revenue to perform the functions of the Vanuatu Competent Authority. The Competent Authority functions are undertaken by the Competent Authority personally as well as staff (who are delegated authority to perform Competent Authority functions.

## 1.4 Domestic Law

From 1 January 2020, CRS is implemented in Vanuatu through the TAA and TAA Regulations made under the TAA. The TAA Regulations provide for automatic exchange of tax information and sets out how the Common Reporting Standard will be applied in Vanuatu. The CRS as applied in Vanuatu is set out in Part 2 of Schedule 2 to the EOI Regulations and is referred to as the Applied Common Reporting Standard or Applied CRS.

## 1.5 Wider Approach to Reporting

Vanuatu has adopted the “wider approach” and options under the CRS – This required Financial Institutions to report on any person that is a tax resident of any jurisdiction other than Vanuatu or the USA.

The due diligence procedures in the Applied CRS are designed to identify accounts which are held by residents of jurisdictions with which the implementing jurisdiction exchanges information under the Applied Standard. However, there is an expectation that the number of these jurisdictions will increase over time. As a result, Vanuatu’s implementation of the Applied CRS is designed to adopt a wider approach to recording the jurisdictions in which a person is a tax resident. In general, the fewer times a financial institution needs to complete the processes required under the Applied CRS, the less costly it is overall for the financial institution to comply. The wider approach will enhance the efficiency and effectiveness of the Applied CRS.

For in-scope accounts opened after the commencement of the Applied CRS, the financial institution will generally be required to ask the person opening the account to certify their residence for tax purposes. If the person has tax residency in another jurisdiction (with the exception of the United

States), irrespective of whether that jurisdiction has adopted the CRS, then the details of the account need to be reported to the Vanuatu Competent Authority.

The Vanuatu Competent Authority (VCA) will then, in turn, exchange that information with other jurisdictions, but only if they have adopted the CRS and an agreement for exchange is in effect, under either the MCAA or if relevant an alternative bilateral treaty and agreement.

Similarly, for in-scope accounts existing at the date of commencement of the Applied CRS, the general requirement is for financial institutions to use the information they have on file to establish whether information about the account holder needs to be reported, unless cured by the account holder. Again, if the person is resident in another jurisdiction (with the exception of the United States), then the details of the account need to be reported to the Vanuatu Competent Authority irrespective of whether that jurisdiction has adopted the CRS. The Competent Authority will then exchange that information with other jurisdictions if they have adopted the CRS and an agreement for exchange is in effect, under either the MCAA or, if relevant an alternative bilateral treaty and agreement.

Subject to further review, residents of the United States will not be reported on under the applied CRS until further notice. This will give time for the appropriateness of FATCA exchange to be evaluated, without imposing excessive costs on Financial Institutions by requiring the Applied CRS to apply now, only to have it change to FATCA reporting (which is slightly different) next year.

## 1.6 Notification and Reporting to the Tax Information Authority

Notifications and reporting for the Applied CRS will be conducted through the Vanuatu Competent Authority Exchange of Information Web Portal. This web portal is managed by the Director of Customs and Inland Revenue.

To access the portal: https://mdes.doft.gov.vu/MDES/

## 1.7 Key Timelines

The first reporting due date for the Applied CRS in the Vanuatu is 31 May 2018 or such further time as allowed and consequently by 31 May of the year following each reporting period. Reporting is an annual event.

The following are the effective dates for the implementation of the Applied CRS in the Vanuatu:

- A Reporting Financial Institution that has a reporting obligation must give notice to the Vanuatu Competent Authority on or before 30 March in the first year it becomes subject to the reporting obligations.
- Financial Institutions file Reports on or before 31 May of each year or such further time as authorised by the VCA.
- The VCA will send information to the Reportable jurisdictions by 30 September of each year.

The VCA must send a report to all jurisdictions

### 1.7.1 Nil Returns to be filed

A Financial Institution that applies the due diligence procedures set out in the Applied CRS for a reporting period and finds no reportable accounts is required to file an information report with the Vanuatu Competent Authority informing that no accounts are identified – effectively a NIL return must be lodged annually where necessary.[iii]

## 1.8 Purpose of these Guide Notes

As the CRS is a global standard, the OECD has developed extensive and comprehensive materials for the consistent application and interpretation of the Standard by all jurisdictions. These guide notes provide guide on aspects of the CRS that are particular to Vanuatu. The guide notes are not intended to replace the information in the OECD documents referred to above, which form the core of the Standard and its interpretation.

A Financial Institution must apply the Vanuatu TAA Regulations in force at the time, with reference to any OECD explanatory materials for the Common Reporting Standard. Guide Notes issued by the Vanuatu Competent Authority can also provide valuable information on the application of the Applied CRS.

Financial Institutions are encouraged to seek professional advice if they are unsure of their obligations under the Applied CRS framework.

## 1.9 Confidentiality

The VCA will not exchange information under the Applied CRS unless satisfied that a Reportable partner jurisdiction has in place adequate measures to ensure the required confidentiality and data security. These confidentiality obligations are evaluated by the Global Forum on Transparency and Exchange of Information for Tax Purposes through its implementation monitoring program.

Information received from Reporting Financial Institutions is kept confidential and can only be used for purposes authorised by the Convention and the TAA. Heavy penalties apply for inappropriate use or disclosure of confidential information.

## 1.10 Applied CRS options

The CRS provides jurisdictions with a number of implementation options. Vanuatu has implemented these options into the Applied CRS (which is set out in Schedule 1 of the TAA Regulations). The options and their impact are explained in **Chapter 11**.

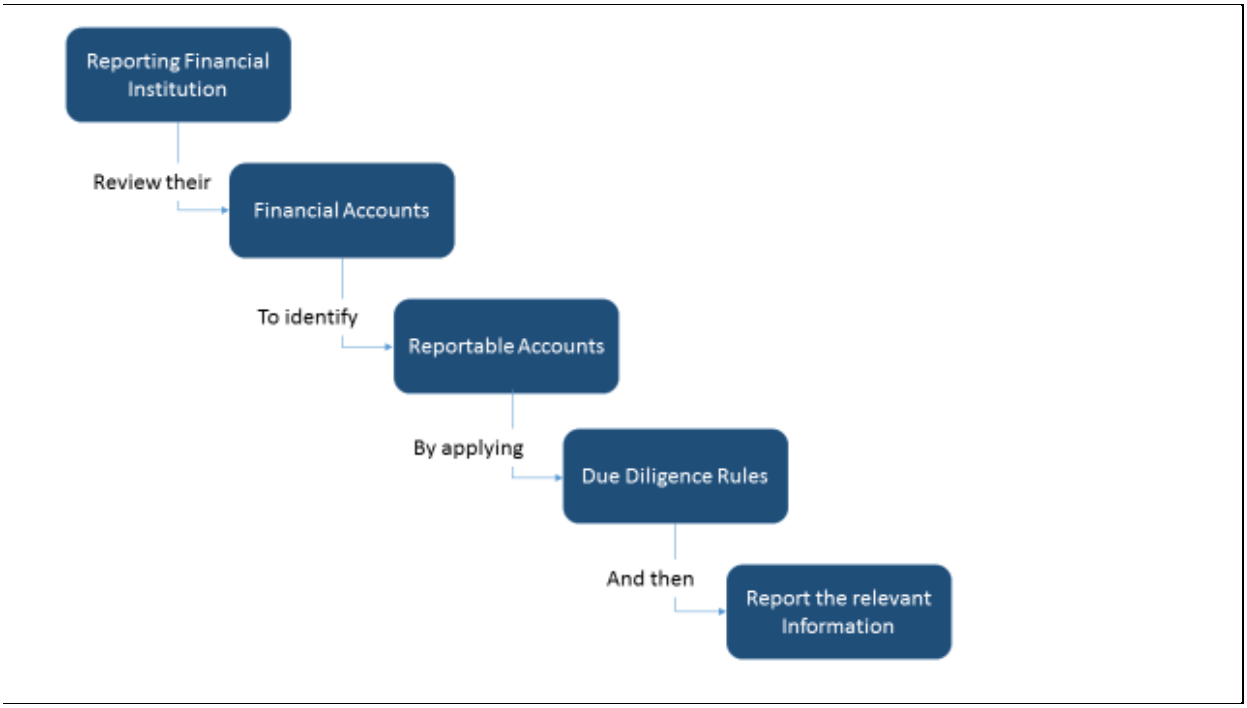
## 1.11 Structure of this guide

This guide is structured around the logical steps that an entity (typically a Financial Institution) would go through in determining whether and, if so, how it is required to implement the Applied CRS (that is, its due diligence rules). These steps are outlined in Part II of the OECD's CRS Implementation Handbook, available on its website.

Broadly, the steps are as follows:

- entities that are Reporting Financial Institutions
- review their Financial Accounts
- to identify Reportable Accounts
- by applying due diligence rules
- then report the relevant information.

**Overview of the Key Steps to implement the Applied CRS**



# 2 FINANCIAL INSTITUTIONS

## 2.1 Financial Institutions – General Features

A core requirement of the legislation implementing the Applied CRS is that Vanuatu Financial Institutions collect and report the specified information to the VCA. The VCA can then exchange the information with its relevant automatic exchange partners and fulfil Vanuatu's international obligations.

A Vanuatu entity must be a Financial Institution under the TAA Regulations to have reporting obligations. An entity is a Financial Institution if it is:

- a Custodial Institution
- a Depository Institution
- an Investment Entity
- a Specified Insurance Company.

Each of the above types of Financial Institutions has within their respective definitions reference to the term 'entity'. For AEOI purposes an entity is a legal person or a legal arrangement. An entity covers any legal arrangement, whether or not a separate legal entity is created. It therefore covers companies, associations, joint ventures, partnerships, limited partnerships, foundations, and trusts (including unit trusts and discretionary trusts).

An entity can be more than one type of Financial Institution. Where this is the case, the entity should comply with the AEOI obligations that specifically apply to each type of Financial Institution it is (for example. if it is both a Custodial Institution and an Investment Entity, it must review and report both the Custodial Accounts it maintains and the equity or debt interests it issues to investors as an Investment Entity).

Where an entity does not meet the definition of Financial Institution in any of the categories then it will be classified as an Active NFE (non-financial entity) or Passive NFE as appropriate.

### 2.1.1 Members of groups of entities

The Applied CRS regime applies to each member of a group of entities and the activities of each branch of such a member, that fall within the regimes' relevant definitions. How each member or branch is characterised under such definitions will determine whether or not the entity or branch has any obligations under the Applied CRS. For example, there may be entities or branches (within a group comprised of one or more Financial Institutions) that qualify as Active NFE or Non-Reporting Financial Institutions, with the consequence that such entities do not have due diligence and reporting obligations. Entities within a group that are Reporting Financial Institutions will have obligations.

## 2.2 Vanuatu financial institutions

The TAA Regulations place reporting obligations on Vanuatu financial institutions (VFI). A VFI is any financial institution resident in Vanuatu, excluding the operations of any branch of the financial institution located outside of Vanuatu. Any branch of a non-resident financial institution is also a VFI where the branch is located in Vanuatu.

In many cases a financial institution's residency or location in Vanuatu is clear. In situations where residency in an ordinary sense is not obvious, the VCA will apply residency test set out in section 2 of the Value Added Tax Act as the way to determine the entity's status.

Section 2 of the Value Added Tax Act treats a person or entity as a resident of Vanuatu if:

(a) In the case of a natural person, that person if the person has spent not less than 12 months in Vanuatu in the preceding 24-month period;

(b) In the case of a company or an unincorporated body of persons, that company or body if it has its centre of administrative management in Vanuatu;
(c) In the case of a person that carries on, in Vanuatu, any taxable activity or any other activity while having any fixed or permanent place of residence or business in Vanuatu relating to that taxable activity or other activity.

If a Financial Institution is a resident of Vanuatu and a resident of another country under the tax law of that country, and is treated as a resident solely of the other country under a tax treaty between Vanuatu and that other country, it will still be a resident of Vanuatu for AEOI reporting purposes. The jurisdiction for reporting a particular account is based on where the account is maintained in any ordinary sense.

A trust that is a Financial Institution would be a Vanuatu Financial Institution if either:

- one or more trustees of the trust is a tax resident of Vanuatu
- the trust is otherwise a tax resident of Vanuatu.

For a trust other than a unit trust, the trust is a tax resident of Vanuatu in any given year if either:

- any trustee of the trust was a tax resident in Vanuatu at any time during the year
- the central management and control of the trust was in Vanuatu at any time during the year.

For unit trusts, the trust is treated as a tax resident unit trust for a year if at any time during the year:

- either any property of the trust is situated in Vanuatu, or the trustee carries on business in Vanuatu; and
- either the central management and control of the trust is in Vanuatu or Vanuatu residents hold more than 50% of the beneficial interests in the income or property of the trust.

If a Vanuatu resident trust that is a financial institution reports all the required information on reportable accounts it maintains to another participating jurisdiction where it is resident for tax purposes, it will not be subject to the jurisdiction of Vanuatu for Applied CRS purposes.

Where a financial institution (other than a trust) does not have a residence for tax purposes (for example, because it is located in a jurisdiction that does not have an income tax or treats the entity as fiscally transparent), it is an VFI if its place of management (including effective management) is in Vanuatu or it is subject to financial supervision in Vanuatu. A financial institution is subject to supervision in Vanuatu if it, or its activities, are licensed or regulated under the laws of Vanuatu.

Where a financial institution (other than a trust) is resident in Vanuatu and is also resident in one or more other CRS Participating Jurisdictions, the financial institution is subject to the CRS due diligence and reporting obligations that apply to Vanuatu for the Financial Accounts it maintains in Vanuatu.

The jurisdiction where an account is maintained is a question of fact which considers such matters as where the RFI maintains records of the account and whether the account is subject to regulation by the jurisdiction. The jurisdiction of the RFI that is named as the contracting party and is obliged under the terms and conditions of the account to make payments or credit interest to the account could also be relevant.

A branch of a non-resident financial institution located in Vanuatu is treated as a resident of Vanuatu for the purposes of the Applied CRS.

### 2.2.1 Notification of Reporting Requirement[1]

A reporting Financial Institution that has an obligation to report under the Applied CRS must notify the VCA that they have a reporting obligation no later than 30 March in the first year the Financial Institution has a reporting obligation.

In addition, the Reporting Financial Institution must notify the Competent Authority of any change in information provided in the Notification within 14 days of the change.

Notification provided to the Competent Authority must include:

- The name of the Reporting Financial Entity; and
- The categorisation of the Reporting Financial Institution as determined by the Applied Common Reporting Standards (i.e., Custodial Institution, Depository Institution, Investment Entity, or Specified Insurance Company); and
- Details of the person authorised to be the principle point of contact for the purposes of Automatic Exchange:
  - Full Name
  - Address
  - Designation and Contact details

The Notification must be made in electronic form.

The Notification may be made using the Notification Form or by email from the Reportable Financial Institution.

Notifications are to be sent to the Vanuatu Competent Authority at VCA@vanuatu.gov.vu.

## 2.3 Custodial institution

A Custodial Institution is an entity that holds, as a substantial portion of its business, Financial Assets for the account of others. For AEOI purposes, a substantial portion means that at least 20% of the entity's gross income is attributable to holding Financial Assets (see 3.4) and providing related financial services in the shorter of either:

- its last three accounting periods
- the period it has existed.

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 with respect to Financial Assets held in custody
- income earned from extending credit to customers with respect to Financial Assets held in custody (or acquired through such extension of credit)
- income earned on the bid-ask spread of Financial Assets held in custody
- fees for providing financial advice with respect to Financial Assets held in (or potentially to be held in) custody by the entity
- fees for clearance and settlement services.

[1] Regulation 5 of the Automatic Exchange of Information Regulations Order No. 76 of 2017.

## 2.4 Depository institution

A Depository Institution is an institution that accepts deposits in the ordinary course of a banking or similar business. An entity is considered to be carrying on a 'banking or similar business' if it is, or is required to be, authorised by the Reserve Bank of Vanuatu to carry on its activities.

For Applied CRS purposes the meaning of a 'banking or similar business' is required to be applied consistent with the CRS Commentary, which provides a more expansive definition. Therefore, an entity may be a Depository Institution for Applied CRS purposes even if it is not, or is not required to be, authorised by the Reserve Bank of Vanuatu. In particular, an entity is a Depository Institution if in the ordinary course of its business with customers it accepts deposits or other similar investments of funds and in addition to that activity also regularly engages in one or more of the following activities:

- makes personal, mortgage, industrial or other loans or provides other extensions of credit purchases, sells, discounts or negotiates accounts receivable, instalment obligations, notes, drafts, cheques, bills of exchange, acceptances or other evidences of indebtedness
- issues letters of credit and negotiates drafts drawn under them
- provides trust or fiduciary services
- finances foreign exchange transactions, or
- enters into, purchases or disposes of finance leases or leased assets.

## 2.5 Investment entity

Broadly, an entity is an Investment Entity if it:

- primarily conducts as a business specified activities for or on behalf of customers ('type A'); or
- primarily derives its gross income from investing or trading in Financial Assets and is managed by a Financial Institution ('type B').

An entity is a **type A** 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 (such as cheques, bills, certificates of deposit, derivatives)
    - 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 is regarded as primarily conducting these activities as a business if its gross income from these activities is at least 50% of its total gross income during the shorter period of either:

- the three-years ending on 31 December in the year before its status as an Investment Entity is to be determined
- the time the entity has existed.

An entity is a **type B** Investment Entity if it is:

- investing on its own account, as a collective investment vehicle on behalf of participants or as a trust on behalf of beneficiaries, and
- managed by a Depository Institution, a Custodial Institution, a Specified Insurance Company or a type A Investment Entity mentioned above, and it meets the Financial Assets test 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 investing or trading activities described above on behalf of the entity. The activities may be performed as part of managing the entity as a whole, or by appointment to manage all or a portion of the Financial Assets of the entity.

An entity is not regarded as being managed by a Financial Institution if that Financial Institution does not have discretionary authority to manage the entity's assets.

The entity:

- may be managed by a mix of other entities and individuals – if one of the entities involved in managing the entity is a Financial Institution within the meaning of the AEOI regimes then the entity meets the requirements for being managed by a Financial Institution
- meets the Financial Assets test if its gross income is primarily attributable to investing, reinvesting or trading in Financial Assets – at least 50% of its income is attributable to investing, reinvesting or trading in Financial Assets in the shorter period of either the:
    - three-years ending on 31 December in the year before that when its status as an investment entity is to be determined; or
    - time the entity has existed.

## 2.6 Specified insurance company

A Specified Insurance Company is an entity that is an insurance company or the holding company of an insurance company that issues, or is obligated to make payments on a Cash Value Insurance Contract or an Annuity Contract.

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 broker 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.

## 2.7 Financial institutions – trusts

The definition of "entity" in subsection 2(1) of the TAA makes it clear that a trust is an entity for the purposes of the TAA. Accordingly, a trust is treated as an entity for AEOI purposes. For a trust to be a Financial Institution it must fall under at least one of the following categories:

- a Custodial Institution;
- a Depository Institution;
- an Investment Entity; or
- a Specified Insurance Company.

The category most likely to apply to trusts is 'Investment Entity'.

Determining whether a trust is an Investment Entity may require you to consider the status of any entity 'managing' the trust. The trustee is an entity or individual that must carry out various obligations under the trust, including managing the trust in accordance with the terms of the trust and laws relating to trustees' duties. A trustee that is an entity could carry on activities such that the trustee is an Investment Entity itself; for example, a corporate trustee in the business of trading, administering or managing financial assets on behalf of other persons.

A trustee may appoint or engage a professional manager to manage the trust. Refer to section 2.8 of this guide for further explanation of when an entity is 'managed by' another entity.

A trust that is not a Financial Institution is a Non-Financial Entity (NFE) for Applied CRS purposes.

### 2.7.1 Reporting exception for certain types of trusts

Even if a trust is a Financial Institution, it will not necessarily be required to report.

A trust will be a Non-Reporting Financial Institution if the A trust that is a 'trustee-documented trust' is a Non-Reporting Financial Institution and will not itself be required to report to the VCA directly. A trust is a trustee-documented trust to the extent that the trustee is a Reporting Financial Institution and the trustee reports all information that is required to be reported for all Reportable Accounts of the trust.

## 2.8 Financial institutions – 'managed by' another financial institution

An entity may gain the status of Investment Entity if it is managed by a Financial Institution; see section 2.5 of this guide. There is a distinction between managing an entity and merely administering or providing services to an entity. Managing an entity involves one entity having a significant degree of discretionary decision-making and responsibility for the other entity's business.

Investing in an unrelated exchange traded fund, unit trust or similar vehicle will not be considered being 'managed by' the exchange traded fund, unit trust or similar vehicle.

A trustee of a trust may appoint or engage an entity to professionally manage the activities or operations of the trust. If that other entity's management of the trust's activities or operations is in conducting a business as described in the relevant definition of 'Investment Entity', the trust is an Investment Entity.

Typically, a professional trustee or a discretionary fund manager is treated as managing a trust in the context of determining if the trust is an Investment Entity.

The status of a trust under the definition of Investment Entity and the status of an entity managing the trust under paragraph D of section IV of Annex II are separate considerations.

***Example 3 – trustee and responsible entity as manager***

R1 Co is the trustee and responsible entity (RE) of a managed investment scheme (H Trust) which manages and invests in a range of financial assets for H Trust. R1 Co is carrying on these activities as a business. As H Trust is managed by R1 Co, the latter entity's activities relating to the trust causes H Trust to be an Investment Entity. R1 Co itself is also an Investment Entity.

***Example 4 – non-trustee Investment Entity managing the trust***

Following from example 1, H Trust's portfolio of investments includes holding all of the units in another trust, B Trust, which has investments in a range of financial assets. R1 Co is not the trustee of B Trust, but is appointed by the trustee of B Trust to provide investment advice, manage B Trust's portfolio of investments and administer distributions of income and reports.

R1 Co does not hold legal title to the assets of B Trust. R1 Co is carrying on these activities as a business. R1 Co's activities relating to B Trust cause B Trust to be an Investment Entity. Those activities would also cause R1 Co to be an Investment Entity if it had not already gained that status from the activities in example 1.

## 2.9 Non-Reporting Financial Institutions

The Applied CRS regime excludes certain Financial Institutions from being RFIs. A number of categories of entities are generally Non-reporting Financial Institutions for the Applied CRS (or would be if they were a Financial Institution). The categories in common are:

- governmental entities;
- international organisations;
- the Reserve Bank and its wholly owned subsidiaries;
- specified Vanuatu retirement funds (including self-managed superannuation funds if any);

- a qualified credit card issuer; and
- trustee-documented trusts.

The exclusion provided through the first three categories does not extend to payments derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.

The Applied CRS contemplates the addition of further entities as Non-reporting Financial Institutions by an implementing jurisdiction. The TAA authorises the Minister to prescribe by legislative instrument further entities which present a low risk of being used to evade tax and have substantially similar characteristics to governmental entities, international organisations, central banks or certain retirement funds defined by the Applied CRS as Non-Reporting Financial Institutions, provided this does not frustrate the purposes of the Applied CRS.

No excluded entities have been prescribed by the Minister to date.

## 2.10 Financial institutions – holding companies and other entities

Under the Applied CRS, a holding company or other entities will have the status of a Financial Institution if it meets the standard definition of Financial Institution. Whether a holding company or other entity has the status of Financial Institution depends on the facts and circumstances. In particular, it depends on whether it engages in the specified activities or operations of a Financial Institution, even if those activities or operations are solely on behalf of Related Entities or its shareholders. For example, an Entity that enters into foreign exchange hedges on behalf of the Entity's Related Entity financial group to eliminate foreign exchange risk will meet the definition of Financial Institution, provided that the other requirements of Investment Entity definition are met.

A holding company will also meet the definition of Financial Institution (specifically, an Investment Entity if it acts as an investment fund, private equity fund, venture capital fund, or similar investment vehicles where investors participate (either through debt or equity) in investment schemes through the holding company.

## 2.11 Financial institutions – providers of asset-based finance services

An entity will not be considered a Depository Institution if the entity does not accept deposits in the ordinary course of a banking or similar business (refer to section 2.4 of this guide).

Therefore, an entity will not be a Depository Institution if its business is solely to provide asset-based finance services, such as:

- equipment finance or other asset leasing services;
- real property leasing services;
- accepting deposits solely as collateral or security for a sale or lease of property; and
- providing loans secured by property, such as mortgage providers, car finance companies or similar financing arrangements.

If such an entity does not meet the definition of a Financial Institution, it may be an Active NFE. For example, an entity is an Active NFE if less than 50% of its gross income in a relevant period is passive income, and less than 50% of the assets held during that period were for the production of passive income.

## 2.12 Financial institutions – investment advisers and investment managers

Under the Applied CRS, if an entity is an Investment Entity solely because it is an investment adviser or investment manager, equity or debt interests in that entity are not Financial Accounts.

It is a condition of the exclusion mentioned above that the customer's financial assets or funds are deposited in the name of the customer with another Financial Institution.

To qualify for the exclusion the Applied CRS requires that the other Financial Institution (in which funds are deposited in the customer's name) cannot be another investment adviser or investment manager.

Due diligence and reporting obligations fall to other entities within the investment relationship such as an investment fund that issues Financial Accounts (for example, debt or equity interests) to investors, or entities acting as Custodial Institutions.

In Vanuatu, financial planners or advisers are examples of entities which may be excluded. Managers of investment funds in Vanuatu (for example, discretionary fund managers of an Investment Entity) may also fall within this category. This is consistent with expectations that within collective or managed investment schemes only interests in the collective investment scheme or managed fund are treated as the relevant Financial Accounts and only the scheme or fund itself is treated as the Reporting FI (Investment Entity).

For separately managed portfolios (SMP) or individually managed accounts (IMA), where an investment manager is appointed directly by the legal owner of assets to provide investment management services, then these accounts are not Financial Accounts of the investment manager. Instead, they will be Custodial Accounts of a Custodial Institution (who will need to treat the investors as their Account Holders). Where a discretionary investment manager also holds assets on behalf of clients (acting as custodian), reporting on those accounts is required by the manager because the investment manager falls within the definition of a Custodial Institution.

Debt or equity interests in investment advisers, managers and similar entities (for example, professional management companies) could be perceived as a Financial Account, since those entities can be construed as Financial Institutions which are solely Investment Entities. However, an adviser or manager that is a Non-Reporting VFI will not be required to report the equity or debt interests it issues. Such interests in the investment manager or adviser are not Financial Accounts.

Investment advisers and managers may be engaged by Reporting FIs to provide assistance in documenting Account Holders. For example, financial advisers may have a direct relationship with investors and readier access to their information. However, it is envisaged that non-reporting advisers and managers will only have reporting obligations as a result of contractual arrangements with Reporting FIs: for instance, where they undertake to act as third party service providers for the customer due diligence (as the Reporting FI is responsible for this under the Applied CRS).

## 2.13 Financial institutions – deceased estates and testamentary trusts

Although deceased estates are a type of trust, generally these are temporary in nature and used to distribute the assets and manage the affairs of the person who has died. So long as the administration of the estate is directed at the winding up and distribution of assets (which may include temporary investing while the winding up and distribution is resolved) and is not an indefinite activity of investing, reinvesting or trading financial assets, it will not be a Financial Institution.

However, a testamentary trust can remain in effect for a number of years. During its existence a testamentary trust works as any other trust would, and can be used for various purposes. As such a testamentary trust can be a Financial Institution, subject to the guide at section 2.7.

## 2.14 Financial institutions – Qualified Credit Card Issuers

Where an RFI is a Qualified Credit Card Issuer, it is a Non-Reporting Financial Institution and is not required to perform due diligence and reporting for AEOI purposes.

In order to be a Qualified Credit Card Issuer, an entity must satisfy the following conditions:

- it is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due for the card and the overpayment is not immediately returned to the customer
- beginning on or before 30 June 2017, or the date the entity commences as a Financial Institution if later, it implements policies and procedures to either prevent a customer deposit in excess of USUSD $50,000, or to ensure that any customer deposit in excess of USUSD $50,000 (under the rules for account aggregation and currency translation) is refunded to the customer within 60 days. A customer deposit does not include credit balances for disputed charges but includes credit balances resulting from merchandise returns.

An entity issuing credit cards will not satisfy the conditions to be a Qualified Credit Card Issuer if there is another reason why it is a Financial Institution; for example, if it also offers Depository Accounts other than credit card accounts. However, if such an RFI accepts deposits on a credit card or other revolving credit facility in excess of the balance due, it may be able to disregard these accounts if they are Excluded Accounts; see section 3.2.

## 2.15 Financial institutions – not-for-profits

Most not-for-profits do not provide financial services, and so would not expect to be categorised as a financial institution. However, endowed charities and other not-for-profits that receive a significant proportion of their income from investments can be an Investment Entity for Applied CRS purposes. If it is an Investment Entity it will be a Financial Institution with Applied CRS obligations.

If a not-for-profit is not a Financial Institution then it will have no reporting obligations.

The meaning of Investment Entity is explained in section 2.5 of this guide. A not-for-profit may be regarded as an Investment Entity if it is managed by a Financial Institution and its gross income is primarily attributable to investing, reinvesting, or trading in financial assets. In general:

- an entity is regarded as being managed by a Financial Institution where it has appointed a Financial Institution (for example, a professional investment manager) to manage all or part its assets with discretionary authority over managing the assets
- an entity’s income is primarily attributable to investing, reinvesting, or trading in financial assets where this activity accounts for at least 50% of the not-for-profit's gross income.

Financial assets do not include direct interests in real property.

A not-for-profit that is a Financial Institution under the Applied CRS will need to identify whether it maintains Financial Accounts which must be reported. The meaning of Financial Account is explained from section 3 of this guide, with specific advice for not-for-profits at section 3.16.

# 3 FINANCIAL ACCOUNTS

Under the Applied CRS, RFIs are required to review the Financial Accounts they maintain to see if any of those accounts need to be reported to the VCA. In general, a Financial Account is an account maintained by a Financial Institution.

The term 'Financial Account' includes five categories of accounts: Depository Accounts, Custodial Accounts, equity and debt interests, Cash Value Insurance Contracts and Annuity Contracts.

**Table of which Financial Institutions are considered to maintain each type of Financial Account**

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

The categories of Financial Accounts subject to review under the Applied CRS is discussed in the following sections.

Some types of accounts are excluded from being Financial Accounts and so are not subject to the due diligence and reporting obligations. Under the Applied CRS these are called Excluded Accounts see section 3.9 for an explanation of Excluded Accounts.

An Account Holder of a Financial Account may be an individual or an Entity. As noted in section 2, an Entity is a legal person or a legal arrangement. An Entity covers any legal arrangement, whether or not a separate legal entity is created, so it covers companies, associations, joint ventures, partnerships, limited partnerships, and trusts (including unit trusts and discretionary trusts). These types of Entities are the Account Holders of the accounts that they hold. Section 4.4 discusses how to identify an Account Holder of a Financial Account.

## 3.1 Depository Accounts

A Depository Account includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. It also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

An account evidenced by a passbook would generally be considered a Depository Account. As mentioned in the Commentary, negotiable debt instruments traded on a regulated market or over-the-

counter market, distributed and held through financial institutions would not generally be considered Depository Accounts, but Financial Assets.

### 3.2 Depository accounts – overpayment of credit or loan facilities

A credit or revolving credit facility becomes a Depository Account when:

- a customer makes a payment in excess of a balance due
- the overpayment is not immediately returned to the customer
- the account is maintained by a Financial Institution in the ordinary course of a banking or similar business.

For the meaning of ‘banking or similar business’, see section 2.4 of this guide. A credit or loan facility in any other circumstances is not a Depository Account.

An overpayment that is immediately returned does not cause an account to be a Depository Account. For this purpose, ‘immediate’ means the practical time it takes to return the overpayment after recognising an overpayment has occurred.

These rules apply to facilities whether or not interest is payable on any credit balance for that account. The meaning of 'deposit' means the amount of a payment in excess of the balance due.

A Depository Account that exists solely because a customer makes a payment in excess of a balance due for a credit card or other revolving credit facility will qualify as an Excluded Account if the Financial Institution has policies and procedures in place to prevent or refund an overpayment of more than USD $50,000 within 60 days if it has not reduced in the meantime. Those policies and procedures should be in place from 1July 2017 (or the date that the entity became a Financial Institution, if later).

It is the general policies and procedures that determine the exclusion. If the Financial Institution generally has a robust implementation of the policies and procedures, an isolated, exceptional and temporary breach of the account balance rules would not disqualify an account from exclusion.

The account balance threshold must take into account the aggregation rules for other accounts held by the customer with the Financial Institution or a Related Entity.

The Applied CRS makes provision for Qualified Credit Card Issuers. See section 2.15 for an explanation of how such an entity qualifies as a Non-Reporting Financial Institution.

### 3.3 Depository accounts – payment cards or pre-loaded cards

For an account to be a Depository Account, it must be maintained by a Financial Institution in the ordinary course of a banking or similar business. Pre-loaded payment cards, including travel cards, gift cards and pre-loaded payment cards used for online payments, are part of the definition of 'Depository Account'. The entity which issues and maintains the account accessed by the card must be a Financial Institution maintaining the account in the ordinary course of a banking or similar business, and the holder must be designated.

A store gift card will not be considered a Depository Account if it is only redeemable for value at specified stores. A stored value card will also not be considered a Depository Account if it is purchased with a non-reloadable stored value.

### 3.4 Custodial Accounts

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

The term Financial Asset is intended to encompass any assets that may be held in an account maintained by a Financial Institution, except a non-debt, direct interest in real property. It does not include physical goods.

Examples of Financial Assets include a security, partnership interest, commodity, swap, Insurance Contract or Annuity Contract, or any interest in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. Security examples include a share 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. Swap examples include interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements. Interests include a futures or forward contract or option.

### 3.5 Equity or debt interests in investment entities

Generally, any equity or debt interest in an investment entity will constitute a financial account under the Applied CRS.

The Applied CRS supplements the general rule with an anti-avoidance rule. Equity or debt interests in a financial institution not covered by the general rule explained above may constitute financial accounts where the class of interest was established to avoid reporting under the relevant AEOI regime.

The Applied CRS provides a special exclusion for equity and debt interests in investment advisers and investment managers. It excludes from the definition of Financial Account any equity or debt interest in an Entity that is an Investment Entity solely because it renders investment advice to, acts on behalf of, or manages portfolios for customers for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customers with other Financial Institutions.

### 3.6 Equity or debt interests regularly traded on an established securities market under the Applied CRS

Under the Applied CRS, equity or debt interests in Investment Entities (whether or not they are regularly traded on an established securities market) are considered Financial Accounts maintained by the RFI that issues the interests. In practice under the Applied CRS, if interests in an RFI are held through an intermediary that is a Financial Institution, duplicated reporting will generally be avoided. The RFI issuing the interests will identify the intermediary as the Account Holder and will not be required to report it. This is because it is a Financial Institution, unless it is a type B Investment Entity and is not a Participating Jurisdiction Financial Institution, which has Passive NFE status under the Applied CRS and must be documented. See section 2.5 for an explanation of type B Investment Entities.

In certain circumstances an issuing RFI may not possess information or have a relationship with the Account Holder that would enable it to comply with its reporting obligations. For example, trades of equity interests in an exchange traded fund are made by brokers but the end investors are directly registered in the fund's interest register, as described above. The Applied CRS contain provisions allowing the use of third party service providers to assist a Financial Institution to meet its due diligence and reporting obligations in such circumstances[iv].

The term 'regularly traded on an established securities market' is also relevant for an RFI for determining the status of some of its Entity Account Holders. An Entity Account Holder that is a corporation whose stock is 'regularly traded on one or more established securities markets' is excluded from the definition of Reportable Person in subparagraph D(2) of section VIII of the Applied CRS (that is, Financial Accounts held by such corporations are not reportable).

An RFI can rely on a self-certification provided by the Account Holder, or information in its possession or that is publicly available, to determine whether stock in the corporation is regularly traded.

A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

## 3.7 Cash value insurance contracts

A Cash Value Insurance Contract means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

Cash Value is a defined term in the Applied CRS. It means the greater of:

- the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan)
- the amount the policyholder can borrow under or with regard to the contract.

The Applied CRS the term "Cash Value" does not include an amount payable under an Insurance Contract as:

- solely by reason of the death of an individual insured under a life insurance contract;
- as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- as a refund of a previously paid premium (less cost of insurance charges, whether or not actually imposed) under an insurance contract (other than an investment-linked life insurance or annuity contract), due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from correcting a posting or similar error on the premium for the contract; or
- a policyholder dividend based upon the underwriting experience of the contract or group involved, except the Applied CRS limits this exclusion to a dividend that relates to an Insurance Contract under which the only benefits payable are as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against.

The Applied CRS also excludes a return of an advance premium or premium deposit for an Insurance Contract where the premium is payable at least annually, if the amount of the advance premium or premium deposit does not exceed the next annual premium payable under the contract.

## 3.8 Annuity contracts

An Annuity Contract means 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 term also includes arrangements in Vanuatu commonly referred to as annuities, under which the issuer agrees to make payments for a term of years.

## 3.9 Excluded accounts

Certain Financial Accounts are seen to be low risk of being used to evade tax and are excluded from review and reporting under Applied CRS. Such accounts are specifically excluded from the definition of 'Financial Account' and are called 'Excluded Accounts'.

The following are Excluded Accounts[v]:

- certain retirement and pension accounts
- certain escrow accounts
- term life insurance contracts
- accounts held solely by a deceased estate

### 3.9.1 Retirement and pension accounts

Certain savings accounts that are retirement or pension accounts are Excluded Accounts if the meet the requirements of Section V III (C)(17)(a) of the Applied CRS.

These rules may apply if there is a private retirement or pension account operated by an entity.

### 3.9.2 Escrow accounts

Accounts where money is held by one party on behalf of another party or parties for certain purposes (for example, escrow accounts) can be Excluded Accounts under the Applied CRS where they are established in connection with Section VIII C(17)(e) of the Applied CRS are met):

- a court order or judgment
- a sale, exchange, or lease of real or personal property, provided certain conditions in the abovementioned provisions are met
- an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment, to facilitate payment of taxes or insurance related to the real property at a later time
- an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.

Where a Financial Account similar to an Escrow Account is not covered above and the account is held by a non-financial intermediary (such as a solicitor, real estate agent or insurance broker trust account) on behalf of clients, the RFI is only required to undertake the due diligence procedures for the non-financial intermediary provided that:

- the funds of underlying clients of the non-financial intermediary are held on a pooled basis
- the only person identified to satisfy AML/KYC requirements relating to the account is the non-financial intermediary.

Where a non-financial intermediary operates an account with an RFI and the underlying client or clients of the intermediary must be identified by the RFI under AML/KYC requirements as part of the account opening process, the RFI must review the account to identify whether any underlying client is a Reportable Person.

### 3.9.3 Term life insurance contracts and pure risk insurance products

Life insurance contracts with a coverage period that will end before the insured individual attains age 90 are not Financial Accounts, provided that the contract satisfies the following requirements:

- periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter
- the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract
- the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract
- the contract is not held by a transferee for value.

As explained at section 3.7, an insurance contract that has a Cash Value (other than an indemnity reinsurance contract between two insurance companies) is a Cash Value Insurance Contract and therefore a Financial Account. An insurance contract that does not have a Cash Value is not a Financial Account.

Pure risk insurance products are not considered to have a Cash Value and so it is unnecessary for the Applied CRS to specifically exclude them from the definition of Financial Account (that is, as a type of Excluded Account).

In Vanuatu, pure risk life (and other) insurance products will generally display the following features, which are listed to illustrate the notion of 'pure risk':

- benefits are paid only on death, terminal illness, disablement or trauma (specified illness or injury)
- there are no policy loans
- there are no policyholder dividends (including termination dividends) or other payments
- there are no surrender charges
- these products require regular payment of premiums on a 'pay as you go' basis
- premiums are usually either age-based stepped premiums (low becoming high) or level for the contract duration (no increases); there are also some instances where level premiums switch to being stepped from a certain age
- they do not have a surrender value, an investment element value or any characteristic resembling a cash value (this is also the case for level premiums)
- advance payments of premiums may be permitted, but interest is not paid on them
- the policy expires if the next premium due is not paid or if cancelled by the policyholder
- if the policyholder cancels the policy, the premium refund relates only to the unexpired period of future cover paid for (for example, cancellation part way through a period for which a premium was paid – other than for 'cooling off' periods, where the full premium is refunded)
- if the policyholder reduces cover, premium refund relates only to the amount of the reduction to cover for the unexpired period of future cover paid for (for example, reduction to sum insured part way through a period for which a premium was paid)
- death benefits may not be age limited – the cover may run until a contractually specified expiry age (for example, age 99) or indefinitely as long as premiums continue to be paid
- disability and trauma benefits are not age limited (other than after age 99, although narrower coverage can apply from earlier ages, such as age 75 or 65) – the cover runs until the contractually specified expiry age of 99 years.

### 3.9.4 Deceased estates

An account may be held by a deceased estate. Such accounts are not Financial Accounts under the Applied CRS where:

- the account is held solely by an estate; and
- the RFI is in possession of documentation for the account which includes a copy of the deceased's will, death certificate or a grant of probate or letters of administration for the deceased and the executor or administrator of the estate.

For this purpose, the RFI must treat the account as having the same status that it had prior to the death of the Account Holder until the date it obtains such documentation.

In cases where a deceased person held a jointly held account and upon death their entitlement automatically transfers to the surviving joint holder or holders, the account would retain its status as a Financial Account and be subject to due diligence and reporting on the joint holders (before the time the RFI receives notification of the deceased's death) or only for the surviving joint holder (from the time the RFI is notified of such death).

Where a Reportable Person held a Financial Account at the time of death, there is an account closure for them for AEOI purposes. See section 5.7 for reporting on closed accounts.

An account of a deceased estate is an Excluded Account regardless of residency of the executor or administrator. While acknowledging that the time to administer an estate can vary widely, the

exclusion of an account held by a deceased estate is not intended to be indefinite. An RFI may need to refresh its knowledge of the account if the status is not resolved over an unduly long period of time.

### 3.10 Dormant accounts

An RFI may identify an account as a dormant account under applicable laws or regulations or the normal operating procedures of the RFI consistently applied for all accounts maintained by that RFI in Vanuatu. Dormant accounts are not excluded from due diligence procedures or reporting.

Where the application of the relevant due diligence procedures indicates the account is a Reportable Account, the RFI must report the account whether or not there was contact with the Account Holder.

### 3.11 Collateral and derivative arrangements – custodial accounts

Whether the holding of collateral constitutes a Custodial Account depends on the nature of the collateral and the broader contractual arrangements between the parties. For a Custodial Account to exist it must be an account held for the benefit of another person and the account must hold one or more Financial Assets.

Simply being a party to a contract or a financial instrument would not generally create a custodial relationship with the counterparty for the contract or financial instrument. In these circumstances each party acts on its own behalf, subject to the terms of the contract or financial instrument.

Some financial or derivatives arrangements include the holding of collateral as security for the finance or fulfilment of the derivatives obligation. If the account under which the collateral is held is not an account held for the benefit of another person and the holding of the collateral is a subsidiary and integral element of the overall arrangement between the two parties, it will not be a Custodial Account.

If collateral is provided on a full title transfer basis so that the collateral taker has full legal and beneficial ownership of the asset, taking or holding the asset does not create a Custodial Account. Whether the beneficial ownership of an asset was transferred depends on weighing the contractual arrangements between the parties.

An account that is not a Custodial Account may nevertheless be a Financial Account for another reason; for example, an account maintained by an Investment Entity.

***Example 5 – money exchange operator***

Vanex Ltd ('Vanex') operates a money exchange and remittance business. In addition to spot exchanges, some customers open accounts with Vanex and engage in various derivatives transactions, such as options and forward contracts. Vanex transacts in these derivatives directly with those customers. Vanex also engages in other transactions with banks as part of its hedging strategies, but these are separate to transactions with its customers.

The derivatives transactions with its customers do not cause the client accounts to be Custodial Accounts. As counterparty to the derivative transactions, Vanex acts on its own behalf and does not have a custodial relationship with the customer for those derivatives.

***Example 6 – contractual agreements to deposit customer funds as risk deposit***

Further to the previous example, Vanex has contractual agreements with some customers which require an amount of money to be deposited by the client to cover or mitigate the risk that the client may not follow through with a transaction if exchange rates move unfavourably. Vanex records these deposits in its internal records and pools client funds in an account with an unrelated bank. Although the holding of money is the holding of Financial Assets for Applied CRS purposes, viewed objectively the holding of the money is subsidiary and integral to the transactions or contracts between Vanex and the customer. The accounts are not Custodial Accounts.

### 3.12 Not-for-profits – Financial Accounts

For a not-for-profit that is an Investment Entity its Financial Accounts are debt or equity interests in the entity.

Some not-for-profits are set up as trusts. An equity interest in a trust or similar arrangement is held by any person treated as a settlor or beneficiary of all or part of the trust, or by any natural person exercising ultimate effective control over the trust. Donors to an established not-for-profit (such as a charity) would not be treated as holding an equity interest in the trust where the donor has made an irrevocable donation with no control over the donated funds.

A person is treated as a beneficiary if they have the right to receive, directly or indirectly, a mandatory distribution; or they receive, directly or indirectly, a discretionary distribution from the trust. In the case of discretionary distributions, the beneficiary may only be treated as a beneficiary in the calendar year in which they receive a distribution.

For most not-for-profit trusts their beneficiaries will be the individuals and entities to whom they make grants or other distributions. The purpose of the grant is not relevant, it is the fact of receiving a grant that makes the person a beneficiary. In the case of a grant paid at the trustees' discretion, the grantee may be treated as beneficiary for only those years they receive a grant.

An equity interest in a company is held by all shareholders, and all other persons with an interest in the profits or capital of the company.

For not-for-profits set up as companies, the recipients of grants will not be equity interest holders unless they have an interest in the profits or capital of the company. Unlike trusts and foundations, the mere receipt of a grant will not make a grantee an equity interest holder.

Debt interests include all loans made to the not-for-profit entity.

Once a not-for-profit has identified its debt and equity interest holders it will need to carry out due diligence on them to identify whether any of them are Reportable Persons. Due diligence procedures are explained from section 4 of this guide.

# 4 DUE DILIGENCE

The AEOI due diligence procedures are the procedures an RFI is required to undertake to determine whether there are any Reportable Accounts among the Financial Accounts it maintains.

For the Applied CRS, the general due diligence procedures that Vanuatu RFIs must comply with are described in sections II to VII of the Applied CRS itself, as interpreted by the CRS Commentary.

The due diligence and reporting requirements of Applied CRS should be read in conjunction with the Vanuatu implementing legislation.

RFIs are required to establish whether a person holding the account is tax resident in any foreign jurisdiction. In addition, further due diligence obligations for Entity Account Holders.

An RFI may use third party service providers to carry out some or all of their due diligence. However, the RFI ultimately remains responsible for their obligations.

The details of due diligence requirements depend on whether an account is pre-existing or a new account. An account is pre-existing if it is in existence on 30 June 2017. The required due diligence further depends on whether an account holder is an individual or an entity. For accounts held by individuals, there are further distinctions in procedures for Lower Value Accounts and High Value Accounts

## 4.1 AML/KYC procedures

AML/KYC procedures are an integral part of the due diligence procedures for the Applied CRS. For some identification tasks an RFI may rely solely on information collected and maintained through properly conducted AML/KYC procedures, for other tasks the review of information must cover the AML/KYC information and any other information held on the client.

An RFI may rely solely on their AML/KYC procedures when:

- reasonably determining that an entity is an Active NFE or a Financial Institution (any entity account);
- identifying the controlling persons of an entity (any entity account, but see section 4.11 of this guide on procedures relating to settlors of trusts); and
- determining whether the Controlling Person or persons of a Passive NFE holding a Pre-existing Account is a Reportable Person, provided that the balance or value does not exceed USD $1 million.

An RFI must review AML/KYC information and any other information held on the client when:

- confirming the reasonableness of a self-certification for a New Individual Account or a New Entity Account; and
- determining whether the holder of a Pre-existing Entity Account may be a Reportable Person.

### 4.1.1 Self-Certification Forms

Self-Certification forms are permitted to be used by reporting entities to determine:

- Controlling person tax residency;
- Entity tax residency; and
- Individual tax residency

The **Business and Industry Advisory Committee to the OECD** (BIAC) has drafted the following self-certification forms and has requested the OECD to make these forms available to assist with the implementation of the Applied CRS.

Financial Institutions may use these forms or any form that provides the same information as contained in the sample forms. Financial institutions should consult their advisers to ensure their Applied CRS-related operations, including the self-certification forms collected from accountholders, comply with all applicable national laws.

- Controlling Person tax residency self-certification form
- Entity tax residency self-certification form
- Individual tax residency self-certification form.

A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

## 4.2 Alternative procedures and elections

The Applied CRS allows RFIs to make certain choices in their application the Applied CRS rules. RFIs are not required to notify the VCA of elections made, but the choice made should be apparent from the records and procedures of the RFI or the carrying out of the RFI's due diligence and reporting obligations.

For the Applied CRS, alternative procedures for due diligence includes:

- applying the due diligence procedures for New Accounts to Pre-existing Accounts[vi];
- applying the due diligence procedures for High Value accounts to Lower Value accounts[vii];
- excluding Pre-existing Entity Accounts with an aggregate value or balance of USD $250,000 or less[viii]; and
- treating certain new accounts as Pre-existing Accounts (see section 4.3).

## 4.3 New account treated as a pre-existing account – the Applied CRS[ix]

Under the Applied CRS, a Financial Account is classified either as a Pre-existing Account or New Account depending on the date of opening; that is, whether it is opened on or after 30 June 2017 or whether the account was already in existence prior to that date. Certain New Accounts may be treated as Pre-existing Accounts, subject to four conditions. The conditions are:

- the Account Holder also holds with the RFI (or with a Related Entity in Vanuatu) a Financial Account that is a Pre-existing Account;
- the RFI (and any Related Entity) treats both accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts, as a single Financial Account for purposes of satisfying the standards of knowledge requirements and determining the balance or value of any of the Financial Accounts when applying any account thresholds;
- for a Financial Account that is subject to AML/KYC procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC procedures for the Financial Account by relying upon the AML/KYC procedures performed for the Pre-existing Account; and
- opening the Financial Account does not require the Account Holder to provide new, additional or amended customer information other than for purposes of the Applied CRS.

### 4.3.1 Treatment of the accounts as a single account

The second condition above requires an RFI to have internal practices that treat the customer and their accounts holistically in relation to being aware of information that may cause a reasonably prudent person to question Documentary Evidence, self-certifications, or a claim being made by the customer. In order to satisfy this condition, the RFI must do two things:

1. Apply standards of knowledge for the correctness or reliability of Documentary Evidence or self-certifications from that Account Holder as if the pre-existing Account or accounts already held by the customer, and the New Account being opened, are a single account. If the RFI has

reason to know that the status assigned to one of the accounts is inaccurate, then it has reason to know that the status assigned to all other accounts of the Account Holder is inaccurate.

2. Treat the Financial Account or accounts already held by the customer, and the New Account being opened, as a single account for the purposes of applying any of the account thresholds. For example, where there is a Pre-existing Individual Account and a New Individual Account being opened, the RFI's internal policies and procedures must account for the year-end account balances of both accounts when monitoring whether those aggregated accounts exceed USD $1 million at the end of that year and future years. If it exceeds USD $1 million it will trigger the High Value Account due diligence procedures. The RFI's policies and procedures would also need to take into account in this aggregation the knowledge that any relationship managers (of an account) possess for financial accounts held with the RFI or with a Related Entity.

### 4.3.2 New, additional or amended customer information

Customer information refers to information on the identity, characteristics or profile of the customer as a person or entity. It does not cover the nature or characteristics of the account or investment; for example, altering the mix of investments within an account. On its own, the act of accepting terms and conditions for the account or authorising a credit check is not the provision of customer information.

An option to provide new, additional or amended customer information at the time of opening the new account does not cause the fourth condition to be failed, as the option to do so is not a requirement. For example, the ability for the customer to update their address when opening a new account does not reach the threshold of being a requirement.

A requirement to confirm existing information as remaining current is also not a requirement to provide new, additional or amended information.

A requirement to provide new, additional or amended customer information refers to a requirement for the Account Holder to provide the information to the RFI. It would not cover a requirement to provide information to another person. For example, where a customer is considering entering into a wealth-related product, their adviser may need to conduct or confirm a needs analysis and issue a statement of advice. If the adviser is unrelated to the RFI that will issue the new in scope account (additional to an existing account with that customer), it does not cause the fourth condition to be failed.

As a general guide and without altering the principles described above, passive actions (or inaction) by or with a customer are to be contrasted with occasions of active engagement between the customer and the RFI. The latter is more likely to present an opportunity to seek and obtain a self-certification or other information needed for complying with the Applied CRS.

It is noted that a customer treated as a pre-existing customer may be subject to KYC refresh under AML obligations and change of circumstances due diligence under the Applied CRS.

***Example 7 – A rolled over term deposit account***

An individual holds a pre-existing term deposit which matures on 1st November that year. Shortly before that date, the FI contacts the customer to confirm instructions: whether the account is to be rolled over in accordance with standing instructions to a default rate, rolled over into a different term; or closed and redeemed. The customer may allow the default instructions to proceed, or may telephone or write with other instructions. Updated terms and conditions may apply, and applicable rates will be disclosed. The rolled over account is a new term deposit account, but this routine creation of the new account does not require the provision of new, additional or amended customer information.

***Example 8 – A change in investments for a portfolio investment product***

An account holder holds a number of investment accounts that are marketed as a single portfolio product. The account holder decides to change the mix of investments due to a change in investment strategy. The customer goes online and makes the changes. As a consequence of those instructions, a number of investment accounts are closed, and some new ones are opened. During the online process, the customer is asked to confirm that their contact information has not changed. For Applied CRS purposes there is not a relevant requirement for the provision of new, additional or amended customer information.

***Example 9 – An existing deposit account holder applies for a credit card, which has an in-scope linked insurance product***

As part of the account opening process, the applicant for the credit card (which is an out-of-scope account for AEOI purposes) is asked to provide information about their credit status – their employment, income and outgoings. The card is a 'packaged' product, and the customer also becomes the insured under a linked insurance product. This is a relevant requirement to provide new, additional or amended customer information and the insurance product account would not be eligible for treatment as a Pre-existing Account (rather, it is treated as a New Account).

***Example 10 – An entity that holds a term deposit account applies for a money market deposit account***

As part of the account opening process, the entity is asked to confirm that none of their information has changed. On its own, this is not a relevant requirement for the provision of new, additional or amended customer information.

In contrast, if the account opening procedures of the RFI required that the customer is asked for confirmation of source of funds for the account, this is a relevant requirement for the provision of new, additional or amended customer information.

***Example 11 – Individual signatory not an account holder***

A fully AML identified and verified individual, who is not an account holder on 30 June 2017, but is a signatory on another account, subsequently applies to open a deposit account in their own name.

This individual may be ‘product ready’ as recorded in the RFI’s system and substantially able to open an account as if they were an existing customer. However, for AEOI purposes the individual does not hold a Pre-existing Account as they are not personally the holder of a Financial Account on the required date. The newly opened account is a New Individual Account for Applied CRS purposes and a self-certification is required.

***Example 12: Individual closing an account and later opening a new one***

An individual, who had an in scope account and was fully AML identified and verified, closed their account in March 2017 and so is not an account holder on 30 June 2017. Subsequently in December 2017 they apply to open a deposit account.

For Applied CRS purposes the individual does not hold a Pre-existing Account on the required date. The newly opened account is a New Individual Account for Applied CRS purposes and a self-certification is required. Note: if the earlier account was not closed, but instead was classified by the RFI as dormant, it will qualify as a Pre-existing Account.

***Example 13: Individual opening a mortgage offset account (Applied CRS):***

An individual has a home loan from an RFI but no other account on 30 June 2017. In February 2018 they apply to open a mortgage offset account (a Depository Account).

A home loan account is an out-of-scope account and so for Applied CRS purposes the individual does not hold a Pre-existing Account on the required date. The newly opened Depository Account is a New Individual Account for Applied CRS purposes and a self-certification is required.

### 4.3.3 Joint account holders opening a new account

Where a New Account is opened with an RFI and one of the Account Holders has a Pre-existing Account and the other does not, the RFI may treat the New Account as a Pre-existing Account for the Pre-existing Account holder. In this situation, the RFI may carry out due diligence on the Account Holder of the Pre-existing Account in line with the Pre-existing Account due diligence procedures. For the joint holder who is a new customer and does not hold a Pre-existing account, the RFI must carry out New Account due diligence on that person as a new Account Holder.

## 4.4 Identifying the account holder of a financial account

The due diligence procedures in the Applied CRS is generally aimed at determining whether the Account Holder is a Reportable Person, or has a Controlling Person who is a Reportable Person in the case of Passive NFEs, so that the RFI can report the respective accounts to the VCA as a Reportable Account.

Accordingly, identifying the Account Holder is a key requirement of the due diligence procedures. In most cases, identifying the holder of a Financial Account is straightforward and the Account Holder is the person listed or identified by the RFI who maintains the account as the holder of the account.

However, RFIs must consider the type of account and the capacity in which it is held. 'Account Holder' is defined in the Applied CRS such that where a person, other than a Financial Institution, holds a Financial Account for the benefit or account of another person as an agent, custodian, nominee, signatory, investment adviser or intermediary, then that other person is the Account Holder.

An RFI may rely on information in its possession (including information collected in line with AML/KYC procedures), based on which it can reasonably determine if a person is acting for the benefit or account of another person.

An Account Holder of a Financial Account may be an individual or an Entity. As noted in section 2, an Entity is a legal person or a legal arrangement. An Entity covers any legal arrangement, whether or not a separate legal entity is created, so covers companies, associations, joint ventures, partnerships, limited partnerships, and trusts (including unit trusts and discretionary trusts). These types of Entities are the Account Holders of the accounts that they hold.

### 4.4.1 Accounts held by trusts, estates, partnerships and other legal arrangements treated as entity accounts

The Account Holder is the person listed or identified as the holder of a Financial Account by the financial institution maintaining the account, regardless of whether such person is a flow-through entity. If a trust, estate or partnership is listed or identified as the holder of a Financial Account, the trust, estate or partnership is treated as the Account Holder rather than any owner, beneficiary, partner or otherwise). This does not remove the requirement to identify the Controlling Persons of the trust, estate or partnership where the entity is a Passive NFE.

A trust that is identified by an RFI as holding a Financial Account is treated as the Account Holder even if, as a matter of law, it is the trust's trustee that appears listed or recorded as the holder of the Financial Account in the VFI's systems.

***Example 14 – trust, not trustee, is the account holder***

'Trustee XYZ Ltd ATF the John & Mary Family Trust': The Trust, not the corporate trustee, is treated as the Account Holder for AEOI purposes.

### 4.4.2 Joint accounts

Where an account is jointly held, each of the joint holders is an Account Holder. An account is reportable if any Account Holder is a Reportable Person or a Passive NFE with one or more Controlling Persons who is a Reportable Person. The balance or value of the account is to be attributed in full to each Account Holder and this applies for both aggregation and reporting purposes. Where an account is jointly held by an individual and an entity, AFIs will need to apply both the individual and entity due diligence requirements to the account.

### 4.4.3 Children's accounts

Some Financial Institutions have account products specifically designed for children, where the child may transact on the account, perhaps in a limited way or after reaching a certain age. If a parent or grandparent (or similar figure) opens a children's account in the child's name, the child is the Account Holder, even if there is no trust deed or other formal arrangement. Any necessary self-certification may be done by a person with legal capacity to sign on behalf of the child.

RFIs may rely on information collected on children's accounts (for example, collected from a parent) in line with current AML/KYC procedures to apply AEOI due diligence procedures to assess if the child is reportable or to confirm the reasonableness of a self-certification. An RFI does not have reason to know that a child is the Account Holder if, in applying the AEOI and AML/KYC due diligence procedures, there is no indication to that effect.

A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

## 4.5 Due diligence – pre-existing individual accounts, lower value accounts

A Lower Value Account for Applied CRS purposes is an individual account with an aggregate balance or value that does not exceed USD $1 million on 30 June 2017. It will remain a Lower Value Account as long as the balance or value does not exceed USD $1 million on 31 December 2017 and 31 December of subsequent years.

An RFI can apply either:

- a residence address test (provided conditions are met – see below); or
- an electronic record search.

An RFI can apply the residence address test to all Lower Value Accounts or, separately to any clearly identified group of accounts such as those maintained by a particular business line of the RFI, or in a particular location by the RFI[x].

### 4.5.1 Residence address test

The due diligence requirements for a Pre-existing Individual account allow for a residence address test procedure for a Lower Value Account (an account with an aggregate account balance or value as of 30 June 2017 that does not exceed USD $1 million). Subject to conditions, the RFI may treat the individual account holder as resident for tax purposes of the country where their current residence address is located.

The current residence address for these purposes is the residential address recorded by the RFI for the Account Holder. A residential address is one where the RFI understands or presumes the account holder resides. A 'care of' or post office box address would not generally be presumed to be the residential address (except in special circumstances such as that of military personnel).

The address must be current. It will not be current if it has been used for mailing purposes by the RFI and the mail was returned as undeliverable (other than due to an error). However, a residence address associated with an account (other than an Annuity Contract) classified as a dormant account (see section 3.14) may be considered current, even though mail was returned as undeliverable during the dormancy period.

The current residence address must be substantiated by evidence. The type of acceptable evidence depends on the circumstances. In this section of our guide, for the purpose of aiding understanding, specific terminology is used in describing three types of evidence:

- Documentary Evidence – the evidence specified in paragraph E(6) of Section VIII of the Applied CRS; broadly, it covers certain documents issued by an authorised government body, an audited financial statement, third party credit report, bankruptcy filing or securities regulator's report;
- supporting documentation – a document issued by an authorised government body or a utility company; and
- general documentation – any of the above, and any other government or formal commercial document (for example, a trust deed or company certificate).

The current residence is substantiated if the RFIs policies and procedures ensure the currently recorded address is the same as, or in the same jurisdiction as a residential address shown in Documentary Evidence.

If the RFI is unable to match the current resident address to Documentary Evidence as above, the current residence is substantiated if the RFIs policies and procedures ensure the currently recorded address is in the same jurisdiction as the government issuing the Documentary Evidence.

If the RFI is unable to match the current resident address to Documentary Evidence as above, either because Documentary Evidence is absent from the records, or an address is absent, it may rely on recently issued supporting documentation.

Finally, and only in the case of individual accounts opened before the introduction of Documentary Evidence requirements under AML/KYC procedures or in circumstances where AML/KYC was not required to be collected such as in the case of Listed Investment Entities, the substantiation requirement will be satisfied if the current residence address is in the same jurisdiction as:

- an address on the most recent general documentation; and
- an address most recently reported by the RFI under the Annual Investment Income Reporting (AIIR) to the VCA.

It is not necessary for the RFI retain a copy of the relevant evidence, as it is sufficient to have made and retained a notation or record of the details from the evidence.

### 4.5.2 Electronic records search

Where an RFI is unable to establish the residence of an individual with a Lower Value Account with the residence address test, or chooses not to apply the residence address test, it must review its electronically searchable data for indicia of the individual's residence.

The Account Holder is regarded as a resident of a foreign jurisdiction if any of the indicia following apply:

1. the Account Holder is identified as resident of a foreign jurisdiction or as a U.S citizen;
2. a current mailing or residence address (including a post office box) of the Account Holder is in a foreign jurisdiction;

3. there are one or more current telephone numbers in a foreign jurisdiction and no telephone number for the account holder in Vanuatu;
4. for non-depository accounts only, that there are current standing instructions to transfer funds to an account maintained in a foreign jurisdiction
5. there is a currently effective power of attorney or signatory authority granted to a person with an address in a foreign jurisdiction; or
6. an 'in-care-of' address or 'hold mail' instruction in a foreign jurisdiction if the RFI does not have any other address on file for the Account Holder.

If none of these indicia are discovered through an electronic search, no further action is required for Lower Value Accounts unless and until there is a subsequent change of circumstance that results in one or more of these indicia being associated with the account or the Account Holder, or the account becomes a High Value Account.

### 4.5.3 Effect of finding indicia

Where any of the first four indicia are found or subsequently arise the account becomes a Reportable Account unless the RFI takes action that leads to the indicia being cured. The RFI may (but is not required to) cure the indicia by obtaining both:

- a self-certification (if not already obtained); and
- Documentary Evidence supporting the self-certification to establish the Account Holder's non-reportable status.

Where the *only* indicium found or arising is item 5 (power of attorney or signatory authority), the account becomes a Reportable Account unless the RFI takes action that cures the indicia. The RFI may (but is not required to) cure the indicia by obtaining either:

- a self-certification (if not already obtained); or
- Documentary Evidence supporting the self-certification to establish the Account Holder's non-reportable status.

In the case where the *only* indicium is item 6 above (an 'in-care-of' address or 'hold mail' instruction in a foreign jurisdiction and no other address on file for the Account Holder), the RFI is required to undertake at least one of these actions:

- conduct a paper record search of certain documents specified in the Applied CRS; or
- seek a self-certification certification or Documentary Evidence from the account holder to establish their tax residency.

If the paper record search action is chosen and further foreign indicia are found, the account is a Reportable Account unless the RFI takes the appropriate curing action for the indicia. If the paper record search finds a Vanuatu address and no other foreign indicia are found, the account is not a Reportable Account.

For any of these curing procedures in which Documentary Evidence is obtained, the evidence will be sufficient to confirm non-reportable status for Applied CRS if it contains a current Vanuatu residential address.

If the chosen course of action fails to resolve the status of the account the RFI is required to attempt the other course of action. If neither course of action is successful in resolving the status of the account, the RFI must report the account as an undocumented account.

If foreign residence indicia were found and not remediated under the options available, the account is a Reportable Account for the indicated jurisdiction(s). The RFI maintaining the account must make

reasonable efforts to obtain the account holder's date of birth and TIN if these are not already held, see section 5.6.

An RFI must monitor the balance of Lower Value Pre-existing Individual Accounts on the last day of each year from 2017. On the first occasion the balance exceeds USD $1 million, the account becomes a High Value Account and the RFI must carry out the enhanced review procedures for High Value accounts in the next calendar year.

## 4.6 Due diligence – pre-existing individual accounts, high value accounts

For Applied CRS purposes, a High Value Account is an individual account with an aggregate balance or value that exceeds USD $1 million on 30 June 2017 or on 31 December of that year or any subsequent year.

This section covers the due diligence procedures for High Value Accounts.

The RFI must start with an electronic record search and then continue, where appropriate, with a paper record search and a relationship manager inquiry.

### 4.6.1 Electronic record search

The electronic record search for Applied CRS is a search for the same indicia as described for Lower Value Accounts in section 4.5.

### 4.6.2 Paper record search

If the RFI's electronically searchable databases include fields for the indicia included in the electronic record search, and capture all of the information described in those fields, a paper record search is not required for the Applied CRS.

Under the Applied CRS an RFI is required to carry out a paper record search but only to the extent that the required information on an Account Holder is not covered 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.

A blank field in the electronically searchable information is acceptable if the RFI has policies and procedures in place that mean a field is only left blank when such information is not applicable to the account. For example, a blank field for any standing instructions to transfer means there are no such instructions in any of the RFIs records for the account, or that such a feature is not applicable.

The paper record search for indicia 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 five 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
- any standing instructions to transfer funds currently in effect (in the case of the Applied CRS, instructions for a Depository Account is not a potential indicium).

### 4.6.3 Relationship manager

A relationship manager inquiry is always required for High Value Accounts if the account or any account aggregated with it has such a manager. The relationship manager inquiry is in addition to the electronic record search and (if appropriate) the paper record search. The RFI must consider whether

any relationship manager associated with the account or any accounts aggregated with such an account has actual knowledge that would identify the Account Holder as a Reportable Person.

The RFI must treat a High Value Account as a Reportable Account if a relationship manager has actual knowledge that the Account Holder is a Reportable Person.

A relationship manager is an employee or officer of the RFI who has been assigned responsibility for specific Account Holders on an ongoing basis. A relationship manager would 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.

Where an account is aggregated with other accounts for account balance or value purposes, the actual knowledge of a relationship manager of any of those accounts (including accounts of Related Entities) determines the status of all of those accounts.

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

A relationship manager also has an important role in identifying any change of circumstance for a high value individual account.

#### 4.6.4 Effect of finding indicia

If none of the relevant indicia are found in the review of the High Value Account and there is no relationship manager with actual knowledge that the Account Holder is a Reportable Person, no further action is required until there is a change in circumstances resulting in one or more indicia being associated with the account.

For the Applied CRS, in the special case where the *only* indicium is an 'in-care-of' address or 'hold mail' instruction in a foreign jurisdiction and there is no other address on file for the Account Holder, the RFI must obtain a self-certification or Documentary Evidence from the account holder to establish their tax residency. If the RFI cannot obtain either of these, it must report the account as an undocumented account – see section 5.8.

Other than the special case mentioned above, if any indicia are found in the review of the account, or there is a subsequent change in circumstances that results in one or more indicia being associated with the account, the RFI must treat the account as a Reportable Account for each jurisdiction indicated unless it elects to apply certain permitted 'curing' procedures.

#### 4.6.5 Curing procedures for high value accounts

An RFI may 'cure' (disregard) certain indicia if it obtains or has previously obtained and recorded a self-certification *and* Documentary Evidence that establishes the Account Holder's status as non-reportable. The indicia for reporting on a Reportable Jurisdiction that can be cured in this way are:

- a current mailing or residence address in a Reportable; or
- one or more telephone numbers in a Reportable Jurisdiction, and no telephone number in the RFI's jurisdiction; or
- standing instructions to transfer funds to an account in a Reportable Jurisdiction.

An RFI may cure a currently effective power of attorney or signatory authority granted to a person with a reportable jurisdiction if it obtains or has previously obtained and recorded a self-certification *or* Documentary Evidence that establishes the Account Holder's status as non-reportable.

### 4.7 Due diligence – self-certification for new individual accounts

Upon opening of a new individual account, a reporting Financial Institution must:

- obtain a self-certification that allows the RFI to determine the Account Holder's residences for tax purposes
- confirm the reasonableness of such self-certification.

If the self-certification establishes that the Account Holder is a tax resident of a foreign jurisdiction, from 30 June 2017 the RFI must obtain the Account Holder's date of birth and for most foreign residence jurisdictions, the taxpayer identification number (TIN) issued by the foreign jurisdiction. See section 5.6 of this guide for an explanation of TIN and date of birth requirements.

Obtaining a self-certification of residency and, if needed, the date of birth and the foreign TIN is generally a prerequisite to opening an account. The statement of self-certification should cover residency status in all cases and, where foreign tax residency is identified, affirmation by the Account Holder of their date of birth and the TIN provided. The account opening should not proceed if the person seeking the account cannot (or refuses to) provide these items.

An RFI may rely on a valid self-certification previously provided by an individual in connection with an account in meeting due the diligence obligations for another account. For example, a self-certification provided for an earlier account can be relied upon for the opening of a new account, so long as the self-certification remains reliable for the older account (no change in circumstances has affected its reliability). If any of the information collected on the opening of the new account conflicts with the existing self-certification, this should be followed up through the change of circumstances process – see section 4.17.

If the Account Holder claims not to have a TIN for the foreign jurisdiction, the self-certification should confirm this. For jurisdictions where TIN usage is widespread, the RFI should seek and record the reason for the lack of a TIN. An RFI may rely on the self-certification and explanation provided there is no reason to believe the statement is false (see also section 5.6 for a discussion of TINs).

If the self-certification establishes that the Account Holder is a foreign tax resident, the RFI must treat the account as a Reportable Account. An account holder may be a tax resident of more than one jurisdiction.

The self-certification may be part of the account opening documentation. The reasonableness check can be done based on other information obtained by the RFI for the account opening, including any documentation collected using AML/KYC procedures.

Generally, RFIs must ensure that valid self-certifications are always obtained for new accounts. There may be exceptional circumstances where it is not possible to obtain a self-certification on 'day one' of the account opening process – for example, where an insurance contract was assigned from one person to another, or where an investor acquires shares in an investment trust on the secondary market. In such exceptional circumstances, the self-certification should be both obtained and validated as quickly as feasible, and within 90 days. The RFI should have robust procedures in place to ensure self-certifications are obtained in these circumstances.

If an RFI does not obtain the self-certification including, when required, the date of birth and TIN upon account opening for a New Individual Account, the RFI should not complete the account opening process. If the RFI opens the account in such circumstances, the RFI will not be compliant with the due diligence requirements. It is an offence under the Tax Administration Regulations for an RFI to fail to undertake due diligence or other measures in accordance with the Applied CRS.

Where a self-certification is obtained at account opening but a reasonableness check of the self-certification cannot be completed because it is a 'day two' process undertaken by a back-office function, the reasonableness of the self-certification should be checked within a period of 90 days.

An RFI is considered to have confirmed the reasonableness of a self-certification if, in the course of opening the account and on review of the information obtained when opening the account, it does not know or have reason to know that the self-certification is incorrect or unreliable.

If an RFI later determines that a self-certification is incorrect or unreliable, it must obtain another valid self-certification. Alternatively, it must obtain a reasonable explanation and appropriate documentation that supports the accuracy of the original self-certification. The RFI must retain a copy or notation of such explanation and documentation.

If the RFI cannot obtain an explanation or appropriate documentation to support the validity of the original self-certification, it is not required to close the account. It must treat the Account Holder as a resident of the jurisdiction in which the Account Holder originally claimed to be resident as well as any other jurisdiction in which the RFI has indications that the Account Holder may be resident.

A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

## 4.8 Due diligence – pre-existing entity account thresholds

A Pre-existing Entity Account is an account held by an entity (a non-individual) on 30 June 2017.

The Applied CRS has a USD $250,000 threshold where the RFI is not required to review accounts that had a balance at or below that threshold on the initial test date. The RFI may elect to disregard the threshold and review all Pre-existing Entity Accounts. Such an election may be made separately for any clearly identified group of such accounts.

Where an RFI applies the USD $250,000 threshold to an account, the RFI must review the aggregated account balance at 31 December each year to determine if the balance has exceeded the threshold on that date. In the case of the Applied CRS, the first 6-month period following 30 June 2017 is a special reporting period and for Applied CRS purposes is treated as being a calendar year. The first review date to test the threshold is therefore 31 December 2017.

Once the balance has exceeded USD $250,000 at a review date, the account becomes reviewable and due diligence must be carried out in the following 12 months.

***Example 15 – application of Threshold***

An RFI is applying the threshold for Pre-existing Entity Accounts. The aggregated balance of a particular Entity Account was as follows on each dated listed:

31 December 2016 – USD $220,000
30 June 2017 – USD $190,000
31 December 2017 – USD $290,000

The account was not initially reviewable for Applied CRS purposes because the balance did not exceed USD $250,000 on 30 June 2017. However, it became reviewable for Applied CRS purposes on 31 December 2017 due to the balance exceeding the threshold. Due diligence procedures under the Applied CRS must be carried out for the account in the following 12 months.

## 4.9 Due diligence – pre-existing entity accounts

If an RFI is required to carry out due diligence on an entity account, it must follow these procedures to determine if the account is held by one or more entities that are Reportable Persons. The RFI must also establish whether an entity is a Passive NFE or should be treated as a Passive NFE and if so, 'look through' the entity account holder to the Controlling Persons to determine whether they are Reportable Persons.

### 4.9.1 Account holder as a reportable person

An RFI must review information maintained for regulatory or customer relationship purposes (including information collected for AML/KYC purposes) to determine whether the Account Holder is resident of a foreign jurisdiction. Information indicating that the Account Holder is resident in a foreign jurisdiction includes:

- a place of incorporation or organisation in a foreign jurisdiction
- an address in a foreign jurisdiction.

If the information indicates that the Account Holder is a foreign resident, the RFI must treat the account as a Reportable Account unless, at the RFI's option, it cures this status by:

- obtaining a self-certification to the contrary from the Account Holder (signed by a person with authority to sign on behalf of the entity), or
- reasonably determining based on information in its possession or publicly available that the Account Holder is not a Reportable Person (for example, a Governmental Entity).

'Publicly available' information includes information published by a government body, publicly accessible registers, and information disclosed on the ASX or other established securities markets.

The RFI should retain a notation of the type of information reviewed and the date reviewed, if such information is relied on to exclude the account.

### 4.9.2 Account holder as a financial institution

If an Account Holder is a Financial Institution the account would generally not be a Reportable Account for Applied CRS purposes.

The general rule that an account held by a Financial Institution will not be a Reportable Account has an exception under the Applied CRS. Where the Financial Institution is a type B Investment Entity (see section 2.5) and is resident in a jurisdiction that is not a Participating Jurisdiction, the entity is deemed to be a Passive NFE. In this case, due diligence on the Controlling Persons of the entity is required (see following). If the RFI cannot determine whether this exception applies based on available information, it would need to seek a self-certification from the entity.

There may be small variations in CRS rules across jurisdictions. If an entity is a resident of a foreign jurisdiction that is a Participating Jurisdiction for the Applied CRS, the entity's status as a Financial Institution for Applied CRS purposes should be resolved under that jurisdiction's laws. If an entity is resident in a jurisdiction that has not implemented the CRS, the standard Vanuatu rules will apply.

### 4.9.3 Passive NFE controlling persons

The RFI must determine whether the entity is a Passive NFE. If so, the RFI must identify the Controlling Persons of the Passive NFE and whether any of those Controlling Persons is a Reportable Person.

For the purposes of determining whether the entity is a Passive NFE, the RFI must request a self-certification unless it has information in its possession or that is publicly available to reasonably determine the status of the Account Holder.

To identify the Controlling Persons, the RFI may rely on information collected and maintained in line with AML/KYC procedures. If the Passive NFE Account Holder is a legal person (for example, a company), a natural person is treated as a Controlling Person if they meet the AML/KYC threshold for ultimate beneficial ownership. If no natural person meets the threshold, the Controlling Person will be the person who holds the position of senior managing official for the entity.

See section 4.11 and 4.12 for further explanation where a Passive NFE Account Holder is a trust.

If a Controlling Person of the Passive NFE is itself an entity, the RFI will need to identify the natural persons that control that entity (and so on, if there is a chain of entities, until the ultimate natural persons with control are determined).

If the account balance or value does not exceed USD $1 million, the RFI may also rely on information collected and maintained in line with AML/KYC procedures to determine if any of the Controlling Persons are Reportable Persons.

The process to identify whether a Controlling Person is a Reportable Person is a search for indicia as described for individuals in section 4.5. The same curing options are also available as described in that section.

If the account balance or value does exceed USD $1 million, the RFI must seek a self-certification from either the Account Holder or the Controlling Person to establish whether any of the Controlling Persons are Reportable Persons. This may be provided in the same self-certification provided by the Account Holder to determine its own status.

If a self-certification is required but is not received after reasonable efforts to obtain it, the RFI must then rely on an electronic record search for indicia to determine whether any Controlling Persons are Reportable Persons. The electronic record search is that as described in section 4.5. If no indicia are present, no further action is required until there is a change in circumstances that results in foreign tax residence indicia for a Controlling Person linked to the account.

An RFI may rely on a valid self-certification from a Controlling Person that was previously obtained from that person or the entity Account Holder in connection with another account, so long as the self-certification remains reliable for the older account (no change in circumstances has affected its reliability).

An RFI may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

## 4.10 Due diligence – New entity accounts

There is no minimum threshold for due diligence on New Entity Accounts under the Applied CRS – all New Entity Accounts must be reviewed.

For a New Entity Account, the RFI must determine whether the account is held by one or more entities that are Reportable Persons. The RFI must also establish whether an entity is a Passive NFE or should be treated as a Passive NFE and if so, "look through" the entity account holder to the Controlling Persons to determine whether they are Reportable Persons.

### 4.10.1 Account holder as a reportable person

In order to determine whether an entity Account Holder is a Reportable Person, the RFI must generally obtain a self-certification in the account opening procedure. It must also confirm the reasonableness of the self-certification based on information obtained in connection with the account opening.

An RFI may rely on a valid self-certification provided for one account in meeting due the diligence obligations for another account. For example, a self-certification provided by an entity for an existing account can be relied upon for the opening of a new account, so long as the self-certification remains reliable for the older account (no change in circumstances has affected its reliability). The earlier self-certification must also be reasonable when considered against information collected on the opening of the new account.

If the self-certification indicates that the Account Holder is resident in a foreign jurisdiction, the RFI must treat the account as a Reportable Account.

A self-certification is not required where the RFI reasonably determines, based on information in its possession or publicly available, that the Account Holder is clearly not a Reportable Person. For example, where information shows the entity as a Vanuatu Governmental Entity, the RFI may make this reasonable determination as these types of entities are not Reportable Persons under the Applied CRS.

If an Account Holder is a Financial Institution the account would generally not be a Reportable Account for Applied CRS purposes, but see section 4.9.2 for an explanation of the exception to this general rule.

Generally, an entity is resident for tax purposes in a jurisdiction if it is liable to tax by reason of its domicile, place of management or incorporation or similar criteria under the laws of that jurisdiction.

### 4.10.2 Passive NFE controlling persons

The RFI must determine whether the entity is a Passive NFE. If so, the RFI must identify the Controlling Persons of the Passive NFE and whether any of those Controlling Persons is a Reportable Person. For the purposes of determining whether the entity is a Passive NFE, the RFI must request a self-certification unless it has information in its possession or that is publicly available so it can reasonably determine the status of the Account Holder.

To identify the Controlling Persons, the RFI may generally rely on information collected and maintained in line with AML/KYC procedures. These procedures must be consistent with recommendations 10 and 25 of the FATF Recommendations (as adopted in February 2012)[xi], including always treating the settlors and beneficiaries of a trust as Controlling Persons (subject to the discussions in sections 4.11 and 4.12 of this Guide).

If the Passive NFE Account Holder is a legal person (for example, a company), a natural person is treated as a Controlling Person if they meet the AML/KYC threshold for ultimate beneficial ownership. If no natural person meets the threshold, the Controlling Person will be the person who holds the position of senior managing official for the entity.

See section 4.11 and 4.12 for further explanation where a Passive NFE Account Holder is a trust.

If a Controlling Person of the Passive NFE is itself an entity, the RFI will need to identify the natural persons that control that entity (and so on, if there is a chain of entities, until the ultimate natural persons with control are determined).

The RFI must seek a self-certification from either the Account Holder or the Controlling Person to establish if any Controlling Persons are Reportable Persons. This may be provided in the same self-certification as that provided by the Account Holder to determine its own status.

As a self-certification is required to establish the status of the Controlling Persons, this may be an opportune time to request or confirm the identity of the Controlling Persons (even though the RFI could solely rely on AML/KYC information for that purpose and procedures consistent with the FATF Recommendations).

The guide in sections 4.7, 4.14 and 5.6 relating to self-certifications, their reasonableness, validity and requirements for TINs is also relevant to the collection of self-certifications confirming the identity, tax residence status and other required details (including TIN) of the Controlling Persons of a Passive NFE.

An RFI may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

## 4.11 Due diligence – settlors of trusts

For a trust determined to be a Passive NFE, it is necessary to determine the Controlling Persons. It is also necessary to determine whether a Controlling Person is a Reportable Person (a tax resident of a foreign jurisdiction). The settlor of the trust is included in the definition of Controlling Person. Whether such a person actually controls the trust is not relevant for AEOI purposes.

### 4.11.1 Pre-existing Entity Account

The RFI maintaining the account must identify the Controlling Persons of the trust. It may do so based on information collected and maintained in line with AML/KYC procedures that applied to the customer or account at the time the account was originally opened. If the information required to be collected and maintained under AML/KTC procedures did not include the identity of the settlor and the RFI has not recorded that identity, no further action is required.

Having identified the Controlling Persons to the extent required by the Applied CRS due diligence procedures, the RFI must determine if the identified Controlling Persons are Reportable Persons. In the case of an account with a balance or value that does not exceed USD $1 million, the RFI may rely on the same information used to identify the Controlling Persons (beneficial owners), in line with AML/KYC procedures. If the review of that information did not identify the settlor, or identified the settlor but the available information does not indicate their foreign tax residency, the RFI is not required to seek further information.

In the case of an account with a balance or value that exceeds USD $1 million on 30 June 2017, a self-certification from the Account Holder or Controlling Person should be requested to determine if the identified Controlling Persons are Reportable Persons. The trustee of the trust may provide this self-certification on behalf of the trust as Account Holder.

If an RFI is seeking a self-certification for a Pre-existing Entity Account, either to determine whether it is a Passive NFE or to determine the status of the Controlling Persons (or both), this is an opportunity to request or confirm the details of Controlling Persons. RFIs are encouraged to structure self-certifications for Pre-existing Entity Accounts to cover all of these purposes.

If the settlor is not identified from information held by the RFI, which at least must include information collected and maintained in line with AML/KYC procedures, the RFI is not required to seek the identity of the settlor in the request for a self-certification.

If the account type does not have related AML/KYC information (for example, because such accounts were not subject to those procedures), the RFI must seek the identity of the Controlling Persons by self-certification.

If the RFI has taken reasonable steps to obtain a self-certification and it was not forthcoming, the Reporting Financial Institution must rely on the indicia in its records to determine if a Controlling Person is a Reportable Person. If the Reporting Financial Institution has no such indicia, then that Controlling Person is not treated as a Reportable Person. No further action is required for that person until there is a change in circumstances.

An RFI may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

### 4.11.2 New entity account

The RFI maintaining the account must identify the Controlling Persons of the trust. It may do so based on information collected and maintained in line with AML/KYC procedures that apply to the customer or account which are consistent with recommendations 10 and 25 of the FATF Recommendations (as adopted in February 2012).

If the AML/KYC procedures do not require the identification of the settlor, an RFI is required to go beyond information collected for AML/KYC purposes and seek the identity of the settlor.

An RFI may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

The due diligence applies to all New Entity Accounts.

The requirements to identify the settlor of a trust have been revised as a result of advice from the Global Forum on Exchange of Information for Tax Purposes that allowing RFIs to rely on a self-certification by a trustee, on behalf of the settlors of the trust, based only on the information that is already known by the trustee, does not meet the required international standards relating to Automatic Exchange of Tax Information.

Accordingly, the guidance has been updated to ensure that trustee self-certifications must identify the controllers of the trust and certify the tax residence of those persons.

RFIs should, as soon as possible (but before 30 June 2021), ensure that they have reviewed self-certifications made by trustees on behalf of settlors to ensure all settlors are identified and their tax residency status provided in accordance with the Applied Common Reporting standard in line with the current guidelines.

## 4.12 Beneficiaries of trusts – controlling persons

All beneficiaries of a Passive NFE trust are always Controlling Persons. This is consistent with recommendations 10 and 25 of the FATF Recommendations (as adopted in February 2012). In determining the Controlling Persons who are beneficiaries of a trust that is a Passive NFE, an RFI may rely on information collected and maintained through AML/KYC procedures for both Pre-existing and New Entity Accounts.

An RFI must also determine whether the beneficiaries of such a trust identified as Controlling Persons are Reportable Persons. In the case of a Pre-existing Entity Account, the RFI may rely on information collected and maintained through AML/KYC Procedures, provided the aggregate balance or value of the account does not exceed USD $1 million. This means that for such an account, if there are no indicia of foreign tax residency for an identified beneficiary or class of beneficiaries in that information, no further action is required for that beneficiary or class of beneficiaries.

For any Pre-existing Entity Account with a balance or value exceeding USD $1 million and any New Entity Accounts (regardless of balance or value), more due diligence is required for a Passive NFE trust account holder in determining whether the identified beneficiaries or any members of a class of beneficiaries are Reportable Persons. A self-certification is required from either the trustee or the beneficiary for each beneficiary. This self-certification requirement may introduce administrative complexity, particularly for discretionary trusts.

One approach that an RFI may take could be to require the trustee to identify all beneficiaries and certify their residency status in the initial due diligence. This practice may be relatively practical for

trusts with clearly limited and identified beneficiaries (such as a simple family trust) and would be an acceptable approach.

However, such an approach may be more difficult in the case of trusts with broad classes of beneficiaries. All beneficiaries are potentially, for AEOI purposes, Controlling Persons. This extends to all members of a class of beneficiaries. RFIs must identify the Controlling Persons and identifying them is not dependent on whether a beneficiary controls the trust. Identifying all beneficiaries and their residency status may be onerous or impossible at the time of on-boarding in the case of a class of beneficiaries that is numerous or not capable of identification at that point in time.

To reduce the burden of such a task, RFIs may make the choice mentioned in paragraph 134 of the Commentary on section VIII, to allow RFIs to align the scope of beneficiaries of a trust treated as Controlling Persons with those treated as Reportable Persons of a trust that is a Financial Institution. Under this approach, a beneficiary will only be treated as a Controlling Person in a year if they receive or become entitled to receive a distribution from the trust. For an RFI that has made the choice mentioned in paragraph 134, a discretionary beneficiary would only need to be identified as a Controlling Person in the initial due diligence self-certification if the beneficiary has received or become entitled to receive a distribution in the year up to the date of signing the certification, or the beneficiary otherwise has actual control of the trust.

In practice, the RFI may make this choice itself by requiring the trustee to provide a self-certification in a particular form, or it may allow the trustee to make the choice in its self-certification statement.

A choice to apply paragraph 134 means the RFI needs to put procedures in place to ensure it is informed of distributions by the trust to foreign tax residents after the initial self-certification, within the time needed to correctly report on the account each year. Possible ways to achieve this are:

- the RFI seeking annual refreshment of the certification – this requires the account holder (the trustee) to re-certify whether any members of the class of beneficiaries who have received distributions since the previous certification are foreign residents
- the RFI requiring the trustee, as a condition of holding the account and on an as needed and a timely basis, to inform the RFI that the trust has made or will make a distribution to a foreign resident beneficiary.

Note that a distribution to a foreign resident beneficiary means a distribution from the trust, which is not necessarily carried out by making a payment from the Financial Account.

An RFI may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

### 4.13 Beneficiaries of a trust that is an RFI – equity interests

A beneficiary of a fixed trust or a mandatory beneficiary of a trust holds an equity interest in the trust if the trust is an RFI. Such a beneficiary will be a pre-existing account holder for Applied CRS due diligence purposes if they held that equity interest on 30 June 2017. A person who is appointed as such a beneficiary or acquires the equity interest after the relevant Applied CRS date is a new account holder.

An RFI that is a trust may apply the broad definition in the Applied CRS or, as explained in the CRS Commentary, may use a narrower meaning which treats a discretionary beneficiary as holding an equity interest only if the beneficiary actually receives a distribution during the calendar year.

The choice of definition may change, as long as the choice is applied to all relevant beneficiaries for a complete reporting period (calendar year). Therefore, to determine if discretionary beneficiaries of an RFI that is a trust are pre-existing account holders, the RFI may determine that all such beneficiaries

existing on 30 June 2017 are pre-existing account holders. It is then permissible for the RFI to choose the narrower definition of equity interest in the following reporting periods for due diligence and reporting purposes.

## 4.14 Validity and reasonableness of a self-certification

A self-certification from an Account Holder, or in some cases a Controlling Person of an Entity (see sections 4.9 and 4.10) must be signed or otherwise positively affirmed and dated. It must contain the Account Holder's or Controlling Person's:

- name
- address (residential if a natural person)
- jurisdiction(s) of residence for tax purposes.

If the self-certification indicates foreign residence, it must also contain:

- a TIN for each foreign jurisdiction (but see section 5.6 for guide on when this may not be required and an explanation of the validity and reasonableness of TINs or the absence of a TIN)
- a date of birth (if a natural person).

The self-certification may be provided in any manner and in any form; for example, electronically, by voice recording or by scanned document. The process of obtaining the self-certification must ensure that the person providing the self-certification is the person named in the self-certification or has the proper authority to certify on their behalf, for example having a current power of attorney. The RFI needs to retain a record of the process used.

A self-certification can be completed based on a yes or no response to record the customer's jurisdictions of tax residence, instead of requiring the completion of a blank field. For example, in order to complete a self-certification, the person could be asked whether the person is a tax resident of a foreign country. Yes or no response would be appropriate.

When a self-certification is first obtained as part of the due diligence process for opening an account, the RFI must confirm its reasonableness based on other information held or obtained in connection with the account. This includes documentation collected for AML/KYC purposes. The reasonableness test is met if the RFI does not know or have reason to know that the self-certification is incorrect or unreliable.

An RFI will know or have reason to know that a self-certification is incorrect or unreliable if it identifies a current residential or postal address in a foreign jurisdiction that conflicts with the jurisdictions of tax residence declared in the self-certification.

In the case of a self-certification that appears to fail the reasonableness test (for example, because the residence address conflicts with the jurisdiction where the person claims to be a resident for tax purposes), the RFI is expected to seek either:

- a valid (new) self-certification; or
- a reasonable explanation and appropriate documentation to resolve the apparent conflict, and retain a copy or notation of how it was resolved.

The question of what is appropriate documentation depends on the nature of the reasonable explanation. For example, an account holder that explains the presence of a foreign residential address as due to their posting as a Vanuatu diplomat might support the explanation with a diplomatic passport. Appropriate documentation could include documentation already provided if relevant to the reasonable explanation.

Dual resident individuals may rely upon tiebreaker rules contained in tax treaties (if applicable) when providing an explanation aimed at resolving doubts over a self-certification.

An RFI is not expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification or the correctness of an explanation provided by an account holder. A reasonably plausible explanation of an indicia inconsistency would generally be acceptable if a currently documented residential address aligns with a tax residence declared in a self-certification.

For example, in the case of a current postal address conflicting with a jurisdiction of tax residence declared in the self-certification, so long as the current residence address aligns with the tax residence, the reasonableness test will be satisfied if a reasonable explanation for the postal address conflict is obtained. No additional documentation is required.

Vanuatu does not have an income tax system. However, for the purposes of examining the reasonableness of a claim for a tax residence in Vanuatu, the following can be used as a guide. For the purposes of the Applied CRS and individual or entity may be treated as a resident of Vanuatu for tax purposes in Vanuatu as follows:

***Individuals***

An individual is treated as a resident of Vanuatu for the purposes of the Applied CRS if:

The individual:

- has his or her home in Vanuatu during the year; or
- is present in Vanuatu for a period of, or periods amounting in aggregate to, 183 days in any 12-month period commencing or ending in the tax year; or
- is a citizen of Vanuatu who is an officer or employee of the Government or a public authority.

***An entity***

An entity may be treated as a resident of Vanuatu for tax purposes if:

The entity is incorporated, registered, formed, settled, or otherwise created in Vanuatu; or is managed and controlled in Vanuatu.

An RFI that has not been able to obtain either a valid new self-certification or a reasonable explanation and documentation supporting the reasonableness of a self-certification must report the account based on any foreign residence status provided in the original self-certification and any other jurisdiction(s) in which there are indications of foreign residence for the reportable person.

An RFI does not know or have reason to know that a self-certification is incorrect or unreliable solely because it discovers a foreign telephone number for the person or entity subject to the self-certification, or standing instructions to transfer funds to an account in a foreign jurisdiction, or a current power of attorney or signatory authority to a person with an address in a foreign jurisdiction.

## 4.15 Validity of Documentary Evidence

Documentary Evidence used in due diligence procedures must be valid. Certain documents remain valid indefinitely:

- documents issued by an authorised government body, such as a passport
- documents that are not generally renewed or amended, such as a certificate of incorporation.

Other Documentary Evidence is valid until the later of the expiration date contained in the document or the last day of the fifth calendar year following the year in which the Documentary Evidence is provided to the RFI.

An RFI may rely on Documentary Evidence provided for one account in meeting the due diligence obligations for another account. For example, Documentary Evidence provided by an entity for an existing account can be relied upon for the opening of a new account, so long as the Documentary Evidence remains reliable.

An RFI does not know or have reason to know that Documentary Evidence is incorrect or unreliable solely because it discovers a foreign telephone number for the person or entity associated with the Documentary Evidence, or standing instructions to transfer funds to an account in a foreign jurisdiction, or a current power of attorney or signatory authority to a person with an address in a foreign jurisdiction.

## 4.16 Finalising due diligence before reporting

Due diligence on Pre-existing Accounts is required to be completed by certain dates depending on the type of Account Holder and balance of the account – see section 1.6. For example, a Pre-existing Individual Account that was a High Value Account on 30 June 2017 must have the first due diligence review completed by 31 December 2017.

In practice, an RFI will need to finalise its due diligence by a time that allows sufficient further time to prepare data for reporting. The time that an RFI selects to "rule off" its records for Applied CRS purposes is a matter for each RFI to decide having regard to its own requirements. The RFI needs to schedule its due diligence program in a way that allows it to complete mandatory procedures by the date it rules off its Applied CRS records.

Due diligence on Pre-existing Accounts may include contact with Account Holders for the purpose of seeking information, documentation or self-certifications. This could be an optional procedure (for example see section 4.5 on curing indicia found for a Lower Value Account) or a mandatory procedure (for example see section 4.9 on obtaining Controlling Person self-certifications for Passive NFEs with account balances over USD $1 million).

Where contact with an Account Holder is an optional procedure, the RFI may carry this out at any time, or not at all. The RFI is not required to finalise any optional procedures in time to take account of the outcomes when preparing Applied CRS reports for the 2017 reporting period.

Where contact with an Account Holder is a mandatory procedure, the RFI would need to schedule these activities at a time that allows a reasonable period to obtain responses to be taken account of when preparing Applied CRS reports for the 2017 reporting period. The planned schedule should be documented.

As a guide, a reasonable period of time to obtain and process responses could normally be 4 to 8 weeks depending on the communication channel. It is acknowledged that some Account Holders may respond late or not at all. In these circumstances the RFI is not required to take account of late responders providing information after the date that the RFI finalises its due diligence for a reporting period.

***Example 16 – Self Certification***

Southern Investment Fund has a number of accounts with balances greater than USD $1 million that are held by entities. In order for the Fund to assemble data and prepare reports for filing with the VCA, it decides to finalise due diligence by 31 April 2018 and use the information it holds on its accounts as of that day in preparing its Applied CRS reports. The Fund plans and records a schedule of its due diligence activities on these accounts over a time that allows Passive NFEs to be identified with a further reasonable time allowed to obtain self-certifications in relation to Controlling Persons by 31 April 2018.

Southern Investment Fund will not be required to consider self-certifications received after 31 April 2018 for its Applied CRS reports due by 31 May 2018. These self-certifications will be considered when reporting on the 2018 reporting period in 2019.

The VCA recognises that in the initial year, time is short and that it will be difficult to meet deadlines. The VCA will work with all FIs in a cooperative and supportive way.

### 4.17 Change in circumstances

A change in circumstances relating to an account or information held by the RFI for an account is a change that results in new or additional information relevant to the status of the account for reporting purposes. It includes an addition or change of an account holder. A change in circumstances for an account must be considered for all accounts maintained by the RFI for the account holder to the extent computerised systems allow aggregation of the accounts.

An RFI is expected to have procedures that ensure a change in circumstances is identified by the RFI. These procedures should cover information that comes to a relationship manager of a High Value Account (if there is one).

RFIs should encourage any persons providing a self-certification to notify the RFI of a change in circumstances affecting the validity of the self-certification.

A change in circumstances may require the RFI to report the account or to take action to resolve the status of the account.

Changes in circumstances requiring action or reporting

| Account type | Change in circumstance | Action required | Time for action or change in status |
|---|---|---|---|
| Lower Value Pre-existing Individual Accounts where initial due diligence was the residential address test (Applied CRS only) | Change causes documentation supporting original residential address to be incorrect or unreliable | Seek a self-certification and Documentary Evidence to establish tax residence. Electronic record search for indicia if not received | By the last day of calendar year or 90 calendar days from change, whichever is later |
| Lower Value Pre-existing Individual Accounts where initial due diligence was the electronic record search | Change causes one or more new indicia to be associated with the account, see section 4.5 | Account is reportable, unless curing procedure is applied, see section 4.5 | RFI has the option to delay treating the account as reportable for up to the last day of the calendar year or 90 calendar days from the change if carrying out curing procedure |
| Higher Value Pre-existing Individual Accounts | Change causes one or more new indicia to be associated with the account, see section 4.6 | Account is reportable, unless curing procedure is applied, see section 4.6 | RFI has the option to delay treating the account as reportable for up to 90 calendar days from the change if carrying out curing procedure |

| | | | |
|---|---|---|---|
| New Individual Accounts | Change causes the RFI to know or have reason to know that the self-certification is incorrect or unreliable, see section 4.14 | Obtain either a new self-certification or a reasonable explanation with documentation supporting the original self-certification. | RFI has the option to delay treating the account as reportable until the earlier of 90 calendar days from the change, a new self-certificate is obtained or the original is satisfactorily explained |
| Pre-existing Entity Accounts | Change causes the RFI to know or have reason to know that a self-certification or other documentation is incorrect or unreliable, see section 4.14 | Re-determine the status of the account in accordance with the original due diligence, see below | Carry out the due diligence by the end of the calendar year or 90 calendar days from the discovery of the change, whichever is the later. |
| New Entity Accounts | Change causes the RFI to know or have reason to know that a self-certification is incorrect or unreliable, see section 4.14 | Re-determine the status of the account in accordance with the original due diligence, see below | Carry out the due diligence by the end of the calendar year or 90 calendar days from the discovery of the change, whichever is the later. |

### 4.17.1 Re-determining the status of an Entity account

Where a change in circumstances has caused an RFI to know or have reason to know that a self-certification or other documentation used in the original due diligence for the account is unreliable, the RFI must re-determine the status of the account. The re-determination process broadly follows the original due diligence process for the account.

If the change in circumstances has indicated possible tax residence for the Account Holder in a different jurisdiction, the RFI must obtain:

- a self-certification; or
- a reasonable explanation and documentation (as appropriate) supporting the reasonableness of the previously collected self-certification or document.

If the RFI is unable to obtain either of the above, it must treat the Account Holder as a resident of both the original jurisdiction and the new jurisdiction.

If the change in circumstances has, considering available information, cast doubt on the status of the Account Holder as a Financial Institution, Active NFE or Passive NFE, the RFI must obtain additional documentation or a self-certification (as appropriate) to establish the Account Holder as an Active NFE or Financial Institution. If the RFI is unable to do so, it must treat the Account Holder as a Passive NFE.

If the change in circumstances indicates possible tax residence of a Controlling Person in another jurisdiction, the RFI must obtain:

- a new self-certification; or
- a reasonable explanation and documentation (as appropriate) supporting the reasonableness of the previously collected self-certification or document.

If the RFI is unable to obtain either of the above, it must rely on an electronic indicia search as described in section 4.5 to determine whether a Controlling Person is a Reportable Person.

## 4.18 Account balance aggregation rule

The aggregate account balance or value is relevant to various due diligence thresholds, for example USD $1 million in the case of High Value Pre-existing Individual Accounts or USD $250,000 for Pre-existing Entity Accounts. Other than the special aggregation rule for relationship managers explained below, identical rules apply to aggregation for individual and entity accounts.

An RFI is required to aggregate all Financial Accounts maintained by it or by a related entity, but only to the extent that the Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or foreign 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.

### 4.18.1 Special aggregation rule applicable to relationship managers

In determining the aggregate balance or value of a pre-existing 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.

### 4.18.2 CRS Participating and Reporting Jurisdictions

The concept of Participating Jurisdiction is important for due diligence procedures under the Applied CRS. An RFI is required to conduct "look-though" due diligence procedures for certain entity account holders resident in countries that are not Participating Jurisdictions. Those look-through procedures apply to entities that are Type B Investment Entities, see section 2.5. Type B Investment Entities who are not resident in a Participating Jurisdiction are treated as Passive NFEs for Applied CRS purposes. Sections 4.8 and 4.9 explain the requirements to identify and determine the status of Controlling Persons of Passive NFEs.

### 4.18.3 Participating Jurisdictions List

Participating Jurisdictions List " Participating Jurisdiction" means a jurisdiction which is identified in Annex 1 of the AEOI Guide.

### 4.18.4 Reportable Jurisdictions

Reportable jurisdictions are all jurisdictions other than Vanuatu or the United States of America.

# 5 REPORTING

## 5.1 Reportable accounts

A Financial Account is a Reportable Account if it is held by one or more Reportable Persons or by an entity that is a Passive NFE (with one or more Controlling Persons that is a Reportable Person.

Under the Applied CRS, a Financial Account held by a Passive NFE with foreign tax resident Controlling Persons is a Reportable Account because the Controlling Persons are Reportable Persons. This is the case irrespective of where the Passive NFE is tax resident.

## 5.2 Nil Reports

As set out in section 1.6.1, a Financial Institution that applies is require to file a NIL return indicting it has found no Reportable Accounts.

## 5.3 Reportable persons

A Reportable Person is an individual or entity that is resident under the tax laws of a foreign jurisdiction. Entity types with no residence under the tax laws of a foreign jurisdiction are reportable for that jurisdiction, if the entity's place of effective management or its principal office is located there. For example, if a partnership has no residency for tax purposes in a particular jurisdiction, but its place of effective management is located there, it is a Reportable Person for that jurisdiction.

In most circumstances, an individual is tax resident in the jurisdiction where they live and work. If an individual is required to file a tax return or pay tax in a jurisdiction, they are likely to be a tax resident there.

In special cases where an individual has ties to more than one jurisdiction, they may be ‘dual resident’ – a tax resident of more than one country or jurisdiction. Where an individual is tax resident in more than one jurisdiction, any Financial Accounts held by that person or held by an Entity which has the individual as a Controlling Person are Reportable Accounts for each jurisdiction where they are tax resident.

Certain entities are excluded from being Reportable Persons – any corporations with stock regularly traded on an established securities market (and their related entities) are excluded (see discussion in section 3.6), as are government entities, international organisations and central banks. Under the Applied CRS, a Financial Institution is also excluded from being a Reportable Person (with the exceptions noted in section 4.9).

## 5.4 Reportable information for reportable accounts

A Financial Account is a Reportable Account if it is held by one or more Reportable Persons or by a Passive NFE entity with one or more Controlling Persons that is a Reportable Person.

Certain entities are excluded from being Reportable Persons – any corporations with regularly traded stock (see discussion in section 3.6) are excluded as are government entities, international organisations, central banks and Financial Institutions.

For a Reportable Account, certain information needs to be reported for every account. Some information varies according to the type of account and information available concerning each Reportable Person for the account.

For the Applied CRS, the information required for account reporting is described in section I of the Applied CRS, as interpreted by the CRS Commentary.

#### 5.4.1 Information for every report
The name and an identifying number of the RFI

#### 5.4.2 Information for every reportable account
Account number (or if no account number, a functional equivalent)

The account balance or value at the end of the year or, if closed during the year, the fact of its closure (see section 5.7)

#### 5.4.3 Information dependent on the type of account
Under Applied CRS the information to be reported is:

- for a Depository Account, the gross amount of interest paid or credited to the account during the calendar year
- for a Custodial Account, the gross amount of interest, dividends and other income generated with respect to assets held in the account paid or credited to the account during the calendar year, and the gross proceeds from the sale or redemption of Financial Assets during the calendar year
- for any other account, the total gross amount paid or credited to the Account Holder in relation to the account during the calendar year 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 calendar year.

#### 5.4.4 Information for each reportable person
The following information is required to be reported for each Reportable Person that is an Account Holder of the account and, in the case of an Account Holder that is an Entity, each Controlling Person of the Entity that is a Reportable Person, as described in the following table.

#### 5.4.5 Information to be reported for each Reportable Person
Name

Address

Jurisdiction(s) of residence

Taxpayer identification numbers issued by the jurisdictions of residence (see section 5.6)

If an individual, their date of birth

The address to be reported for an individual is their current residence address. If the RFI does not hold this address in its records, it should report the mailing address. The address to be reported for an entity is the address that the RFI has in its records for that entity.

### 5.5 Account balance or value
Generally, the balance or value of a Financial Account is the balance or value that is calculated by the RFI for the purposes of reporting to the Account Holder. The balance to be reported is the balance or value of the account at the end of the reporting period (as a general rule, 31 December of a calendar year) except in the case of closed accounts (refer to discussion in section 5.7 of this Guide).

Where it is not possible (or usual business practice) to value an account at 31 December, an RFI should use the normal valuation point for the account that is nearest to 31 December.

The balance or value in the case of Depository Accounts is the amount in the account on 31 December (unless the account is closed prior to that date). For instance, it is expected that a bank could

determine the account balance or value of a cash or savings account as at 31 December of a calendar year.

In the case of a cash value insurance contract, the RFI may report the cash value or surrender value of the account as at the most recent contract anniversary date falling within the relevant calendar year of reporting (if the company chooses to use the anniversary date of a policy for valuation purposes).

The balance or value of an equity interest is the value calculated by the RFI for the purpose needing the most frequent determination of value, and the balance or value of a debt interest is its principal amount.

The balance or value of the account is not to be reduced by any liabilities or obligations an Account Holder incurs for the account or any of the assets held in it. The account balance must not be reduced by any fees, penalties or other charges the Account Holder may be liable for if they terminate, transfer, surrender, liquidate or withdraw cash from the account.

An account with a zero or negative balance is to be reported as having a balance or value of zero.

## 5.6 Taxpayer Identification Numbers (TINs) and date of birth

A TIN means a Taxpayer Identification Number. Some jurisdictions use a functional equivalent (for example the social security number in the case of the U.S.) as the TIN to identify their taxpayers. The OECD's Automatic Exchange of Information has information on the usage and structure of TINs as submitted by each participating jurisdiction.

From 30 June 2017, a new account that is a Reportable Account under the Applied CRS requires an RFI to obtain and report the foreign TIN and (in the case of individuals) the date of birth for each Reportable Person for the account. If the account is identified as reportable because of a self-certification upon opening the account, the RFI should require the TIN for each Reportable Person at the same time. The date of birth should also be obtained for individuals, if not already known by the RFI through other processes (such as AML/KYC procedures).

For an account maintained by an RFI on 30 June 2017 (a Pre-existing Account) that is determined to be a Reportable Account under the Applied CRS, the RFI must make reasonable efforts to obtain the TIN and date of birth of each associated Reportable Person if not already known. The same also applies to a new account from 30 June 2017 where a change of circumstances means it is later found to be associated with a Reportable Person. Reasonable effort means contacting the account holder, and examples of such contact are a letter, email or a request during an online login process. An unsuccessful request for this information should be followed by a second request within a year.

For both new and pre-existing accounts, a TIN is not required if a TIN was not issued to the person by the relevant jurisdiction. Such a circumstance can arise because either:

- TINs are not used by the jurisdiction (see the OECD's Automatic Exchange of Information); or
- TINs are used in the jurisdiction, but the particular person, for a range of possible reasons, has not obtained or been issued a TIN for that jurisdiction.

If a person claims not to have a TIN, this statement should be part of the self-certification collected for the account, unless the RFI reasonably determines that the person would not have a TIN for the relevant foreign jurisdiction, based on information on the OECD's Automatic Exchange of Information Portal.

In exceptional circumstances the customer may declare to be a foreign tax resident but not provide their TIN, because they need additional time to locate the TIN (for example, the customer is an exchange student whose TIN has always been solely in the possession of the student's parents, who

reside overseas). In such exceptional cases, an RFI should obtain the missing TIN within a reasonable period of time, in no cases exceeding 90 days

### 5.6.1 Validity and reasonableness of TINs

Generally, an RFI is not expected to conduct comprehensive checks on the issue or validity of TINs for every jurisdiction. An RFI can generally rely on the TINs provided in the self-certification or Documentary Evidence.

The OECD's Automatic Exchange of Information provides information on the issue, collection, practical structure and other specifications of TINs in each participating jurisdiction.

If a self-certification from an account holder or their representative does not contain a TIN, and information included on the Automatic Exchange Portal indicates the account holder's jurisdiction of residence issues TINs to all tax residents, an RFI has reason to know that the self-certification may be unreliable or incorrect. In this case, the RFI is expected to seek either a valid (new) self-certification or a reasonable explanation why the account holder has not provided the TIN.

However, an RFI is generally not required to confirm the format and other specifications of a TIN with the information on the Automatic Exchange Portal, or seek such information relating to non-participating jurisdictions not provided on the Portal. RFIs may still wish to do so to enhance the quality of information collected and minimise the administrative burden associated with any follow up on reporting an incorrect TIN. In this case, they may also use regional and national websites providing a TIN check module to further verify the accuracy of the TIN provided in the self-certification.

Even so, an RFI should be familiar with, and check for, the validity of TINs from another jurisdiction in which the RFI or a Related Entity operates if:

- there are simple or standard rules for TINs in that jurisdiction (such as the structure or number of digits), and
- the IT systems used across the jurisdictions are shared or sufficiently similar that the validation task would not be onerous.

The VCA will monitor international expectations on the use of the information on the OECD's Automatic Exchange Portal and update this guide if necessary.

## 5.7 Closed accounts

For a Reportable Account closed during the year, the Applied CRS requires reporting the closure. The payments that are reportable (see section 5.3) are those payments paid or credited to the account up until closure.

## 5.8 Undocumented accounts – Applied CRS

The term 'undocumented account' has a specific meaning in the Applied CRS. An undocumented account may arise when an RFI finds a 'hold mail' or 'in-care-of' indicium of foreign residency for a Pre-existing Individual Account and no other address on file, and the status of the account is not determined from other documentation.

In the case of a Lower Value Account, if an electronic record search for the account has found a 'hold mail' or 'in-care-of' address in a foreign jurisdiction as the only recorded address for the account and no other reportable indicia for the account holder, the RFI must take at least one of these actions:

- conduct a paper record search of certain documents specified in the Applied CRS; or
- seek a self-certification or Documentary Evidence from the account holder to establish their tax residency.

If the chosen course of action fails to resolve the status of the account, the RFI is required to attempt the other course of action. The account has undocumented account status unless and until one of these actions resolves the foreign address indicium.

In the case of a High Value Account, if the enhanced review procedures required by the Applied CRS are carried out on the account and the only indicium of foreign residency found is a 'hold mail' or 'in-care-of' address in a foreign jurisdiction with no other address on file, the RFI must seek a self-certification or Evidence from the account holder to establish their tax residency. If the self-certification is not received by the time of reporting, the account remains an undocumented account.

The 'hold mail' or 'in-care-of' circumstances described above for Pre-existing Individual Accounts are the only situations where a reported account should be reported as 'undocumented'.

An undocumented account must continue to be reported for subsequent years until its status is resolved. An RFI must, in the case of a High Value Account, repeat its request for documentation annually until resolved. Examples of making such a request could be by letter, email or a request during face to face contact. A request is not required for Lower Value Accounts on an annual basis; however, RFIs are encouraged to renew their request from time to time.

### 5.8.1 Identification as reportable

An account may be identified as reportable at any time during a calendar year, either upon the initial due diligence for the account, or later after a change in circumstances triggering a change in status of the account. In general, an account is only a Reportable Account from the time it is actually identified as such.

Pre-existing Individual Accounts that are High Value Accounts (that is, exceed the USD $1 million threshold) on a test date later than 30 June 2017, and Pre-existing Entity Accounts that exceed the USD $250,000 threshold on a test date later than 30 June 2017, will follow the general rules in the Applied CRS and its implementing legislation. That means an account is only a Reportable Account from the time it is actually identified as one, following the completion of due diligence procedures within the prescribed deadlines.

A further scenario where an account may become a Reportable Account under the Applied CRS is through the application of an anti-avoidance provision. This could occur where an account becomes reportable as it ceases to meet the definition of an Excluded Account.

Reportable status may change during the calendar year. If an account holder becomes a foreign tax resident or is identified as a foreign tax resident during the year, the account has become reportable. However, an account identified as reportable during the year that has a change in circumstances such that it no longer has reportable status on 31 December that year is not reportable for that calendar year.

The date periods of tax residency during the year are not reportable information.

## 5.9 Transitional period for pre-existing individual accounts – Applied CRS

The Applied CRS allows an extended period for carrying out due diligence on Pre-existing Individual Accounts that are Lower Value Accounts (accounts with a balance not exceeding USD $1 million on 30 June 2017). The review of Lower Value Accounts must be completed by 31 December 2018. A Lower Value Account is treated as a Reportable Account from the date it is identified as such. A Lower Value Account identified as a Reportable Account during 2017 may be reported in 2018, but if not reported in that year, it must be reported in 2019 (by 31 May 2019). A Lower Value Account identified as a Reportable Account during 2018 must be reported in 2019 (by 31 May 2019).

A Pre-existing Individual Account that is a High Value Account as of 30 June 2017 has a deadline of 31 December 2017 for completing due diligence. Such an account will be treated as having been a

Reportable Account on 30 June 2017 if subsequent due diligence identifies that the account would have been a Reportable Account on that day. In other words, it is a Reportable Account from 30 June 2017 and must be reported by 31 May 2018, regardless of whether the Reporting Financial Institution conducts its due diligence procedures on the account between 30 June 2017 to 31 December 2017

A Pre-existing Individual Account that was not a High Value Account as of 30 June 2017 but became a High Value Account because its balance exceeds USD $1 million on 31 December 2017 must be reviewed during the 2018 calendar year. If found to be a Reportable Account, if must be reported by 31 May 2019.

## 5.10 Transitional period for pre-existing entity accounts – Applied CRS

The Applied CRS legislation also allows an extended period for carrying out due diligence on a Pre-existing Entity Account with a balance or value exceeding USD $250,000 on 30 June 2017. The review must be completed by 31 December 2018. Such an account will be treated as having been a Reportable Account on 30 June 2017 if subsequent due diligence identifies that the account would have been a Reportable Account on that day. If it is a Reportable Account it must be reported by 31 May 2018, regardless of whether the Reporting Financial Institution conducts its due diligence procedures on the account between 30 June 2017 to 31 December 2017 or 1 January 2018 to 31 December 2018.

## 5.11 Currency reporting and related issues

### 5.11.1 Reporting

Amounts or values reported under the Applied CRS must be reported in the currency the account is denominated and the information reported and must identify the currency in which each amount is denominated. Where an account is denominated in more than one currency, the RFI may elect to report information in any of those currencies. Where currencies are converted for reporting amounts, a spot rate from the last day of the calendar year must be used.

### 5.11.2 Thresholds

Threshold amounts for the purposes of determining due diligence procedures are in U.S. dollars in the Applied CRS. However, Vanuatu has allowed RFIs to convert US Dollar threshold amounts in the Applied CRS into other currencies at the prevailing spot rate on the test day or such other exchange rate as may be prescribed in the TAA Regulations[xii].

The Applied CRS test date is 30 June 2017 for initial categorisation of pre-existing accounts, or 31 December each year for subsequent testing. For an insurance contract or Annuity Contract, the date of the most recent contract valuation may be used.

## 5.12 How to report for Applied CRS

At the time this document was drafted, the arrangements for filing annual reports was not finalised. Further details will be provided by the Vanuatu Competent Authority in the near future.

- However, all reports must be filed in accordance with the CRS XML Schema User Guide.

# 6 COMPLIANCE

RFIs are required to have procedures and systems in place to ensure that Reportable Accounts are identified, the relevant information collected and that information is reported to the VCA. The international agreements to which Vanuatu is or will be a party expect the VCA, as the competent authority, to endeavour to ensure that RFIs provide complete and accurate information for exchange with those countries.

The TAA contains a range of sanctions that may be applied to RFIs not complying with their reporting obligations.

An RFI that fails to comply with the due diligence procedures in identifying any Reportable Accounts is unlikely to provide complete and accurate information to the VCA. For example, an RFI that fails to collect a customer's self-certification upon account opening would have difficulty in identifying and reporting on that account holder's jurisdiction of residence for tax purposes.

Accordingly, an RFI that does not collect an account holder's self-certification may be subject to:

- an administrative penalty for providing a false or misleading statement to the VCA, or
- an administrative penalty for failing to lodge a statement with the VCA.

In addition, an RFI commits an offence if they fail to undertake the due diligence (including to collect a self-certification) as required by the Applied CRS . Further information about this penalty follows in section 6.1.

An RFI needs to keep adequate records about the procedures used in preparing their AEOI reports to ensure the VCA can properly assess whether they have complied with their reporting obligations. The minimum record keeping requirements are set out in the TAA Regulations. It is an offence to fail to keep and retain records in accordance with the Applied CRS.

Specifically, an RFI must to keep records for five years (from the end of the calendar year of the year in which the RFI is required to report for the last reporting year the record is relevant. The records must:

- if a report is required - correctly records the procedures by which it determined what information to include in the report; and
- if a report is not required - correctly records the procedures used to determine that it did not need to provide the report.

The records must be in re in English, or are readily accessible and easily convertible into English.

Keeping records of the procedures used in Applied CRS due diligence processes includes keeping a record of the evidence relied upon. This includes the self-certification and, where other evidence is relevant, a record of that evidence. The self-certification is expected to be captured by the RFI in a manner such that it can credibly demonstrate that the self-certification was positively affirmed (for example, voice recording, digital footprint). For other evidence, the evidence retained by an RFI does not have to be the original and may be a certified copy, a photocopy or, at least, a notation of the type of documentation reviewed, the date the documentation was reviewed, and the document's identification number (if any).

## 6.1 Failure to obtain a self-certification – Applied CRS

Aside from opening a new account, an RFI may be required to obtain a self-certification or a new self-certification in some other situations. A self-certification or a new self-certification is required under the Applied CRS if:

- there is a change in circumstances for a New Individual Account or a New Entity Account that causes the RFI to know, or have reason to know, that the original self-certification is incorrect or unreliable
- a Passive NFE holds a Pre-existing entity account and the aggregate account balance or value is USD $1 million or more, to determine if a Controlling Person is a Reportable Person.

A change in circumstances would not require an RFI to obtain a new self-certification if the Account Holder provides a reasonable explanation and documentation (as appropriate) of the perceived indicia.

## 6.2 Collaboration on compliance and enforcement

Vanuatu will exchange tax information in accordance with the Convention and the MCCA. These agreements, that support the Applied CRS, give a foreign tax administration the ability to notify the VCA when it has reason to believe an error may have led to incorrect or incomplete information reporting, or there is non-compliance with the Applied CRS's due diligence and reporting requirements by a Vanuatu RFI. In such situations, the VCA is obliged to take all appropriate measures under Vanuatu law, including applying penalties to the RFI, to address errors or non-compliance.

The VCA has a reciprocal ability to notify foreign tax administrations of errors or non-compliance by RFIs in those countries about their reporting to the VCA of accounts held by Vanuatu tax resident account holders.

### 6.2.1 Offences and Penalties

A person commits an offence if they -

(a) fail to notify the Competent Authority of their obligation to report as required;
(b) refuse or fail to furnish any statement, return or information as and when required by these Regulations;
(c) fail to undertake the due diligence or other measures required by and in accordance with these Regulations;
(d) make any false report, false statement or false declaration or give any false information to the Competent Authority in relation to these Regulations;
(e) make a false or misleading statement in a self-certification;
(f) fail to keep or maintain records;

The TAA and TAA Regulations impose significant administrative and criminal sanctions for failing to comply with the requirements of the Applied CRS. Significant fines and imprisonment can be imposed for failing to comply with the requirements of the Applied CRS, as well as administrative penalties where appropriate.

The Vanuatu Competent Authority intends to support Financial Institutions and other people comply with the Applied CRS requirements. However, where appropriate, firm measures will be taken to enforce the law if necessary.

### 6.2.2 Anti-Avoidance

If a person enters into any arrangement or engages in a practice, the main purpose or one of the main purposes of which can reasonably be considered to be to avoid any obligation under these Regulations, these Regulations apply as if the person has not entered into the arrangement or engaged in the practice.

A Non Reporting Financial Institution ceases to be a Non Reporting Financial Institution if it fails to meet the requirements set out under Section VTI B of the Applied Common Reporting Standard.

An Excluded Account ceases to be an Excluded Account if it fails to meet the requirements set out under:

(a) Section VIII(C)(17) of the Applied Common Reporting Standard; or
(b) Schedule 2 of the TAA Regulations

### 6.2.3 Undocumented accounts – Applied CRS

As explained in section 5.8, the term "undocumented account" has a specific meaning for the Applied CRS. The “hold mail” or “in-care-of” circumstances for Pre-existing Individual Accounts described in section 5.8 are the only situations where a reported account should be reported as "undocumented".

The VCA will monitor the number and frequency of reporting of undocumented accounts by an RFI. High rates of reporting of undocumented accounts may be queried to determine whether these have been correctly reported and whether reasonable efforts have been made by the RFI to document the accounts.

# 7 FREQUENTLY ASKED QUESTIONS

The Global Forum on Transparency and Exchange of Tax Information publish CRS-related Frequently Asked Questions on their website.

You can access the Frequently Asked Questions here.

# 8 REFERENCES AND LINKS

**FATFA Recommendations**

FATF/OECD (2013), *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*, The FATF Recommendations February 2012, FATF/OECD, Paris, available on http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

**Common Reporting Standards and Implementation**

Common Reporting Standard (and commentary)

Common Reporting Standard Implementation Handbook

OECD Global Forum - CRS-related Frequently Asked Questions

OECD Report on Automatic Exchange

XML Schema

**Legislation and Regulations**

TAA and TAA Regulations (1 January 2020 onwards)

Vanuatu ITC Act and Regulations (Repealed 1`January 2020)

**Mutual Administrative Assistance Agreements**

Convention for Mutual Administrative Assistance in Tax Matters

Competent Authority Agreement

**Useful Links**

DCIR website

# 9 OUR COMMITMENT TO YOU

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, you are encouraged to seek professional advice.

# 10 APPLIED CRS – MODIFICATIONS

Table of Optional Provisions to the CRS authorised by the Standard and the Commentaries (see CRS Implementation Handbook p. 11-17)

| Optional Provision | Regulation | Commentary Modification | Option | Approach Taken |
|---|---|---|---|---|
| 1 | n/a | Com p.98 | Alt approach to calculating account balances | Alternative Option not adopted |
| 2 | n/a | Com p. 99 | Use of other reporting period | Alternative reporting periods not adopted |
| 3 | n/a | Com p. 105 | Phasing in the requirement to report gross proceeds | Phasing in requirement not adopted |
| 4 | Clause 6 Part 1 of Schedule 2 of the TAA Regulations | | Filing of Nil Returns | Nil Returns are required, as is requirement to notify Competent Authority that entity is a Reporting Financial Institution |
| 5 | Clause 8 Part 1 of Schedule 2 of the TAA Regulations | CRS p 31, Com p. 108 | Allowing 3rd Party service providers to fulfil the obligations on behalf of the financial institutions | Third party service providers are allowed to perform functions as specified for the Reporting Financial Institution. |
| 6 | Section III D 1 of the Applied CRS (Schedule 1) | CRS p. 31, Com p. 108 | Allowing the due diligence procedures for New Accounts to be used for Pre-existing Accounts | Reporting Financial Institutions may use the due diligence procedures in the Applied CRS applicable to New Accounts for Pre-existing Accounts |
| 7 | Section III D 2 of the Applied CRS (Schedule 1) | CRS p. 31, Com p. 108 | Allowing the due diligence procedures for High Value Accounts to be used for Lower Value Accounts | Reporting Financial Institutions may use the due diligence procedures in the Common Reporting Standard applicable to High Value Accounts for Lower Value Accounts |
| 8 | Section III B 1 of the Applied CRS (Schedule 1) | CRS p. 32, Com p. 111 | Allowing a residential address test to be used for Pre-existing Lower Value Accounts | A residential address test may be used for Pre-existing Lower Value Accounts instead of the electronic indicia test otherwise required |
| 9 | Section V A of the Applied CRS (schedule 1) | CRS p. 38, Com p.135 | Optional Exclusion from due diligence for Pre-existing Entity Accounts of less than USUSD $250,000. | Reporting Financial Institutions may elect to exclude from its due diligence procedures Pre-existing Accounts with an aggregate account balance or value of USUSD $250,000 as at the commencement of the TAA Regulations. |
| 10 | Section VII A of the Applied CRS (Schedule 1) | CRS p. 42, Com p.153 | Alternative documentation procedure for certain employer-sponsored group insurance contracts or annuity contracts. | Alternative documentation for certain employer-sponsored group insurance contracts or annuity contracts is allowed if the requirements set out in Section VII A are satisfied. |

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| 11 | Clause 3 Part 1 of Schedule 2 of the TAA Regulations | Com p.203 | Allow financial institutions to make greater use of existing standardised industry coding systems for the due diligence process. | Reporting Financial Institutions may use existing standardised industry coding for their due diligence processes as documentary evidence. |
| 12 | Section VII C 4 of the Applied CRS (Schedule 1) | CRS p. 43, Com p. 156 | Currency translation | The US dollar thresholds may be converted into other currencies either at the prevailing spot rate or such other exchange rate as may be prescribed in these Regulations. |
| 13 | Section VIII C 9 of the Applied CRS (Schedule 1) | Com p.181 | Expanded definition of Pre-existing Account | Reporting Financial Institutions may treat new accounts of a Pre-existing Account holder as Pre-existing accounts if the requirements of Section VIII C 9 of the Applied CRS are satisfied. |
| 14 | Section VIII E 4 of the Applied CRS (Schedule 1) | Com p.183 | Expanded definition of Related Entity | Expanded definition adopted |
| 15 | n/a | CRS p. 50 | Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle | Special Rule for Bearer Shares is not included. |
| 16 | n/a | Com p.198 | Controlling Persons of a trust | Special Rule is not included. |

Note: The OECD Common Reporting Standard Section IX: Effective Implementation has been deleted from the Common Reporting Standard incorporated into the TAA and the TAA Regulations. The TAA and TAA Regulations provide necessary legal framework to support the effective implementation and ensure compliance with the Common Reporting Standard due diligence and reporting requirements.

# 11 ANNEX 1 – Participating Jurisdictions

| Nr | Jurisdiction of Competent Authority | Nr | Jurisdiction of Competent Authority |
|---|---|---|---|
| 1. | Albania | 62. | Korea |
| 2. | Andorra | 63. | Kuwait |
| 3. | Anguilla | 64. | Latvia |
| 4. | Antigua and Barbuda | 65. | Lebanon |
| 5. | Argentina | 66. | Liberia |
| 6. | Armenia | 67. | Liechtenstein |
| 7. | Aruba | 68. | Lithuania |
| 8. | Australia | 69. | Luxembourg |
| 9. | Austria | 70. | Macau (China) |
| 10. | Azerbaijan | 71. | Malaysia |
| 11. | The Bahamas | 72. | Maldives |
| 12. | Bahrain | 73. | Malta |
| 13. | Barbados | 74. | Marshall Islands |
| 14. | Belgium | 75. | Mauritius |
| 15. | Belize | 76. | Mexico |
| 16. | Bermuda | 77. | Moldova |
| 17. | Brazil | 78. | Monaco |
| 18. | British Virgin Islands | 79. | Montenegro |
| 19. | Brunei | 80. | Montserrat |
| 20. | Bulgaria | 81. | Morocco |
| 21. | Cameroon | 82. | Nauru |
| 22. | Canada | 83. | Netherlands |
| 23. | Cayman Islands | 84. | New Caledonia |

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|---|---|---|---|
| 24. | Chile | 85. | New Zealand |
| 25. | China (People's Republic of) | 86. | Nigeria |
| 26. | Colombia | 87. | Niue |
| 27. | Cook Islands | 88. | Norway |
| 28. | Costa Rica | 89. | Oman |
| 29. | Croatia | 90. | Pakistan |
| 30. | Curacao | 91. | Panama |
| 31. | Cyprus[2] | 92. | Peru |
| 32. | Czech Republic | 93. | Poland |
| 33. | Denmark | 94. | Portugal |
| 34. | Dominica | 95. | Qatar |
| 35. | Ecuador | 96. | Romania |
| 36. | Estonia | 97. | Russian Federation |
| 37. | Faroe Islands | 98. | Rwanda |
| 38. | Finland | 99. | Saint Kitts and Nevis |
| 39. | France | 100. | Saint Lucia |
| 40. | Georgia | 101. | Saint Vincent and the Grenadines |
| 41. | Germany | 102. | Samoa |
| 42. | Ghana | 103. | San Marino |
| 43. | Gibraltar | 104. | Saudi Arabia |
| 44. | Greece | 105. | Senegal |

[2]Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.
Note by Türkiye: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

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|---|---|---|---|
| 45. | Greenland | 106. | Seychelles |
| 46. | Grenada | 107. | Singapore |
| 47. | Guernsey | 108. | Sint Maarten |
| 48. | Hong Kong (China) | 109. | Slovak Republic |
| 49. | Hungary | 110. | Slovenia |
| 50. | Iceland | 111. | South Africa |
| 51. | India | 112. | Spain |
| 52. | Indonesia | 113. | Sweden |
| 53. | Ireland | 114. | Switzerland |
| 54. | Israel | 115. | Thailand |
| 55. | Isle of Man | 116. | Türkiye |
| 56. | Italy | 117. | Turks & Caicos Islands |
| 57. | Jamaica | 118. | Uganda |
| 58. | Japan | 119. | Ukraine |
| 59. | Jersey | 120. | United Arab Emirates |
| 60. | Kazakhstan | 121. | United Kingdom |
| 61. | Kenya | 122. | Uruguay |

# 12 END NOTES

[i] Schedule 2 of the TAA Regulations.
[ii] Subclause 1(2) of Part 1 of Schedule 2 of the TAA Regulations.
[iii] Clause 6(1) of Part 1 of Schedule 2 of the TAA Regulations.
[iv] Clause 8 of Part 1 of Schedule 2 of the TAA Regulations.
[v] Section V III (C)(17(a) of the Applied CRS (Schedule 1).
[vi] Section III D 1 of the Applied CRS (Part 2 of Schedule 2 of the TAA Regulations).
[vii] Section VII A of the Applied CRS (Part 2 of Schedule 2 of the TAA Regulations).
[viii] Section V A of the Applied CRS (Part 2 of Schedule 2 of the TAA Regulations).
[ix] Section VIII C 9 of the Applied CRS (Part 2 of Schedule 2 of the TAA Regulations).
[x] Section VII A of the Applied CRS (Part 2 of Schedule 2 of the TAA Regulations).
[xi] See link at Section 11 of this guide.
[xii] Section VII C 4 of the Applied CRS (Part 2 of Schedule 2 of the TAA Regulations).