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- (b) The collective investment vehicle retires all such shares upon surrender;
- (c) The collective investment vehicle performs the due diligence procedures set forth in Sections II through VII and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- (d) The collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible, and in any event prior to 1 March 2018.

### C. Financial Account

- (1) The term “**Financial Account**” means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:
  - (a) in the case of an Investment Entity ~~[other than an Investment Entity that is a Financial Institution solely because it manages an Investment Entity described in subparagraph A(6)(b)]~~, any equity or debt interest in ~~[the] a~~ Financial Institution other than a “Financial Account” that includes any equity or debt interest in an Entity that is an Investment Entity solely because it:
    - (i) renders investment advice to, and acts on behalf of; or
    - (ii) manages portfolios for, and acts on behalf of,a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
  - (b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with ~~[a] the~~ purpose of avoiding reporting in accordance with Section I; and
  - (c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a non-investment linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

The term “Financial Account” does not include any account that is an Excluded Account.

- (2) The term “**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. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.
- (3) The term “**Custodial Account**” means an account (other than an Insurance Contract or Annuity Contract) ~~[for the benefit of another person]~~ that holds one or more Financial Assets for the benefit of another person.
- (4) The term “**Equity Interest**” means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
- (5) The term “**Insurance Contract**” means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.



- (6) The term “**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 a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.
- (7) The term “**Cash Value Insurance Contract**” means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.
- (8) The term “**Cash Value**” means the greater of (i) 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); and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term “Cash Value” does not include an amount payable under an Insurance Contract:
- (a) Solely by reason of the death of an individual insured under a life insurance contract including a refund of a previously paid premium provided such refund is a Limited Risk Refund ~~[as the term is understood in the Commentary]~~;
  - (b) 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;
  - (c) Subject to the application of subparagraph C(8)(a), 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 contract or an Annuity Contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
  - (d) As a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph C(8)(b); or
  - (e) As a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.
- (9) The term “**Pre-existing Account**” means a Financial Account maintained by a Reporting Financial Institution as of 29 February 2016.
- (10) The term “**New Account**” means a Financial Account maintained by a Reporting Financial Institution opened on or after .
- (11) The term “**Pre-existing Individual Account**” means a Pre-existing Account held by one or more individuals.
- (12) The term “**New Individual Account**” means a New Account held by one or more individuals.
- (13) The term “**Pre-existing Entity Account**” means a Pre-existing Account held by one or more Entities.
- (14) The term “**Lower Value Account**” means a Pre-existing Individual Account with an aggregate balance or value as of ~~[31 December]~~ 29 February 2016 that does not exceed \$1,000,000.
- (15) The term “**High Value Account**” means a Pre-existing Individual Account with an aggregate balance or value that exceeds \$1,000,000 as of ~~[31 December]~~ 29 February 2016 or ~~[31 December of any subsequent year]~~ the last day of February of any subsequent Reporting Period.
- (16) The term “**New Entity Account**” means a New Account held by one or more Entities.

(17) The term “**Excluded Account**” means any of the following accounts:<sup>10</sup>

- (a) A retirement or pension account that satisfies the following requirements:
- (i) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
  - (ii) The account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
  - (iii) Information reporting is required to the tax authorities with respect to the account;
  - (iv) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
  - (v) Either (i) annual contributions are limited to \$50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of \$1,000,000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirements of **[this]** subparagraph **C(17)(a)(v)** will not fail to satisfy such requirements solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7).

- (b) An account that satisfies the following requirements:
- (i) The account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
  - (ii) The account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
  - (iii) Withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
  - (iv) Annual contributions are limited to \$50,000 or less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirements of **[this]** subparagraph **C(17)(b)(iv)** will not fail to satisfy such requirements solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7).

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<sup>10</sup> **CRS footnote:** “During the process of developing the Standard, it was decided that several of the categories in Annex II to the Model FATCA IGA were either not appropriate or not desirable in the context of the Standard and they were therefore not included. These are categories such as Treaty Qualified Retirement Funds, Financial Institutions with a Local Client Base, Local Banks, Financial Institutions with Only Low-Value Accounts, Sponsored Investment Entities and Controlled Foreign Corporations, Sponsored and Closely Held Investment Vehicles.”

- (c) A life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:
- (i) 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;
  - (ii) The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
  - (iii) 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; and
  - (iv) The contract is not held by a transferee for value.
- (d) An account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.
- (e) An account, which includes a trust account, established in connection with any of the following:
- (i) A court order or judgment.
  - (ii) A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
    - (aa) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
    - (bb) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
    - (cc) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
    - (dd) The account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and
    - (ee) The account is not associated with an account described in subparagraph C(17)(f).
  - (iii) An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
  - (iv) An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.
- (f) A **Depository Account** that satisfies the following requirements:
- (i) The account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
  - (ii) Beginning on or before 1 March 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of \$50,000, or to ensure that any customer overpayment in excess of \$50,000 is refunded to the customer within 60 days,

in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

- (g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) through (f), and is defined in Annex III to these Regulations as an Excluded Account, provided that the status of such account as an Excluded Account does not frustrate the purposes of the Common Reporting Standard.

#### D. Reportable Account

- (1) The term “**Reportable Account**” means ~~[an account]~~ a Financial Account that is maintained by a South African Reporting Financial Institution and is held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person provided it has been identified as such pursuant to the due diligence procedures described in Sections II through VII.
- (2) The term “**Reportable Person**” means a [Reportable] Foreign Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organization; (v) a Central Bank; or (vi) a Financial Institution.
- (3) The term “**Reportable Jurisdiction Person**” means an individual or Entity that is resident in a [Reportable] Foreign Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a [Reportable] Foreign Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
- (4) The term “[Reportable] Foreign Jurisdiction” means a jurisdiction ~~[(i) with which an agreement is in place pursuant to which there is an obligation in place to provide the information specified in Section I, and (ii) which is identified in a published list] other than the Republic of South Africa.~~
- (5) The term “**Participating Jurisdiction**” means a jurisdiction (i) with which South Africa has an agreement in place pursuant to which ~~[(i)]~~ the jurisdiction will provide the information specified in Section I to South Africa, and (ii) which is identified in ~~[a published list]~~ Annex I Part B to these Regulations, as may be updated from time to time.
- (6) The term “**Controlling Persons**” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.
- (7) The term “**NFE**” means any Entity that is not a Financial Institution.
- (8) The term “**Passive NFE**” means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.
- (9) The term “**Active NFE**” means any NFE that meets any of the following criteria:
  - (a) Less than 50 per cent of the NFE’s gross income for the preceding Reporting Period is passive income and less than 50 per cent of the assets held by the NFE during the preceding ~~[calendar year]~~ Reporting Period or other appropriate reporting period are assets that produce or are held for the production of passive income;
  - (b) The stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;

- (c) The NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- (d) Substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFE does not qualify for this status if the NFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- (e) The NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFE;
- (f) The NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- (g) The NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- (h) The NFE meets all of the following requirements:
  - (i) It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labour organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
  - (ii) It is exempt from income tax in its jurisdiction of residence;
  - (iii) It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - (iv) The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
  - (v) The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof.

## E. Miscellaneous

- (1) The term "**Account Holder**" means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Annex, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any

person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

- (2) The term “**AML/KYC Procedures**” means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject under domestic law.
- (3) The term “**Entity**” means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
- (4) ~~[An Entity is a “**Related Entity**” of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 per cent of the vote and value in an Entity.]~~ An Entity is a “**Related Entity**” of another Entity if (i) either Entity controls the other Entity; (ii) the two Entities are under common control; or (iii) the two Entities are Investment Entities described in subparagraph A(6)(b), are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50 % of the vote and value in an Entity.<sup>11</sup>
- (5) The term “**TIN**” means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).
- (6) The term “**Documentary Evidence**” includes any of the following:
  - (a) A certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
  - (b) With respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual’s name and is typically used for identification purposes.
  - (c) With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised.
  - (d) Any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator’s report.
- (7) With respect to a Pre-existing Entity Account, a Reporting Financial Institution may use as Documentary Evidence any classification in the Reporting Financial Institution’s records with respect to the Account Holder that was:
  - (a) determined based on a standardised industry coding system;
  - (b) recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes); and
  - (c) implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account,

<sup>11</sup> **Option # 14 - Expanded definition of Related Entity** - *Related Entities are generally defined as one entity that controls another entity or two or more entities that are under common control. Control is defined to include direct or indirect ownership of more than 50 percent of the vote and value in an Entity. As provided in the Commentary, most funds will likely not qualify as a Related Entity of another fund, and thus will not be able to apply the rules described above for treating certain New Accounts as Preexisting Accounts or apply the account aggregation rules to Financial Accounts maintained by Related Entities. A jurisdiction may modify the definition of Related Entity so that a fund will qualify as a Related Entity of another fund by providing that control includes, with respect to Investment Entities described in subparagraph (A)(6)(b), two entities under common management, and such management fulfils the due diligence obligations of such Investment Entities. A similar approach can be achieved under FATCA by applying the Sponsoring Regime.*



provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term “standardised industry coding system” means a coding system used to classify establishments by business type for purposes other than tax purposes.<sup>12</sup>

- (9) The term “Reporting Period” means the period commencing on 1 March 2016 and ending on the last day of February 2017 and thereafter the period commencing on 1 March of each year following 2016 and ending on the last day of February of the following calendar year.
- (10) The term “SARS” means the South African Revenue Service.
- (11) In the case of conflict between the Tax Administration Act and the MCAA, the Convention on Mutual Administrative Assistance in Tax Matters or any other international tax agreement, the latter shall prevail over the Tax Administration Act.

## **Section IX**

### **Complementary Reporting and Due Diligence Rules for Financial Account Information**

#### **A. Change in circumstances**

- (1) A “change in circumstances” includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information to the Account Holder's account (including the addition, substitution, or other change of an Account Holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in subparagraphs C(1) through (3) of Section VII) if such change or addition of information affects the status of the Account Holder.
- (2) If a Reporting Financial Institution has relied on the residence address test described in subparagraph B(1) of Section III and there is a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that the original Documentary Evidence (or other equivalent documentation) is incorrect or unreliable, the Reporting Financial Institution must, by the later of the last day of the relevant Reporting Period, or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting Financial Institution must apply the electronic record search procedure described in subparagraphs B(2) through (6) of Section III.

#### **B. Self-certification for New Entity Accounts**

With respect to New Entity Accounts, for the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may only rely on a self-certification from either the Account Holder or the Controlling Person.

#### **C. Residence of a Financial Institution**

- (1) A Financial Institution is “resident” in a Participating Jurisdiction if it is subject to the jurisdiction of such Participating Jurisdiction in that the Participating Jurisdiction is able to enforce reporting by the Financial Institution. In general, where a Financial Institution is resident for tax purposes in a Participating Jurisdiction, it is subject to the jurisdiction of such Participating Jurisdiction and it is, thus, a Participating Jurisdiction Financial Institution.
- (2) In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Participating Jurisdiction), the trust is considered to be subject to the jurisdiction of a Participating Jurisdiction if one or more of its trustees are resident in such jurisdiction, except if the trust reports all the information required to be reported under to the Common Reporting Standard with respect to Reportable Accounts maintained by the trust, to another Participating Jurisdiction because it is resident for tax purposes in such other jurisdiction.

<sup>12</sup> Application of elected **Option # 11**: *Allowing financial institutions to make greater use of existing standardised industry coding systems for the due diligence process*

- (3) Where a Financial Institution (other than a trust) does not have a residence for tax purposes (for example because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Participating Jurisdiction and it is, thus, a Participating Jurisdiction Financial Institution if:
- (a) it is incorporated under the laws of the Participating Jurisdiction;
  - (b) it has its place of management (including effective management) in the Participating Jurisdiction; or
  - (c) it is subject to financial supervision in the Participating Jurisdiction.
- (4) Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdictions, such Financial Institution will be subject to the reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the Financial Account(s).

#### **D. Account maintained**

In general, an account would be considered to be maintained by a Financial Institution as follows:

- (1) in the case of a Custodial Account, by the Financial Institution that holds custody over the assets in the account (including a Financial Institution that holds assets in street name for an Account Holder in such institution);
- (2) in the case of a Depository Account, by the Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution regardless of whether such agent is a Financial Institution);
- (3) in the case of any equity or debt interest in a Financial Institution that constitutes a Financial Account, by such Financial Institution;
- (4) in the case of a Cash Value Insurance Contract or an Annuity Contract, by the Financial Institution that is obligated to make payments with respect to the contract.

#### **E. Trusts that are Passive NFEs**

An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes, according to subparagraph D(3) of Section VIII, shall be treated as resident in the jurisdiction in which its place of effective management is situated. For these purposes, a legal person or a legal arrangement is considered "similar" to a partnership and a limited liability partnership where it is not treated as a taxable unit in a Participating Jurisdiction under the tax laws of such jurisdiction. However, in order to avoid duplicate reporting, given the wide scope of the term "Controlling Persons" in the case of trusts, a trust that is a Passive NFE may not be considered a similar legal arrangement.

#### **F. Address of Entity's principal office**

- (1) One of the requirements described in subparagraph E(6)(c) of Section VIII is that, with respect to an Entity, the official documentation includes either the address of the Entity's principal office in a jurisdiction in which it claims to be a resident or a jurisdiction in which the Entity was incorporated or organised. The address of the Entity's principal office is generally the place in which its place of effective management is situated.
- (2) The address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes is not the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organisational documents.
- (3) An address that is provided subject to instructions to hold all mail to that address is not the address of the Entity's principal office.

### **Section IX**

#### **Effective Implementation**

**A.** The following rules and administrative procedures apply to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out above.

##### **(1) Anti-avoidance**



- (a) If—
- (i) a person enters into any arrangements; and
  - (ii) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid any obligation under the Common Reporting Standard,

these Regulations are to have effect as if the arrangements had not been entered into.

- (b) If a Non-Reporting Financial Institution is no longer a Non-Reporting Financial Institution if it no longer complies with the requirements for a Non-Reporting under Section VIII(B) or Annex II, it becomes a Reportable Financial Institution from the moment that it no longer complies with such requirements.

- (c) If an Excluded Account is no longer an Excluded Account if it no longer complies with the requirements for an Excluded Account under Section VIII(C)(17) or Annex III, it becomes a Reportable Account from the moment that it no longer complies with such requirements.

## (2) Record keeping

- (a) Reporting Financial Institutions are required under sections 29 and 30 of the Tax Administration Act to keep records of the steps undertaken under the Common Reporting Standard any information or evidence relied upon for the performance of the above procedures, which records, information or evidence by may inspected by SARS under section 32 of the Act.

- (b) A reporting financial institution must to maintain this information in respect of all Account Holders for a period of 8 years from the end of the Reportable Period in which the due diligence process is carried out.

## (3) Compliance and enforcement

In terms of section 3(2)(j) of the Tax Administration Act, administration of a tax Act (including any regulations thereunder), *inter alia* means giving effect to an international tax standard such as the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, which uses the Common Standard on Reporting for automatic exchange of information under the MCAA. Accordingly, all available administrative information gathering and enforcement powers of SARS under the Tax Administration Act may be used to:

- (a) verify Reporting Financial Institutions' compliance with the reporting and due diligence procedures under these Regulations;
- (b) follow up with a Reporting Financial Institution when undocumented accounts are reported; and
- (c) ensure that the Entities and accounts defined in domestic law as Non-Reporting Financial Institutions and Excluded Accounts referred to in Annex II and III continue to comply with the requirements for such non-reporting or exclusion and continue to have a low risk of being used to evade tax.

## (4) Sanctions for non-compliance

Non-compliance with any obligation under these Regulations is subject to administrative penalties under Chapter 15 or criminal sanctions under Chapter 17 read with section 16 of the Tax Administration Act, including non-compliance as referred to in section 16(4) of the Act by:

- (a) a Reportable Person that is an Account Holder,
- (b) if the Reportable Person is an entity, any Controlling Person(s) of that entity; or
- (c) any other person;

from whom a Reporting Financial Institution requires information, a document or thing in order in order to obtain and report the information required under Section I and to comply with any other requirement of these Regulations.

B. These Regulations have effect from 1 March 2016.

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**ANNEX I**  
**Participating Jurisdictions**

1. ...
2. ...

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**ANNEX 2**  
**Non-Reporting Financial Institutions<sup>13</sup>**

*Section VIII(B)(1)(c)*

1. ...
2. ...

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<sup>13</sup> **Jurisdictional Option:**

**CRS HB** par 87: One of the categories of Non-Reporting Financial Institution is a general category of “Other Low-risk Non-Reporting Financial Institutions”... It is expected that each Jurisdiction would have only one list of domestically-defined Non-Reporting Financial Institutions (as opposed to different lists for different Participating Jurisdictions) and that it would make such a list publicly available. While the two systems are independent from each other, **a starting point for what might be included in the list under the Standard is the Financial Institutions treated as Non-Reporting Financial Institutions with respect to the FATCA IGA.**

**ANNEX III**  
**Excluded Accounts**  
*Section VIII(C)(17)(g)*

1. ...
2. ...

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