



SAMOA

TAX INFORMATION EXCHANGE ACT 2012

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TAX INFORMATION EXCHANGE ACT 2012
2012, No. 3

AN ACT to provide for international co-operation with Competent Authorities under agreements facilitating exchange of tax information, and for related purposes.

[Assent and commencement date: 26 January 2012]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Tax Information Exchange Act 2012.

(2) This Act commences on the date of assent by the Head of State.

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“agreement” means:

- (a) an agreement between the Government of Samoa and a foreign government listed in Schedule 1 including the following types of agreement -
 - (i) tax information exchange agreement;
 - (ii) double taxation agreement containing a provision for the tax information;

- (b) a treaty, convention or any international agreement that makes provision for the exchange of information with respect to tax matters including the automatic exchange of information between a foreign State and Samoa;

“Commissioner” has the same meaning as in section 2 of the Tax Administration Act 2012;

“competent authority” means the authority designated by the Government of a foreign state in an agreement;

“controller” has the same meaning as in section 2 of the International Banking Act 2005;

“Court” means the Supreme Court of Samoa;

“Foreign Jurisdiction” means any jurisdiction other than Samoa or the United States of America;

“information” includes a fact, statement, document or record in any form;

“Inspector” means the Inspector of International Banks appointed under the International Banking Act 2005;

“international financial services” has the same meaning as in section 2 of the Samoa International Finance Authority Act 2005;

“international financial services legislation” has the same meaning as in section 2 of the Samoa International Finance Authority Act 2005;

“Minister” means the Minister responsible for Revenue;

“Ministry” means the Ministry responsible for Revenue;

“Registrar”, where appropriate, means the following:

(a) the Registrar of International and Foreign Companies appointed under the International Companies Act 1988;

(b) the Registrar of International Trusts appointed under the International Trusts Act 1988;

(c) the Registrar of Insurance appointed under the International Insurance Act 1988;

(d) the Registrar of International Partnerships appointed under the International Partnership and Limited Partnership Act 1998;

“regulated person” means a person authorised, licensed or registered or required to be authorised, licensed or registered under an international financial services legislation.

(2) Under section 16, this Act is one of the tax laws within the meaning of section 2(1) of the Tax Administration Act 2012.

3. Agreements – (1) Without limiting section 105 of the Income Tax Act 2012, the Minister may enter into an agreement for exchange of information in relation to the following:

(a) taxes on income or profits;

- (b) taxes on capital;
- (c) taxes on net wealth;
- (d) estate, inheritance or gift taxes;
- (e) any other identical or substantially similar taxes of Samoa or the other country or territory with a view to assisting in the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

(2) A lawful obligation as to secrecy, confidentiality or other restriction on the disclosure of information does not prevent the Commissioner from disclosing information required to be disclosed under an agreement to an authorised officer of a competent authority.

(3) An arrangement made under section 105 of the Income Tax Act 2012 may be added, by regulations, to the list of agreements in Schedule 1 of this Act.

PART 2

REQUEST FOR ASSISTANCE

4. Receipt of a request – Upon receipt of a request for assistance, the Commissioner must provide a copy of the request to the Attorney General before acting on the request.

5. Approval of a request – (1) Subject to section 6, the Commissioner may approve a request for assistance received under section 4 before exercising his or her powers and carrying out his or her duties under sections 7 and 8 if the Commissioner is satisfied that the request:

- (a) is made by a competent authority; and
- (b) conforms with the relevant agreement; and
- (c) sets out the information prescribed in Schedule 2.

(2) The Commissioner may request further information from the competent authority if the request for assistance does not adequately provide all the information prescribed in Schedule 2.

6. Decline of a request – The Commissioner may decline a request for assistance if the Commissioner is satisfied that the request:

- (a) may impose an obligation to disclose trade, business, industrial, commercial or professional secrets or trade process except that information held by a person referred to in section 7(1)(a) is not treated as a secret or trade process merely because it is held by the person; or
- (b) may enforce or administer a provision of the tax law of the country of the competent authority which discriminates against a national of Samoa as compared with a national of the country of the competent authority in the same circumstances; or
- (c) concerns information that, if disclosed, would be contrary to public policy.

PART 3 COLLECTION OF INFORMATION

7. Collection of information by notice – (1) Subject to section 5, the Commissioner may, by notice in writing:

- (a) require one or more of the following to provide the information specified in the notice —
 - (i) a regulated person, including a person who ceased to be a regulated person on or before the date of the issuing of the notice;
 - (ii) a person carrying on international financial services;
 - (iii) a financial institution under the Financial Institutions Act 1996;
 - (iv) a person acting in an agency or fiduciary capacity including nominees and trustee;
 - (v) to a person reasonably believed to have the information to which the notice relates; and
- (b) specify the place where, and the period within which, the information is to be provided or produced.

(2) The Commissioner may require information provided under this section to be:

- (a) in a form approved by the Commissioner; and
- (b) verified or authenticated to the satisfaction of the Commissioner.

(3) The Commissioner or an officer of the Ministry authorised by the Commissioner may make copies or extracts of information provided under this section.

(4) Where a person claims a lien on information, the production of the information under this section is without prejudice to that person's lien.

(5) For the purposes of this section, section 28 of the Tax Administration Act 2012 applies.

8. Service of notice – (1) For information that is protected from unauthorised disclosure, the Commissioner must serve notice of the request on:

- (a) the person identified in the request as the person in relation to whom the information is sought; and
- (b) the person identified in the request as the person who is believed to have possession or control of the information.

(2) The Commissioner may decline to serve notice of the request where the Commissioner:

- (a) does not have any information of the person referred to in subsection (1); or
- (b) is of the opinion that it is likely to prevent or unduly delay the effective exchange of information under an agreement; or
- (c) is of the opinion that this is likely to prejudice an investigation into an alleged breach of any law relating to tax of the country whose government the exchange of information agreement was made.

(3) Notices must be served as prescribed by regulation or, in the absence of regulations, under the Tax Administration Act 2012.

9. Powers of inspection – (1) The Commissioner may exercise the powers of inspection under the Tax Administration Act 2012 for the purpose of administration of this Act if the Commissioner is satisfied that:

- (a) a person has failed to comply or has only partly complied with a notice issued under section 7; or
- (b) a notice would not be complied with and the information to which the notice relates may be removed, tampered with or destroyed.

(2) In this section, “places” in the Tax Administration Act 2012 includes a vehicle, a vessel or an aircraft.

10. Secrecy and confidentiality obligations overridden –

(1) This Part and Part 3A have effect despite an obligation as to secrecy, confidentiality or other restriction upon the disclosure of information imposed by any law or otherwise on the persons referred to in section 7(1)(a) and a reporting financial institution (as defined under Part 3A).

(2) A provision in another Act providing for an obligation of the kind referred to in subsection (1), including a provision enacted after the commencement of this Act, is subject to this section and Part 3A.

PART 3A

**COMMON REPORTING STANDARD FOR
THE AUTOMATIC EXCHANGE OF FINANCIAL
ACCOUNT INFORMATION IN TAX MATTERS**

10A. Objective of the Common Reporting Standard – (1)

The objective of this Part is to give effect to and implement the collection and automatic reporting of financial account information in accordance with the CRS by Reporting Financial Institutions.

(2) The CRS:

- (a) set out in Schedule 3 has the force of law in Samoa (except Section VIII(B)(9)); and
- (c) must be read and interpreted consistently with the CRS Commentary.

10B. Definitions – In this Part:

“Common Reporting Standard” or “CRS” means the Common Reporting Standard set out in Annex 5 of the Standard for Automatic Exchange of Financial Account Information in Tax Matters, as amended from time to time, and has been codified under Schedule 3;

“CRS Commentary” means the CRS Commentary set out in Part III.B of the Standard for Automatic Exchange of Financial Account in Tax Matters

approved by the Council of the Organisation for Economic Co-operation and Development on 15 July 2014, as amended from time to time;

“CRS due diligence requirements” means all of the due diligence requirements of a Reporting Financial Institution set out in Sections II to VII of the CRS, as interpreted by the definitions set out in Section VIII of the CRS;

“excluded account” means:

- (a) an account as defined in subparagraphs C(17)(a) to (f) of Section VIII of the CRS; or
- (b) an account prescribed by order under section 10K.

“non-reporting Financial Institution” means:

- (a) a financial institution as defined in subparagraphs B(1)(a), (b), (d) and (e) of Section VIII of the CRS; or
- (b) a financial account prescribed by order under section 10K.

“reportable account” has the same meaning as in section VIII(D)(1) of the CRS;

“reportable jurisdiction” *definition repealed*;

“reporting financial institution” means:

- (a) any financial institution, as defined in Schedule 3, that is resident in Samoa, but excludes any branch of that financial institution that is located outside of Samoa; and
- (b) any branch of a financial institution that is not resident in Samoa, if that branch is located in Samoa and satisfies the definition of reporting financial institution under Schedule 3.

(2) Any word or expression which has a meaning given to it by the CRS shall, where it is used in this Part, and unless the contrary intention appears, have the same meaning in this Part as it has in the CRS.

10C. General requirement (1) Any reporting financial institution shall identify reportable accounts maintained by the

institution by applying the due diligence procedures described in Sections II to VII of the CRS as set out in Schedule 3.

(2) A reporting financial institution shall, in respect of the calendar year 2017 and every following calendar year, file with the Commissioner an information return setting out the information required to be reported described in paragraphs A and B of Section I of the CRS as set out in Schedule 3, subject to paragraphs C to E in Section I of the CRS, in relation to every financial account identified as a reportable account that is maintained by the institution at any time during a calendar year.

(3) If a reporting financial institution applies the due diligence procedures described in Sections II to VII of the CRS as set out in Schedule 3, for a calendar year and no account is identified as a reportable account, the institution shall file an information return which provides that the institution maintains no such reportable accounts in respect of that year, only when requested by the Commissioner.

(4) An information return, required to be filed under subsection (2), shall be submitted electronically in accordance with subsection (5) on or before 30 July of the year following the calendar year to which the return relates.

(5) An information return, required to be filed by subsections (3) and (4), shall be filed electronically using such technology as may be approved or provided by the Commissioner, and in such form as the Commissioner may require.

10D. Registration requirements – A reporting financial institution must register with the Commissioner for the purposes of the CRS in the manner and within the period of time that the Commissioner may determine by means of a public ruling published in the *Savali* under section 85 of the Tax Administration Act 2012.

10E. Currency translation – All dollar amounts under this Part are in US dollars and in determining the balance or value of an account denominated in a currency (other than US\$) for the purposes of this Part and the CRS, the institution shall translate the relevant US\$ threshold amount described in the CRS or in this Part into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.

10F. Records – (1) Any reporting financial institution shall keep records that the institution obtains or creates for the purpose of complying with this Part, including self-certifications and records of documentary evidence.

(2) Any reporting financial institution required by this Part to keep records that does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (4).

(3) Any reporting financial institution that obtains or creates records, as required under this Part, in a language other than English shall, upon request, provide an English translation to the Commissioner.

(4) Any reporting financial institution that is required to keep, obtain or create records under this Part shall retain those records for a period of at least seven (7) years following:

- (a) in the case of a self-certification, the day the related financial account is closed; and
- (b) in any other case, the end of the last calendar year in respect of which the record is relevant.

10G. Access to information – The Commissioner may use any information-gathering power under the Tax Administration Act 2012 to obtain any information specified in Section I of Schedule 3, even if the information may not be required for the purposes of the Tax Administration Act 2012.

10H. Anti-avoidance – If a person enters into any transactions or schemes, the main purpose or one of the main purposes, of which can reasonably be considered to avoid an obligation imposed under this Part, the person is subject to the obligation as if the person had not entered into the transaction or scheme.

10I. Confidentiality – (1) Subject to subsections (2) and (3), any information provided to or received by the Commissioner pursuant to an agreement or this Part must be treated as confidential.

(2) Information treated as confidential under subsection (1) received pursuant to an agreement may only be disclosed in accordance with the terms of the agreement.

(3) Information treated as confidential under subsection (1) provided to the Commissioner in compliance with this Part may be disclosed by the Commissioner in accordance with the terms of an agreement.

(4) A person who discloses or divulges to any person any information in contravention of this Part or an agreement, commits an offence punishable on conviction by a fine not exceeding 250 penalty units or by a term of imprisonment not exceeding five (5) years, or both.

10J. Offences and administrative penalties – (1) If a reporting financial institution fails to comply with any of the obligations arising from this Part, the reporting financial institution commits an offence and the Commissioner may impose an administrative penalty not exceeding 250 penalty units instead of prosecuting the offence in court.

(2) Subject to subsection (3), an account holder who refuses to provide a self-certification or details with which tax residence can be established; or provides false, incomplete or misleading information commits an offence under this Part, and is liable to an administrative penalty under subsection (1).

(3) Before imposing the administrative penalty, the Commissioner must first serve on the reporting financial institution or account holder a written notice that sets out:

- (a) the nature of the offence committed;
- (b) the proposed penalty to be imposed;
- (c) a reasonable time in which the reporting financial institution or account holder is required to meet requirements and correct any failures;
- (d) a time in which the reporting financial institution or account holder is to respond in writing to the Commissioner, as to whether or not it accepts or denies committing the offence; and
- (e) any other information necessary to inform the reporting financial institution or account holder about the administrative penalty.

(4) If a reporting financial institution or account holder denies committing the offence or fails to remedy failures within timeframe set out in the written notice, the Commissioner may prosecute the offence in court.

(5) If the amount of the penalty is paid in full, no further proceeding for the alleged offence is to be instituted.

(6) An administrative penalty is a debt owed to the Government and recoverable in a court by the Commissioner.

10K. Ministerial order for excluded account and non-financial account – The Minister may, acting on the advice of the Commissioner make Orders prescribing:

- (a) account to be an excluded account;
- (b) financial institution to be a non-reporting financial institution.

PART 4 DISCLOSURE OF INFORMATION

11. Restriction on the disclosure of information – (1) The following information must be treated as confidential:

- (a) information that is supplied by a competent authority in connection with a request for assistance;
- (b) information that is obtained by virtue of the exercise of the powers under this Act;
- (c) information that is provided by the Commissioner to the Attorney-General under section 4.

(2) Information treated as confidential must not be disclosed except:

- (a) to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the agreement under which the request was made and for the collection or recovery of any duty or tax due to Government under any of the Inland Revenue Acts; or
- (b) for the purpose of administration of this Act, to another person, entity, authority or jurisdiction, with express written consent of the competent authority.

PART 5 MISCELLANEOUS

12. Offences – (1) A person who does any of the following commits an offence:

- (a) contravenes section 11; or
- (b) fails to comply with a notice issued under section 7(1); or
- (c) makes a representation or submits information to the Commissioner in response to a notice issued under section 7 that the person knows or ought to know to be false; or
- (d) intentionally removes, tampers, or destroys information requested under this Act; or
- (e) intentionally acts to prevent or impede submission of information requested under this Act.

(2) A person who commits an offence under subsection (1) is liable upon conviction to a fine not exceeding 250 penalty units or to imprisonment for a term not exceeding 5 years, or both.

13. Criminal liability of directors, officers, abettors, and others – (1) Where an offence was committed by a company and it is proved that the offence was committed with the consent or connivance of, or attributable to a neglect on the part of, any director, chief executive, controller, manager, secretary or other similar officer of the company or a person purporting to act in any such capacity, the person as well as the company is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the company.

(3) Where an offence is committed by a partnership, or by an unincorporated association and is proved to have been committed with the consent or connivance of, or is attributable to the failure to exercise due diligence by, a partner in the partnership or, a person concerned in the management or control of the association, that person, as well as the partnership or association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) A person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence may be proceeded against and punished as a principal offender.

14. Immunity – No action lies against the Government, the Minister, a Registrar, an Inspector, or a person exercising a power or performing a function under this Act in respect of anything done or omitted to be done by or on behalf of that person in good faith in the exercise of that power or performance of that function.

15. Regulations – The Head of State, acting on the advice of Cabinet, may make regulations providing for such matters as are contemplated by or necessary for giving full effect to this Act including but not limited to amendment of the Schedules.

16. Consequential amendment – In the First Schedule to the Income Tax Administration Act 1974, after “The Value Added Goods and Services Tax Act 1992/1993 except sections 13 and 14” insert “Tax Information Exchange Act 2012”.

Schedules

SCHEDULE 1 AGREEMENTS

(Section 3)

Country	Date of Execution
1. San Marino	1 September 2009
2. Principality of Monaco	7 September 2009
3. Kingdom of the Netherlands	14 September 2009
4. Ireland	8 December 2009
5. Australia	16 December 2009
6. Sweden	16 December 2009
7. Finland	16 December 2009
8. Greenland	16 December 2009
9. Iceland	16 December 2009
10. Norway	16 December 2009
11. Faroes	16 December 2009

12. Denmark	16 December 2009
13. New Zealand	16 December 2009
14. Mexico	30 November 2011
15. Japan	4 June 2013
16. South Africa	26 July 2013
17. Republic of Korea	15 May 2015
18. New Zealand (Double Taxation Agreement)	8 July 2015

SCHEDULE 2
INFORMATION IN A REQUEST FOR ASSISTANCE

(Section 5(1)(c) and 5(2))

1. The tax purpose for which the information is sought.
2. The identity of the competent authority.
3. The identity of the person under examination or investigation.
4. A statement of the information sought including its nature, the relevance of the information to the purpose of the request and the form in which the competent authority wishes to receive the information from the Commissioner.
5. Grounds for believing that the information requested is held by the Ministry, or is in the possession or control of a person within Samoa.
6. To the extent known, the name and address of any person believed to be in possession or control of the requested information.
7. A statement that the request is in conformity with the law and administrative practices of the country and that the competent authority is authorised to obtain the requested information under the laws of that country or in the normal course of administrative practice and that it is in conformity with an agreement to which this relates.
8. A statement that the competent authority has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

9. An undertaking from the requesting competent authority that all information provided in relation to the request must be kept confidential and must not, without prior written consent, be disclosed to a third party, transmitted or used for the purposes of investigations or proceedings other than those stated in the request.

SCHEDULE 3

(Section 10A)

COMMON REPORTING STANDARD

Section I: General Reporting Requirements

- A. Subject to paragraphs C through F, each Reporting Financial Institution must report the following information with respect to each Reportable Account of such Reporting Financial Institution:
 1. the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more

Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each Reportable Person;

2. the account number (or functional equivalent in the absence of an account number);
3. the name and identifying number (if any) of the Reporting Financial Institution;
4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
5. in the case of any Custodial Account:
 - a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - b) the total gross proceeds from the sale or redemption of Financial

Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
 7. in the case of any account not described in subparagraph A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
- B. The information reported must identify the currency in which each amount is denominated.
- C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Preexisting Account or with respect to each Financial Account that is opened prior to becoming a Reportable Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law. However, a Reporting Financial Institution is required to use reasonable

efforts to obtain the TIN(s) and date of birth with respect to these accounts OR each Reportable Account that is a Preexisting Account and with respect to each Financial Account that is opened prior to becoming a Reportable Account by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts.

- D. Notwithstanding subparagraph A(1), the TIN is not required to be reported if (i) a TIN is not issued by the relevant Reportable Jurisdiction or (ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.
- E. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.
- F. Notwithstanding paragraph A, the information to be reported with respect to [xxxx] is the information described in such paragraph, except for gross proceeds described in subparagraph A(5)(b).

Section II: General Due Diligence Requirements

- A. An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in

Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.

- B. A Reporting Financial Institution, which pursuant to the procedures described in Sections II through VII and, identifies any account as a Foreign Account that is not a Reportable Account at the time the due diligence is performed, may rely on the outcome of such procedures to comply with future reporting obligations.
- C. The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.
- D. Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.
- E. Each Jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting Financial Institutions, as contemplated in domestic law, but these obligations shall remain the responsibility of the Reporting Financial Institutions.
- F. Each Jurisdiction may allow Reporting Financial Institutions to apply the due diligence procedures for New Accounts to Preexisting Accounts, and the due diligence procedures for High Value Accounts

to Lower Value Accounts. Where a Jurisdiction allows New Account due diligence procedures to be used for Preexisting Accounts, the rules otherwise applicable to Preexisting Accounts continue to apply.

Section III: Due Diligence for Preexisting Individual Accounts

The following procedures apply with respect to Preexisting Individual Accounts.

- A. **Accounts Not Required to be Reviewed, Identified, or Reported.** A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract is not required to be reviewed, identified or reported, provided the Reporting Financial Institution is effectively prevented by law from selling such Contract to residents of a Reportable Jurisdiction.
- B. **Lower Value Accounts.** The following procedures apply with respect to Lower Value Accounts.
 1. **Residence Address.** If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.

2. **Electronic Record Search.** If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subparagraphs B(3) through (6):
- a) identification of the Account Holder as a resident of a Foreign Jurisdiction;
 - b) current mailing or residence address (including a post office box) in a Foreign Jurisdiction;
 - c) one or more telephone numbers in a Foreign Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution;
 - d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Foreign Jurisdiction;
 - e) currently effective power of attorney or signatory authority granted to a person with an address in a Foreign Jurisdiction; or

- f) a “hold mail” instruction or “in-care-of” address in a Foreign Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.
- 3. If none of the indicia listed in subparagraph B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.
- 4. If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Foreign Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
- 5. If a “hold mail” instruction or “in-care-of” address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account

Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account as an undocumented account.

6. Notwithstanding a finding of indicia under subparagraph B(2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Foreign Jurisdiction if:
 - a) the Account Holder information contains a current mailing or residence address in the Foreign Jurisdiction, one or more telephone numbers in the Foreign Jurisdiction (and no telephone number in the jurisdiction of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a

Foreign Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:

- i. a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Foreign Jurisdiction; and
 - ii. Documentary Evidence establishing the Account Holder's residence for tax purposes other than such Foreign Jurisdiction.
- b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the Foreign Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
- i. a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Foreign Jurisdiction; or

- ii. Documentary Evidence establishing the Account Holder's residence for tax purposes other than such Foreign Jurisdiction.

C. **Enhanced Review Procedures for High Value Accounts.** The following enhanced review procedures apply with respect to High Value Accounts.

1. **Electronic Record Search.** With respect to High Value Accounts, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in subparagraph B(2).
2. **Paper Record Search.** If the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph C(3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within

the last five years for any of the indicia described in subparagraph B(2):

- a) the most recent Documentary Evidence collected with respect to the account;
- b) the most recent account opening contract or documentation;
- c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
- d) any power of attorney or signature authority forms currently in effect; and
- e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.

3. **Exception To The Extent Databases Contain Sufficient Information.** A Reporting Financial Institution is not required to perform the paper record search described in subparagraph C(2) to the extent the Reporting Financial Institution's electronically searchable information includes the following:
- a) the Account Holder's residence status;

- b) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
 - c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
 - d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
 - e) whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and
 - f) whether there is any power of attorney or signatory authority for the account.
4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account)

if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.

5. **Effect of Finding Indicia.**

- a) If none of the indicia listed in subparagraph B(2) are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a resident for tax purposes in a Foreign Jurisdiction in subparagraph C(4), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.
- b) If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the account as a resident for tax purposes of each Foreign Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one

- of the exceptions in such subparagraph applies with respect to that account.
- c) If a “hold mail” instruction or “in-care-of” address is discovered in the enhanced review of High Value Accounts described above, and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account.
6. If a Preexisting Individual Account is not a High Value Account as of 31 December 2016, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the

account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

7. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph C to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.
8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to

apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.

9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Reportable Jurisdiction, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder.

D. Review of Pre-existing Individual Accounts:

1. that is a Lower Value Account within the meaning of CRS must be completed by 31 December 2018; and
2. that is a High Value Account within the meaning of CRS must be completed by 31 December 2017.

Section IV: Due Diligence for New Individual Accounts

The following procedures apply with respect to New Individual Accounts.

- A. With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which

may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

- B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to paragraph D of Section I) and date of birth.
- C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

Section V: Due Diligence for Preexisting Entity Accounts

The following procedures apply for purposes of identifying Reportable Accounts among Preexisting Entity Accounts.

- A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an aggregate account balance or value that does not exceed \$250,000 as of 31 December 2016, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds \$250,000 as of the last day of any subsequent calendar year.
- B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an aggregate account balance or value that exceeds \$250,000 as of 31 December 2016, and a Pre-existing Entity Account that does not exceed \$250,000 as of 31 December 2016 but the aggregate account balance or value of which exceeds \$250,000 as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph C.
- C. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting may be Required.** For Preexisting Entity Accounts described in paragraph B, a Reporting Financial Institution must apply the following review procedures:

1. **Determine the Residence of the Entity**
 - a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine the Account Holder's residence. For this purpose, information indicating the Account Holder's residence includes a place of incorporation or organisation, or an address in a Foreign Jurisdiction.
 - b) If the information indicates that the Account Holder is Reportable Person, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.
2. **Determine the Residence of the Controlling Persons of a Passive NFE.** With respect to an Account Holder of a Preexisting Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must identify whether the Account Holder is a Passive NFE with one or more Controlling

Persons and determine the residence of such Controlling Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account is treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs C(2)(a) through (c) in the order most appropriate under the circumstances.

- a) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
- b) **Determining the Controlling Persons of an Account Holder.** For the purposes of determining the

Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

c) **Determining the Residence of a Controlling Person of a Passive NFE.**

For the purposes of determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may rely on:

- i. information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more Passive NFEs with an aggregate account balance or value that does not exceed \$1,000,000; or
- ii. a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) in which the Controlling Person is resident for tax purposes. If a self-certification is not provided, a Reporting Financial Institution will establish such residence by

applying the procedures described in paragraph C Section III.

D. **Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.**

1. Review of Preexisting Entity Accounts with an aggregate account balance or value that exceeds \$250,000 as of 31 December 2016 must be completed by 31 December 2018.
2. Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed \$250,000 as of 31 December 2016, but exceeds \$250,000 as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds \$250,000.
3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph C.

Section VI: Due Diligence for New Entity Accounts

The following procedures apply with respect to New Entity Accounts.

- A. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting may be Required.** For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures.
1. **Determine the Residence of the Entity.**
 - a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and TIN and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.
 - b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable

Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

2. **Determine the Residence of the Controlling Persons of a Passive NFE.** With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must identify whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs A(2)(a) through (c) in the order most appropriate under the circumstances.
 - a) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless

it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.

- b) **Determining the Controlling Persons of an Account Holder.** For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
- c) **Determining the Residence of a Controlling Person of a Passive NFE.** For purposes of determining the Residence of Controlling Person of a Passive NFE, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

Section VII: Special Due Diligence Rules

The following additional rules apply in implementing the due diligence procedures described above:

- A. **Reliance on Self-Certifications and Documentary Evidence.** 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.
- B. **Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract.** A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia of residence in a Foreign Jurisdiction as described in paragraph B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in paragraph B of Section III.

C. **Account Balance Aggregation and Currency Rules.**

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial

Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.

3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.
4. **Amounts Read to Include Equivalent in Other Currencies.** All dollar amounts are in U.S. dollars and shall be read to include equivalent amounts in other currencies, as determined by domestic law.

Section VIII: Defined Terms

The following terms have the meanings set forth below:

- A. **Reporting Financial Institution**

1. The term “**Reporting Financial Institution**” means any Participating Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution.
2. The term “**Participating Jurisdiction Financial Institution**” means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.
3. The term “**Financial Institution**” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
4. The term “**Custodial Institution**” means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity’s gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20 per cent of the Entity’s gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior

to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.

5. The term “**Depository Institution**” means any Entity that accepts deposits in the ordinary course of a banking or similar business.
6. The term “**Investment Entity**” means any Entity:
 - a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
 - i. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - ii. individual and collective portfolio management; or
 - iii. otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
 - b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by

another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50 per cent of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

7. The term "**Financial Asset**" includes a security (for example, a share of stock in a corporation; partnership or beneficial

ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term “Financial Asset” does not include a non-debt, direct interest in real property.

8. The term “**Specified Insurance Company**” means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

B. Non-Reporting Financial Institution

1. The term “**Non-Reporting Financial Institution**” means any Financial Institution that is:
 - a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is 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;
- b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
 - c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b), and is defined in domestic law as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Common Reporting Standard;
 - d) an Exempt Collective Investment Vehicle; or
 - e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.

2. The term “**Governmental Entity**” means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a “Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.
 - a) An “integral part” of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
 - b) A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise

constitutes a separate juridical entity, provided that:

- i. the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
 - ii. the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
 - iii. the Entity's assets vest in one or more Governmental Entities upon dissolution.
- c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a

commercial business, such as a commercial banking business, that provides financial services to private persons.

3. The term “**International Organisation**” means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (1) that is comprised primarily of governments; (2) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and (3) the income of which does not inure to the benefit of private persons.
4. The term “**Central Bank**” means an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.
5. The term “**Broad Participation Retirement Fund**” means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or

persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:

- a) does not have a single beneficiary with a right to more than five per cent of the fund's assets;
- b) is subject to government regulation and provides information reporting to the tax authorities; and
- c) satisfies at least one of the following requirements:
 - i. the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
 - ii. the fund receives at least 50 per cent of its total contributions (other than transfers of assets from other plans described in subparagraphs B(5) through (7) or from retirement and pension accounts described in subparagraph C(17)(a)) from the sponsoring employers;

- iii. distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in subparagraphs B(5) through (7) or retirement and pension accounts described in subparagraph C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or
 - iv. contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.
6. The term “**Narrow Participation Retirement Fund**” means a fund established to provide retirement, disability, or death benefits to beneficiaries that are

current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:

- a) the fund has fewer than 50 participants;
- b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
- c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;
- d) participants that are not residents of the jurisdiction in which the fund is established are not entitled to more than 20 per cent of the fund's assets; and
- e) the fund is subject to government regulation and provides information reporting to the tax authorities.

7. The term **“Pension Fund of a Governmental Entity, International Organisation or Central Bank”** means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death

benefits to beneficiaries or participants that are current or former employees (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.

8. The term **“Qualified Credit Card Issuer”** means a Financial Institution satisfying the following requirements:
 - a) the Financial Institution 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 with respect to the card and the overpayment is not immediately returned to the customer; and
 - b) beginning on or before 31 December 2018, 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 account aggregation and 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.

9. The term “**Exempt Collective Investment Vehicle**” means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

An Investment Entity that is regulated as a collective investment vehicle does not fail to qualify under subparagraph B(9) as an Exempt Collective Investment Vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

- a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after [xx/xx/xxxx];
- 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 [xx/xx/xxxx].

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, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term “Financial Account” does not include 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 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 noninvestment-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) 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;
- 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) 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 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 “**Preexisting Account**” means a Financial Account maintained by a Reporting Financial Institution as of 31 December 2016
 10. The term “**New Account**” means a Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2017.
 11. The term “**Preexisting Individual Account**” means a Preexisting 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 “**Preexisting Entity Account**” means a Preexisting Account held by one or more Entities.
 14. The term “**Lower Value Account**” means a Preexisting Individual Account with an aggregate balance or value as of 31 December 2016 that does not exceed \$1,000,000.

15. The term “**High Value Account**” means a Preexisting Individual Account with an aggregate balance or value that exceeds \$1,000,000 as of 31 December 2016 or 31 December of any subsequent year.
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:
 - 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 requirement of subparagraph C(17)(a)(v) will not fail to satisfy such requirement 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 requirement of subparagraph C(17)(b)(iv) will not fail to satisfy such requirement 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).

- 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 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:
 - (i) 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;

- (ii) 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;
- (iii) 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;

- (iv) the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and
 - (v) 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 31 December 2018, 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 domestic law 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 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 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 Organisation; (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 Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a

Reportable 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 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.
5. The term “**Participating Jurisdiction**” means a jurisdiction (i) with which an agreement is in place pursuant to which it will provide the information specified in Section I, and (ii) which is identified in a published list.
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 calendar year or other appropriate reporting period is passive income and less than 50 per cent of the assets held by the NFE during the preceding calendar year 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 Entity does not qualify for this status if the Entity 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 organisation 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 reorganising 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

- organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation 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 the Common Reporting Standard, 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.
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.

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 authorised 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.

REVISION NOTES 2012 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2012 – 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) roman numerals changed to decimal numbers;

The following amendments were made to this Act since its enactment:

By the Tax Information Exchange Amendment Act 2015:

- Section 10 in subsection (1) substitute “Subject to subsection (2),”;and substitute new subsection (2);
 Schedule 1 after item 13, insert new items 14,15, and 16.

By the Tax Exchange Amendment Act 2017, No. 6

- Amendments to sections 2, 10, new sections 10A – 10H, 10K inserted and new Schedule 3 inserted, commenced on 1 December 2017;
- Newly inserted sections 10I & 10J commenced on date of Assent: 9 March 2017.

Section 2 amend definition of “agreement”;

Section 10 inserted references to Part 3A

New Part 3A inserted

New Schedule 3 inserted

By the Tax Information Exchange Amendment Act 2018 No. 8.

Section 2 insert definition of “foreign jurisdiction”

Section 10B amended

Section 10K amended

Schedule 3 amended

By the Tax Information Exchange Amendment Act 2019 No. 14.

Schedule 1 inserted new items under schedule 1 after item 16.

*This Act is administered by
the Ministry for Customs and Revenue.*