

Automatic Exchange of Financial Account Information

GUIDANCE ON THE COMMON REPORTING STANDARD



MINISTRY OF FINANCE
REPUBLIC OF THE MARSHALL ISLANDS

Document History

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Abbreviations & Acronyms

Abbreviation/Acronym	Meaning
AEOI	Automatic exchange of financial account information
AEOI Act	Automatic Exchange of Financial Account Information Act 2016, 48 MIRC Ch. 5, available at: https://rmiparliament.org/
AEOI Regulations	AEOI Regulations 2016, as amended, available at: https://rmicourts.org/selected-regulations/
AML	Anti-money laundering
CRS	Common Reporting Standard, including the Commentaries thereon, available at: https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/
CRS-MCAA	Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, available at: https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/
FATF	Financial Action Task Force
FATF Recommendations	FATF Recommendations 2012, available at: https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html
FI	Financial Institution, as defined by the AEOI Act and the CRS
KYC	Know your customer
MAAC	Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol, available at: https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm
MDES	Multi Data Exchange Solution, available at: https://mdes.rmimof.com/MDES/
Ministry	Republic of the Marshall Islands Ministry of Finance
MIRC	Marshall Island Revised Code
NFE	Non-Financial Entity
OECD	Organisation for Economic Co-operation and Development
RFI	Reporting Financial Institution, as defined by the AEOI Act and CRS
RMI or Marshall Islands	Republic of the Marshall Islands
Secretary	Republic of the Marshall Islands Secretary of Finance
TIN	Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number)

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1. Introduction

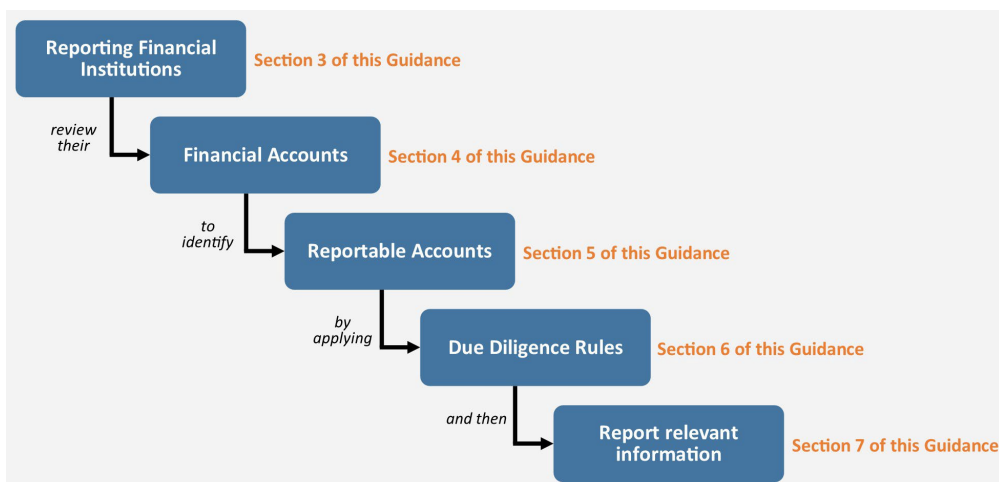
This Guidance is issued by the Secretary pursuant to the AEOI Act. Under §508 of the AEOI Act, the Secretary administers and enforces compliance with the AEOI Act and the AEOI Regulations.

1.1. Overview

Developed by the OECD and approved by the OECD Council in 2014, the CRS is the global standard for AEOI. It builds on the approach adopted by countries to implement the United States Foreign Account Tax Compliance Act (“FATCA”), but there are key differences between FATCA and the CRS.

The CRS requires jurisdictions to obtain information from their domestic FIs and automatically exchange that information with other jurisdictions on an annual basis. It sets out the FIs required to report, the different types of accounts and account holders covered, the due diligence procedures to be followed by RFIs, and the financial account information to be exchanged.

Figure 1. Overview of the CRS



In the Marshall Islands, the CRS is implemented through the AEOI Act and AEOI Regulations. They require RFIs to have systems and procedures in place to ensure that reportable accounts are identified, the relevant information collected, and the correct information is reported. Reporting in the Marshall Islands is handled through [MDES](#). The reported information is then exchanged with partner jurisdictions.

1.2. Purpose & Scope of this Guidance

This *Guidance on the Common Reporting Standard* (“Guidance”) is intended to assist FIs in understanding their obligations under the CRS, as implemented in the Marshall Islands.

As the CRS is a global standard, the OECD has developed broad, comprehensive materials for the consistent interpretation and application of the CRS by all jurisdictions, as outlined in Section 2.1 below. This Guidance, therefore, is limited to aspects of the CRS that are specific to the Marshall Islands, the AEOI Act, and the AEOI Regulations. It is not intended to replicate the OECD materials, which form the core of the CRS and its interpretation, subject to Marshall Islands law.

This Guidance is not intended to alter or override existing legal requirements. It should be read in conjunction with the CRS, as implemented under Marshall Islands law. Any term that is not defined in this Guidance has the meaning set forth in the AEOI Act, the AEOI Regulations, or the CRS.

1.3. Legal Status of this Guidance

This Guidance does not constitute law or regulation, and it does not replace or supersede any statutory or regulatory requirements or any judicial precedent. In the event of a discrepancy between this Guidance and the legal or regulatory frameworks currently in force, the latter will prevail. Specifically, nothing in this Guidance should be interpreted as providing any explicit or implicit guarantee or assurance that any supervisory agency would defer, waive, or refrain from enforcement actions in the event of a breach of the AEOI Act, the AEOI Regulations, or any other law or regulation currently in force in the Marshall Islands.

2. Overview of Legal and Regulatory Framework

2.1. International CRS Framework

The Marshall Islands is a [participating jurisdiction](#) under the MAAC. In accordance with Article 6 of the MAAC, the Marshall Islands is a [signatory](#) of the CRS-MCAA, which provides the framework to exchange CRS information. The CRS-MCAA provides the rules for exchange between the Marshall Islands Competent Authority and the Competent Authorities of the Marshall Islands' exchange partners.

Materials and resources outlining the international CRS framework and providing additional information and guidance are available on the OECD's [Automatic Exchange Portal](#). Key documents include:

- the [Standard for Automatic Exchange of Financial Account Information in Tax Matters](#), which includes the CRS and the Commentaries thereon;
- the [CRS Implementation Handbook](#); and
- a list of [CRS-related Frequently Asked Questions](#).

The Marshall Islands commenced AEOI pursuant to the CRS in 2018. It exchanges CRS information on a non-reciprocal basis, meaning the Marshall Islands sends but does not receive CRS data.

2.2. Marshall Islands CRS Framework

The Marshall Islands' domestic laws that govern AEOI for tax purposes pursuant to the CRS include the AEOI Act and the AEOI Regulations, as amended.

The AEOI Act gives effect to the CRS-MCAA and provides for implementation of the CRS, obligating RFIs to collect and report information on reportable accounts and establishing a framework for administering and enforcing CRS requirements. The AEOI Regulations were promulgated pursuant to §517 of the AEOI Act and incorporate the CRS by reference into Marshall Islands law.

2.2.1. CRS Options

In certain areas, the CRS provides optional approaches allowing jurisdictions to adopt the one most suited to their circumstances. Most optional provisions are intended to provide greater flexibility for FIs. Through the AEOI Regulations, the Marshall Islands has adopted the options detailed below.

2.2.1.1. Wider Approach

For the scope of due diligence obligations, the Marshall Islands has opted for the "wider approach."

The CRS due diligence procedures are designed to identify accounts held by residents of the implementing jurisdiction's CRS exchange partners. However, the number of exchange partners will likely increase over time. The "wider approach" minimizes costs for FIs by eliminating the need for FI's to repeatedly perform additional due diligence when new exchange partners are added.

Under the "wider approach," RFIs perform CRS due diligence procedures on all accounts (except those held by a resident of the Marshall Islands or the United States), irrespective of whether the Account Holder is resident in a Reportable Jurisdiction. However, RFIs need only report information on accounts held by

an Account Holder who is resident for tax purposes in a Reportable Jurisdiction (i.e., a jurisdiction listed in Schedule 4 of the AEOI Regulations). This approach is reflected in Section 2(3) of the AEOI Regulations.

2.2.1.2. Other Options

Table 1. CRS Options Adopted by the Marshall Islands

No.	Summary of Option	RMI Status
A. Reporting Requirements (Section I of the CRS)		
1	Alternative approach to calculating account balances	NO
2	Use of other reporting period	NO
3	Phasing in the requirement to report gross proceeds	NO
4	Filing of nil returns	YES
B. Due Diligence (Section II-VII of the CRS)		
5	Allowing third-party service providers to fulfil the obligations on behalf of RFIs	YES
6	Allowing due diligence procedures for New Accounts to be used for Preexisting Accounts	YES
7	Allowing due diligence procedures for High Value Accounts to be used for Lower Value Accounts	YES
8	Residence address test for Lower Value Accounts	YES
9	Exclusion from due diligence for Preexisting Entity Accounts of less than USD 250,000	YES
10	Alternative documentation procedure for certain employer-sponsored group insurance contracts or annuity contracts	YES
11	Allowing FIs to make greater use of existing standardized industry coding systems for the due diligence process	YES
12	Currency translation	N/A
C. Definitions (Section VIII of the CRS)		
13	Expanded definition of Preexisting Account	YES
14	Expanded definition of Related Entity	YES
15	Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle	YES

2.2.2. Key Dates Under the CRS

The dates on which new account opening procedures commence and the dates by which due diligence procedures must be completed vary from jurisdiction to jurisdiction. The following are the effective dates for the implementation of the CRS in the Marshall Islands:

- The effective date for Preexisting Accounts (Individual or Entity) to be subjected to due diligence procedures are those Financial Accounts in existence as of 31 December 2016. New Accounts (Individual or Entity) requiring self-certification are those opened on or after 1 January 2017.
- The annual reporting deadline for RFIs to submit CRS returns is 30th June.

2.2.3. Relevance of CRS Commentary

The CRS Commentary was prepared by the OECD to supplement the CRS and draws upon an international consensus on the meaning of the CRS. The Commentary, therefore, is an integral part of the CRS. The AEOI Act and AEOI Regulations require the CRS to be applied consistently with the CRS Commentary.

2.2.4. Marshall Islands Competent Authority

The Secretary of Finance serves as the Competent Authority for the Marshall Islands. In accordance with the AEOI Act, the Secretary administers and enforces compliance with the MAAC, the CRS-MCAA, the AEOI Act, and the AEOI Regulations. These powers may be delegated by the Secretary.

RFIs must report information required under the CRS to the Secretary via MDES. The Secretary will then exchange that information with Reportable Jurisdictions that satisfy the requisite confidentiality and data safeguards standards and have the necessary legal instruments and legislative frameworks in place. The Secretary may contact RFIs about the accuracy of information submitted through MDES.

2.2.5. Multi Data Exchange Solution (MDES)

MDES is the system through which RFIs fulfill their reporting obligations under the AEOI Regulations. RFIs are required to register, confirm reporting obligations, and submit any required reporting through MDES. Please refer to the [MDES portal](#) for technical guidance on how to complete these processes.

2.2.6. Confidentiality

In accordance with §509 of the AEOI Act, any person currently or formerly employed in the administration or enforcement of the AEOI Act or AEOI Regulations must treat CRS information received from RFIs as confidential and only disclose it as necessary to administer or enforce the CRS-MCAA, the AEOI Act, or the AEOI Regulations. The Secretary will only exchange CRS information with exchange partners that have adequate measures in place to ensure the required confidentiality and data safeguards are met. Any breach of confidential data will be reported in accordance with the relevant international standards.

3. Entity Classification

3.1. Overview

A key aspect to implementing the CRS reporting requirements is to ensure the correct scope of financial institutions that are required to collect and report the information. These are defined in the CRS as Reporting Financial Institutions (RFIs). Each FI must determine its own classification for the purposes of the CRS. In all cases, it is important that all information provided by FIs is accurate, complete, correct, and reliable.

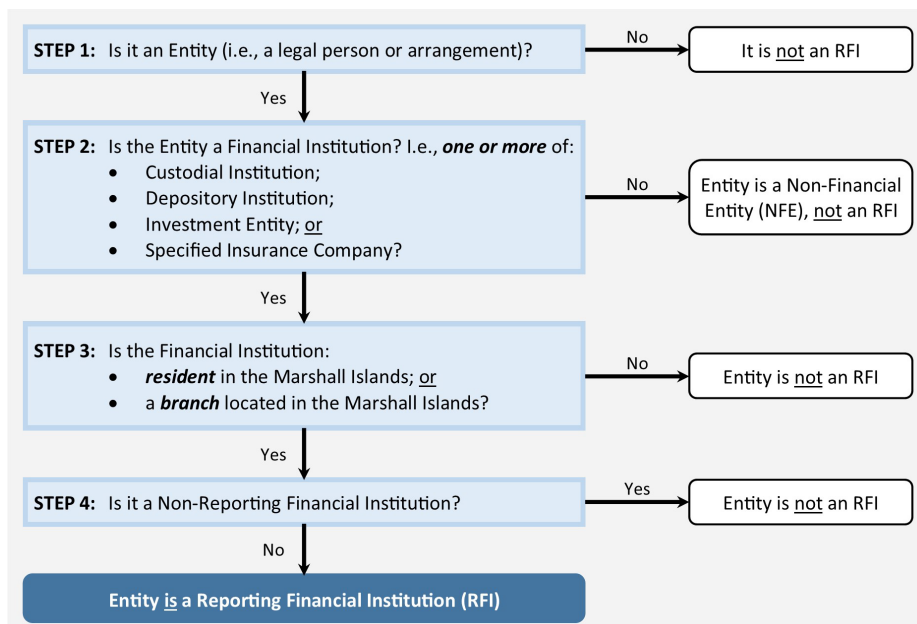
The CRS also refers to Non-Financial Entities (NFEs). An NFE is essentially any Entity that is not an FI. NFEs are then split into Passive NFEs or Active NFEs, with additional procedures required in relation to Passive NFEs (reflecting the greater tax evasion risks they pose).

Each Entity must ensure that it has been classified correctly. The Marshall Islands authorities will investigate instances of possible misclassification and may request additional information by way of a desk-based or on-site audit. Misclassification of an Entity may constitute circumvention or another offence under the AEOI Act and may be subject to penalties as outlined in the AEOI Act.

3.2. Identifying RFIs

The CRS contains detailed rules defining RFIs which are built around a four-step test, as shown in Figure 2 below:

Figure 2. Steps to Identify an RFI



3.2.1. Step 1: Is it an Entity?

For the purposes of the CRS, only an Entity can be an RFI. The definition of “Entity” is broad and consists of legal persons and legal arrangements, such as corporations, partnerships, trusts, and foundations. Individuals, including sole proprietorships, are excluded from the definition of RFIs.

3.2.2. Step 2: Is the Entity a Financial Institution?

The CRS broadly classifies an Entity as either an FI or an NFE. An Entity is an FI if it is a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

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

Where an Entity is not “Financial Institution” under the CRS, then it will be classified as an Active NFE (non-financial entity) or Passive NFE as appropriate.

3.2.2.1. Custodial Institutions

A “Custodial Institution” is an Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. This generally includes custodian banks, brokers, and central securities depositories.

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% 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.

Financial Asset

While it does not refer to assets of every kind, term “Financial Asset” is intended to encompass any assets that may be held in an account maintained by an FI with limited exception. The term does not include a non-debt, direct interest in real property or a commodity that is a physical good (e.g., wheat).

Within that context, 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);
- a partnership interest;
- a commodity;
- a 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);
- an 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.

3.2.2.2. Depository Institutions

A “Depository Institution” is an Entity that accepts deposits in the ordinary course of a banking or similar business. This generally includes savings banks, commercial banks, savings and loan associations, and credit unions.

3.2.2.3. Investment Entities

There are two types of “Investment Entities”:

- **Type A** – an Entity that primarily conducts as a business investment activities or operations for or on behalf of a customer; and
- **Type B** – an Entity that derives its gross income from investing, reinvesting, or trading in Financial Assets and is managed by another FI (including a Type A Investment Entity).

Type A Investment Entities

A Type A Investment Entity is any Entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

- trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate, and index instruments; transferable securities; or commodity futures trading;
- individual and collective portfolio management; or
- otherwise investing, administering, or managing Financial Assets or money on other persons’ behalf.

These activities or operations do not include rendering non-binding investment advice to a customer.

An Entity is treated as primarily conducting as a business one or more of the activities described above if its gross income from conducting those activities is at least 50% of its gross income during the shortest of its last three fiscal periods, or the period since the entity has been in existence.

Type B Investment Entities

A Type B Investment Entity is an Entity 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 a Type A Investment Entity (even if the managing Entity is not the sole manager).

An Entity is “managed by” another Entity if the managing Entity performs, either directly or through another service provider, any of the Type A Investment Entities activities or operations on behalf of the managed Entity. However, an Entity does not manage another Entity if it does not have discretionary authority to manage the Entity’s assets (in whole or part).

An Entity’s gross income is primarily attributable to investing, reinvesting, or trading in financial assets if its total gross income is at least 50% of the Entity’s gross income during the shorter of its last three fiscal periods, or the period since the entity has been in existence.

Examples of Investment Entities

The definition of “Investment Entity” is interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the FATF Recommendations.

An Entity would generally be considered an Investment Entity if it functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund,

venture capital fund, leveraged buy-out fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in Financial Assets.

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

For additional examples, see paragraph 22 of the CRS Commentary on Section VIII of the CRS.

3.2.2.4. Specified Insurance Companies

A “Specified Insurance Company” 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. An “insurance company” is an entity that is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the entity is doing business. Most life insurance companies would generally be considered Specified Insurance Companies.

Insurance companies that provide only general insurance or term life insurance, and reinsurance companies that provide only indemnity reinsurance contracts, are not Specified Insurance Companies. Insurance advisors, agents, or brokers are not Specified Insurance Companies.

A Specified Insurance Company can include both an insurance company and its holding company. However, the holding company itself will be a Specified Insurance Company only if it issues or is obligated to make payments with respect to Cash Value Insurance Contracts or Annuity Contracts.

3.2.3. Step 3: Is the Financial Institution in the Marshall Islands?

Pursuant to §502(3) of the AEOI Act, a “Republic of the Marshall Islands Financial Institution” is:

- any FI that is **resident** in the Marshall Islands; and
- any **branch** located in the Marshall Islands of a FI that is not resident in the Marshall Islands.

The CRS includes specific rules to determine the tax residence of Entities. Basic residence rules and their application to FIs are shown in the table below:

Table 2. Determining Where an FI is “Resident” under the CRS

Entity	Where FI is “Resident” under the CRS
Entities (except trusts) with a single tax residence	Jurisdiction where it is resident for tax purposes
Entities (except trusts) with no tax residence	Jurisdiction where it is incorporated, its place of management, or where it is subject to financial supervision
Entities (except trusts) with multiple tax residences	Jurisdiction where the Financial Account(s) are maintained
Trusts	Jurisdiction where one or more trustees are resident, unless the required information is being reported elsewhere because the trust is treated as tax resident there

As shown in Table 2 above, an Entity's residence under the CRS is generally where it is resident for tax purposes. Thus, an Entity that is tax resident in the Marshall Islands generally will be "resident" in the Marshall Islands for purposes of the CRS.

There are special rules where an Entity (other than a trust) does not have a residence for tax purposes (e.g., because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax). In these cases, the Entity will be "resident" in the Marshall Islands if the Entity is incorporated under Marshall Islands law, has its place of management in the Marshall Islands, or is subject to financial supervision in the Marshall Islands (e.g., under the Banking Act 1987, 17 MIRC Ch. 1).

Where an Entity (other than a trust) is resident in more than one Participating Jurisdiction, it will be subject to the CRS due diligence obligations of the Participating Jurisdiction in which it maintains the Financial Account(s) and must report the account(s) to that jurisdiction. In such a case, accounts reported to another Participating Jurisdiction by a Marshall Islands FI are not required to be reported in the Marshall Islands. However, the Marshall Islands FI must be able to demonstrate that it complied with all reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the accounts.

A trust is "resident" for CRS purposes in the Participating Jurisdiction where one or more of its trustees are resident, unless all the information required to be reported in relation to the trust is reported to another Participating Jurisdiction because it is resident for tax purposes there.

Branches of Marshall Islands FIs that are not located in the Marshall Islands are excluded from the scope of the AEOI Regulations and will not be regarded as RFIs in the Marshall Islands. These branches may nevertheless be subject to the domestic CRS legislation of the jurisdiction where the branch is located.

3.2.4. Step 4: Is it a Non-Reporting Financial Institution?

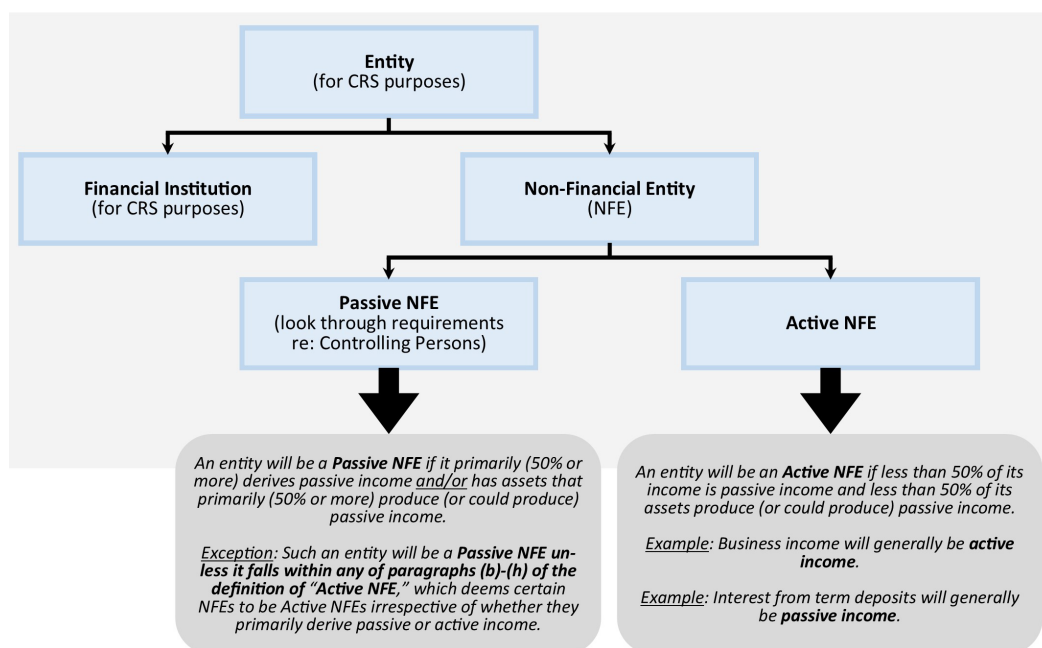
As defined in §502(3) of the AEOI Act, a "Reporting Financial Institution" is any Marshall Islands FI that is not a Non-Reporting FI. Because they pose a low risk of being used to evade tax, Non-Reporting FIs are excluded from CRS due diligence and reporting obligations and are not required to register in MDES. Non-Reporting FIs include:

- Governmental Entities, and their pension funds;
- International Organisations;
- Central Banks;
- certain retirement funds;
- Qualified Credit Card Issuers;
- Exempt Collective Investment Vehicles; and
- Trustee-Documented Trusts.

In addition to the above, the CRS permits the Marshall Islands to identify low-risk FIs as Non-Reporting FIs under certain conditions. The Marshall Islands' jurisdiction-specific list of Non-Reporting FIs is set out in Schedule 2 of the AEOI Regulations. Currently, none are listed.

3.3. Identifying NFEs: Active and Passive

An Entity that is not an FI is an NFE. There are two categories of NFEs: (i) Active NFEs; and (ii) Passive NFEs.

Figure 3. Identifying Active NFEs and Passive NFEs

The distinction between Active NFE and Passive NFE is important because an RFI is required to apply a higher standard of due diligence to Financial Accounts held by a Passive NFE. The FI is required to determine whether the Passive NFE is controlled by one or more Reportable Persons.

An NFE, whether Active or Passive, has no CRS reporting obligation. However, the Entity is required to determine its classification and, when requested, to produce a self-certification for RFIs to certify its classification (see Section 6.4 below on the due diligence requirements for Entity Accounts). A Passive NFE would also be required to identify its Controlling Person(s) and provide a self-certification to its FI relating to each Controlling Person's tax residence(s).

RFIs must report Financial Accounts that are held by Passive NFEs with Controlling Person(s) that are Reportable Persons.

3.3.1. Passive NFEs

A Passive NFE is any NFE that:

- is not an Active NFE; or
- is a professionally managed (Type B) Investment Entity that is not a Participating Jurisdiction FI (i.e., an Investment Entity that is resident in a non-Participating Jurisdiction).

3.3.2. Active NFEs

The definition of Active NFE essentially excludes Entities that primarily receive passive income or primarily hold assets that produce passive income (such as dividends, interest, capital gains, rents, etc.), and it includes any NFE that meets any of the criteria listed in the CRS. In summary, those criteria refer to:

- a) active NFEs by reason of income and assets;

- b) publicly traded NFEs;
- c) Governmental Entities, International Organisations, Central Banks, or their wholly owned Entities;
- d) holding NFEs that are members of a nonfinancial group;
- e) start-up NFEs;
- f) NFEs that are liquidating or emerging from bankruptcy;
- g) treasury centres that are members of a nonfinancial group; or
- h) non-profit NFEs.

The CRS describes the criterion to qualify for the Active NFE status for “active NFEs by reason of income and assets” as follows: less than 50% of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% 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.

3.3.3. Passive Income

The CRS does not define passive income, but the CRS Commentary provides a list of items that should generally be considered passive income. As set out in the CRS Commentary, the term “passive income” will generally include income from the mere holding of property, such as:

- dividends;
- interest;
- income equivalent to interest;
- rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE;
- annuities;
- the excess of gains over losses from the sale or exchange of Financial Assets that gives rise to the passive income described previously;
- the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets;
- the excess of foreign currency gains over foreign currency losses;
- net income from swaps; or
- amounts received under Cash Value Insurance Contracts.

Passive income will not include, in the case of a NFE that regularly acts as a dealer in Financial Assets, any income from any transaction entered into in the ordinary course of such dealer’s business as such a dealer.

4. Financial Accounts

4.1. Overview

RFIs are required to review the “Financial Accounts” they “maintain” to identify accounts held (and/or, in the case of Passive NFEs, controlled) by relevant foreign tax residents.

The general rule is that a “Financial Account” is an account maintained by an FI. The CRS then further clarifies that the term includes specific categories of accounts: Depository Accounts, Custodial Accounts, equity and debt interests, Cash Value Insurance Contracts, and Annuity Contracts.

Certain accounts are seen to be low risk of being used to evade tax and, therefore, are specifically excluded from the requirement to be reviewed (i.e., are not Financial Accounts). These are called Excluded Accounts.

Figure 4. Identifying Financial Accounts

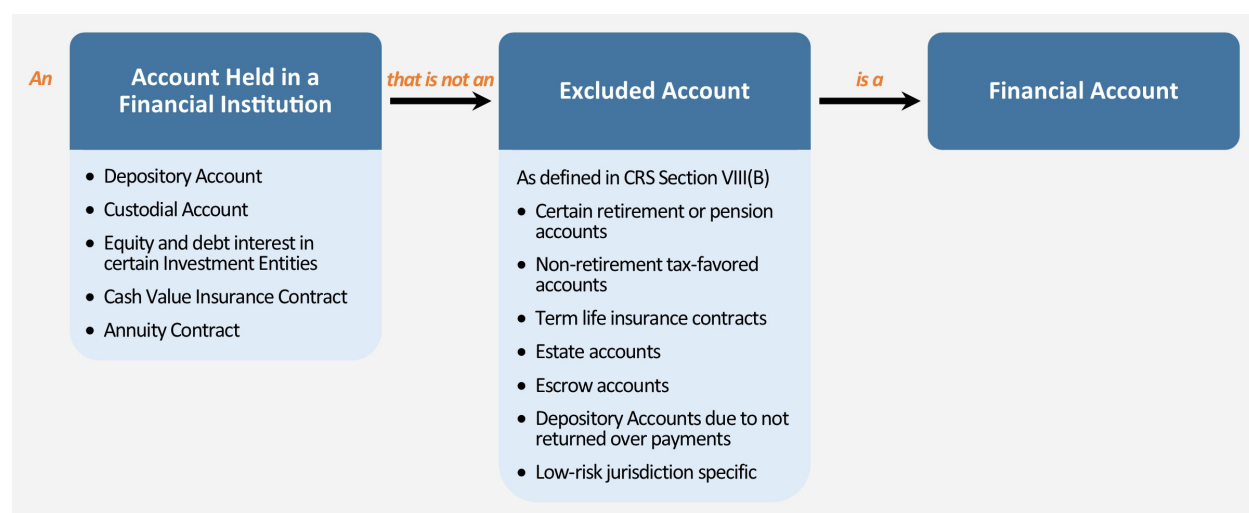


Table 3 below shows which FI is considered to “maintain” each type of Financial Account.

Table 3. Determining Which FI “Maintains” a Financial Account

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

4.2. Depository Accounts

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 an FI in the ordinary course of a banking or similar

business. It also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

An account that is evidenced by a passbook would generally be considered a Depository Account.

Negotiable debt instruments that are traded on a regulated market or over-the-counter market and distributed and held through FIs would not generally be considered Depository Accounts.

The account does not have to be an interest-bearing account. A Depository Account will include any credit balance on a credit card (a “credit balance” does not include credit balances in relation to disputed charges but includes a credit balance resulting from refund of purchases) issued by a credit card company engaged in banking or similar business. However, credit cards will not be considered Depository Accounts where the issuer meets the requirements to be deemed as a Qualified Credit Card Issuer.

An RFI that is not a Qualified Credit Card Issuer, but accepts deposits when a customer makes a payment in excess of a balance due with respect to a credit card account or revolving credit facility, does not need to report the account where the account qualifies as an Excluded Account (see Section 4.7 below).

4.3. Custodial Accounts

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

As described in Section 3.2.2.1 above, “Financial Assets” generally include any asset that may be held in an account maintained by an FI (including securities, commodities, swaps, etc.) with limited exception.

4.4. Equity and Debt Interests

Generally, any equity or debt interest in an Investment Entity will constitute a Financial Account.

If the Investment Entity is a partnership, an “equity interest” is either a capital or profits interest in the partnership. If the Investment Entity is a trust, an “equity interest” is considered to be held by:

- any person who is treated as a settlor;
- a beneficiary of all or part of a trust, namely persons with the right to a mandatory distribution or persons who receives a discretionary distribution in the calendar year; or
- any other natural person exercising ultimate effective control over the trust.

A “debt interest” refers to any interest created when a lender lends to a borrower, which can arise from arrangements such as simple loans, bond issues, or note issues.

In addition to the general rule, the CRS includes an anti-avoidance rule. An equity or debt interest in an FI not covered by the general rule may constitute a “Financial Account” where the class of interest was established to avoid reporting under the CRS.

The CRS provides a special exclusion for equity and debt interests in investment advisers and investment managers. It excludes from the definition of “Financial Account” any equity or debt interest in an Entity that is an Investment Entity solely because it renders investment advice to/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 other FIs.

4.5. Cash Value Insurance Contracts

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

“Cash Value” is 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 (for example, pledging as collateral) the contract. It does not include an amount payable under an Insurance Contract in the circumstances specified in Section VIII(C)(8) of the CRS.

4.6. Annuity Contracts

An “Annuity Contract” is a contract:

- under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals; or
- 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.

4.7. Excluded Accounts

The term “Financial Account” does not include any account that is an Excluded Account. “Excluded Accounts” are excluded from the definition of “Financial Account” (and, therefore, from CRS due diligence and reporting obligations) because they present a low risk of being used to evade tax.

The CRS sets out the following categories of Excluded Accounts:

- a) retirement and pension accounts;
- b) non-retirement tax-favored accounts;
- c) term life insurance contracts;
- d) estate accounts;
- e) escrow accounts;
- f) Depository Accounts due to not-returned overpayments; and
- g) jurisdiction-specific low-risk accounts.

The nature and scope of each category is detailed in full in Section VIII(C)(17) of the CRS and the associated CRS Commentary.

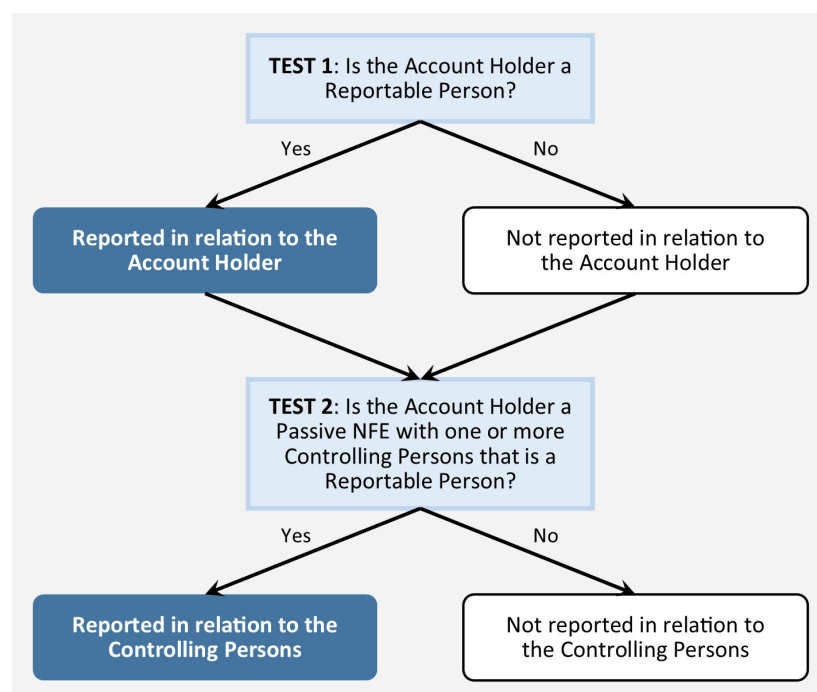
As noted in category g) above, the CRS permits Participating Jurisdictions to define accounts meeting certain criteria (including presenting a low risk of being used to evade tax) as “Excluded Accounts” in their domestic law. The Marshall Islands’ jurisdiction-specific list of Excluded Accounts is set out in Schedule 1 of the AEOI Regulations. Currently, none are listed.

5. Reportable Accounts

5.1. Overview

Once an RFI has identified the Financial Accounts it maintains, it must review those accounts to identify whether any of them are Reportable Accounts. A “Reportable Account” is defined as 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. A two-part test is used to identify Reportable Accounts:

Figure 5. Two Tests to Determine a Reportable Account



5.2. Identifying the Account Holder

Identifying the “Account Holders” of Financial Accounts is a key requirement of the CRS, as the CRS is generally aimed at determining whether a Financial Account is held (or, for Passive NFEs, controlled) by a relevant foreign tax resident.

In most cases, identifying the “Account Holder” is straightforward: it is generally the person listed or identified by the RFI that maintains the account as the holder of the Financial Account. That person may be an individual or Entity (even a flow-through Entity). However, RFIs must consider the type of account and the capacity in which it is held.

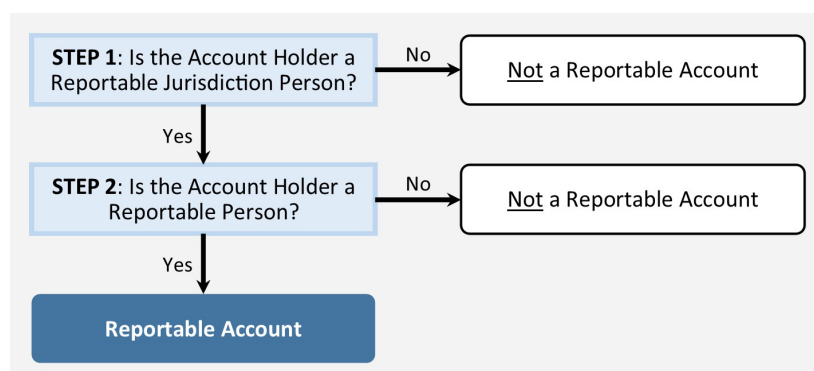
Where a person other than a FI holds a Financial Account for the benefit or account of another person as an agent, custodian, nominee, signatory, investment adviser or intermediary, then that other person is the Account Holder. An RFI may rely on information in its possession, including information collected in line with AML/KYC procedures, based on which it can reasonably determine if a person is acting for the benefit or account of another person.

Where an account is jointly held, each of the joint holders is an Account Holder. An account will be subject to reporting if any of the joint Account Holders is a Reportable Person or a Passive NFE with one or more Controlling Persons who are Reportable Persons. When more than one Reportable Person is a joint holder, each Reportable Person is treated as an Account Holder and is attributed the entire account balance.

5.3. Reportable Account by Virtue of the Account Holder

The first test establishes whether a Financial Account is a Reportable Account by virtue of the Account Holder using a further two-step test:

Figure 6. Reportable Account by Virtue of the Account Holder



STEP 1: Is the Account Holder a Reportable Jurisdiction Person?

Generally, an individual or Entity is a “Reportable Jurisdiction Person” if it is resident in a Reportable Jurisdiction under the tax laws of that jurisdiction. As an exception to this rule, an Entity that has no residence for tax purposes (e.g., because it is treated as fiscally transparent) is considered to be resident in the jurisdiction where its place of effective management is situated.

Because the Marshall Islands has adopted the “wider approach” (see Section 2.2.1.1 above), the term “Reportable Jurisdiction” has two meanings. For CRS due diligence procedures, a “Reportable Jurisdiction” is any jurisdiction other than the United States or the Marshall Islands. For filing CRS information returns with the Secretary, a “Reportable Jurisdiction” is any jurisdiction is listed in Schedule 4 of the AEOI Regulations (i.e., the jurisdictions to which the Marshall Islands has agreed to send CRS information).

STEP 2: Is the Account Holder a Reportable Person?

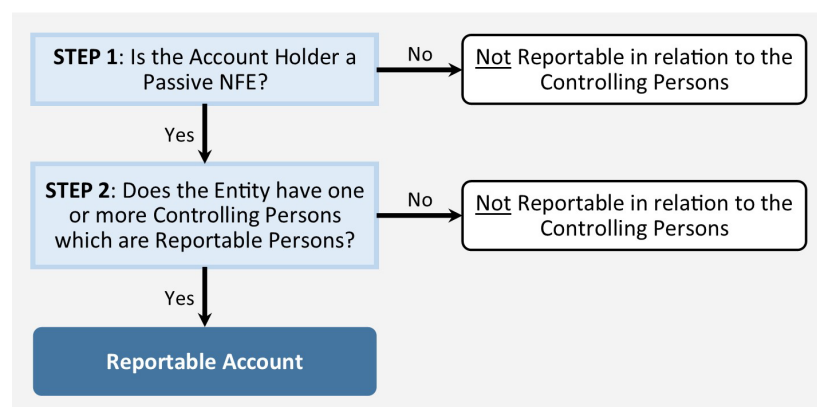
If the individual is a Reportable Jurisdiction Person, they will also be a “Reportable Person” unless specifically excluded. The specific exclusions are:

- a corporation the stock of which is regularly traded on one or more established securities market and any Related Entity of that corporation;
- a Governmental Entity;
- an International Organisation;
- a Central Bank; or
- a Financial Institution (which would have its own reporting obligations under the CRS).

5.4. Reportable Account by Virtue of Controlling Persons

Regardless of whether the Financial Account is a Reportable Account by virtue of the Account Holder, there is then a second two-part test in relation to the Controlling Persons of certain Entity Account Holders. This may mean that additional information is required to be reported in relation to an already-Reportable Account or that a previously Non-Reportable Account becomes a Reportable Account.

Figure 7. Reportable Account by Virtue of Controlling Persons



STEP 1: Is the Account Holder a Passive NFE?

As described in Section 3.3.1 above, a Passive NFE generally is an NFE that primarily receive passive income or primarily hold assets that produce passive income (dividends, interest, capital gains, rents, etc.).

STEP 2: Does the Entity have one or more Controlling Persons which are Reportable Persons?

If the Entity Account Holder is a Passive NFE, then the RFI must “look-through” the Entity to identify its Controlling Persons. If the Controlling Persons are Reportable Persons, then information on the Financial Account must be reported, including details of the Account Holder and each reportable Controlling Person.

The term “Controlling Persons” corresponds to the definition of “beneficial ownership” as described in Recommendation 10 of the FATF Recommendations and its Interpretive Note and must be interpreted in a manner consistent with that definition.

In line with the FATF Recommendations, a “Controlling Person” is generally the natural person(s) who exercises control over an Entity. “Control” depends on the legal structure of the Entity:

- For an Entity that is a **legal person**, the “Controlling Persons” will be:
 - (a) the natural persons (if any) who ultimately have a controlling ownership interest (holding 25% or more of the shares/interests or voting rights, whether directly or indirectly) in the Entity; and
 - (b) where there is doubt as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, the natural persons (if any) exercising control through other means; and
 - (c) where no natural person(s) is identified as exercising control of the Entity, the relevant natural person who holds the position of senior managing official.

- For an Entity that is a **trust**, the “Controlling Persons” will be 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. For other types of legal arrangements, identification must be made of persons in equivalent or similar positions.

Only a natural person can be a “Controlling Person,” and more than one natural person can be the “Controlling Person” of a given legal person or legal arrangement.

6. Due Diligence

6.1. Overview

Due diligence is the set of actions and procedures that RFIs must carry out to establish whether a Financial Account is held (or, for Passive NFEs, controlled) by a Reportable Person and is, therefore, a Reportable Account (see Section 5 above). The CRS due diligence rules are in addition to AML/KYC procedures, although they may partly rely on those procedures in some cases.

RFIs will need to use different CRS due diligence procedures depending on when the Financial Account was opened and whether the Financial Account is held by an individual or an Entity. For accounts held by individuals, there are further distinctions in procedures for Lower Value Accounts vs. High Value Accounts.

Table 4 below summarizes the main due diligence procedures under Sections III to VII of the CRS, as implemented in the Marshall Islands via Sections 3 to 4 of the AEOI Regulations:

Table 4. Summary of CRS Due Diligence Obligations

Type of Financial Accounts			Summary of Due Diligence
Individual Accounts (i.e., accounts held by natural persons) <i>CRS Sections III & IV</i>	Preexisting Accounts (i.e., Financial Accounts in existence as of 31 December 2016 and other Financial Accounts specified in Section 2(1)(j) of the AEOI Regulations) <i>CRS Section III</i>	Lower Value Accounts (i.e., balance or value equal to or less than USD 1 million) <i>CRS Section III(B)</i>	The RFI may either: - rely on the residence address test (i.e., consider the Account Holder as resident for tax purposes in the jurisdiction the Account Holder registered as its residence address in the FI's records, to the extent that such residence address is supported by Documentary Evidence, such as an identity card); or <i>CRS Section III(B)(1)</i> - search for indicia (e.g., residence address, telephone number) of tax residency on its electronically searchable database. <i>CRS Section III(B)(2)</i>
		High Value Accounts (i.e., balance or value above USD 1 million) <i>CRS Section III(C)</i>	The RFI cannot rely on the residence address test. It must always look for indicia on its electronically searchable database and, if applicable, in its paper records or after consulting with the relationship manager (i.e., the employee of the bank in charge of the account).
	New Accounts (i.e., Financial Accounts opened on or after 01 January 2017 as stated in Section 2(1)(g) of the AEOI Regulations) <i>CRS Section IV</i>		The RFI must always: - obtain a valid self-certification (i.e., one containing at least, the name, residence address, jurisdiction of tax residency, date of birth of the Account Holder and a TIN for each Reportable Jurisdiction if the individual has been issued such a number); and - confirm its reasonableness (i.e., the self-certification is consistent with, and does not otherwise conflict with the documentation collected in the course of opening the account, including AML/KYC information).

Type of Financial Accounts		Summary of Due Diligence
Entity Accounts (i.e., accounts held by legal persons or arrangements) <i>CRS Sections V & VI</i>	Preexisting Accounts (i.e., Financial Accounts in existence as of 31 December 2016 and other Financial Accounts specified in Section 2(1)(j) of the AEOI Regulations) <i>CRS Section V</i>	For Preexisting Entity Accounts with a balance or value above USD 250,000, the RFI must determine: i. whether the Entity itself is a Reportable Person; and ii. whether the Entity is a Passive NFE and, if so, whether such Passive NFE has one or more Controlling Persons that are Reportable Persons. For purposes of determining the status of the Entity (i.e., if the Entity itself is a Reportable Person and if it is a Passive NFE), the RFI may (i) rely on information in its possession (e.g., the AML/KYC file) and publicly available information (e.g., public records); or (ii) obtain a self-certification from the Entity. If applicable, for purposes of identifying the Controlling Persons of a Passive NFE, the RFI may rely on AML/KYC documentation or obtain a self-certification. For purposes of determining if the Controlling Persons of the Passive NFE are Reportable Persons, the RFI may rely on AML/KYC documentation, but only if the account balance or value does not exceed USD 1 million. If the balance or value exceeds this threshold, the RFI must collect a valid self-certification.
	New Accounts (i.e., Financial Accounts opened on or after 01 January 2017 as stated in Section 2(1)(g) of the AEOI Regulations) <i>CRS Section VI</i>	Regardless of the balance or value of the account, all New Entity Accounts must be reviewed. For these purposes, the RFI should: i. collect a valid self-certification to determine: a) whether the Entity itself is a Reportable Person; and b) whether the Entity is a Passive NFE and, if so, whether that Passive NFE has one or more Controlling Persons that are Reportable Persons, and ii. confirm its reasonableness. The RFI may not need to obtain a self-certification to the extent that it can reasonably determine, based on information in its possession (e.g., the AML/KYC file) or publicly available information (e.g., public records), that the Entity is exempt from being reported. The RFI may also determine that an Entity is not a Passive NFE based on information in its possession or publicly available information.

6.2. AML/KYC Procedures

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

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

- reasonably determining that an Entity is an Active NFE or a FI;
- identifying the Controlling Persons of an Entity; and
- determining whether the Controlling Person(s) of a Passive NFE holding a Preexisting Account is a Reportable Person, provided that the balance or value does not exceed USD 1 million.

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

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

6.3. Individual Accounts

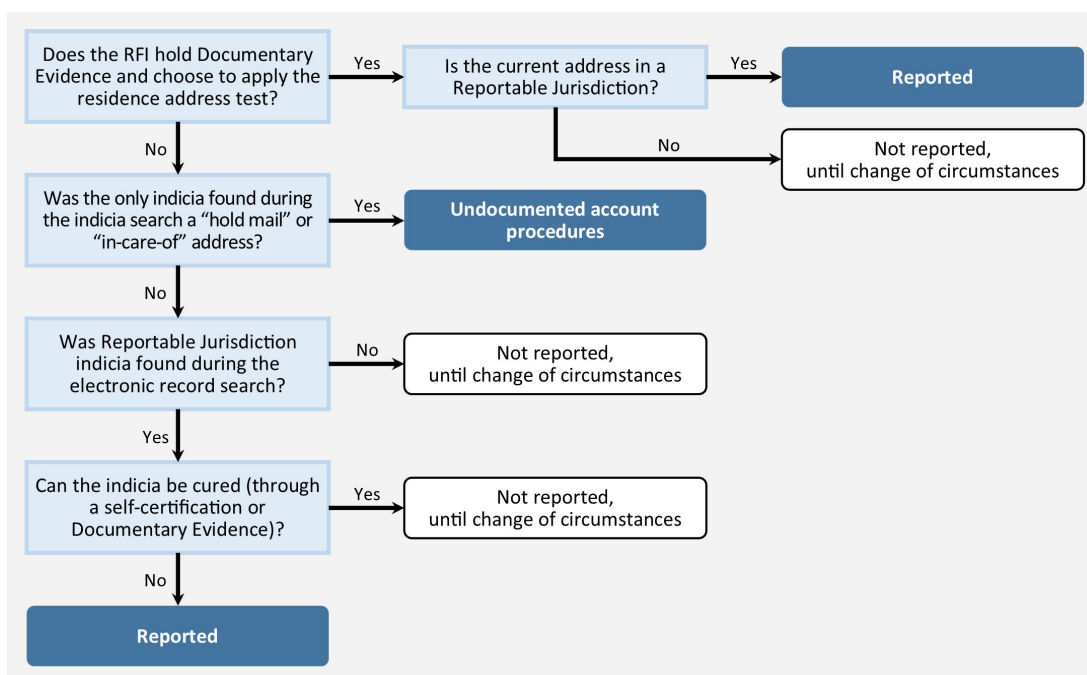
Individual accounts are accounts held by natural persons. Applicable due diligence procedures depend on whether the account is a Preexisting Account or New Account. Preexisting Accounts are further divided into Lower Value Accounts and High Value Accounts.

6.3.1. Preexisting Individual Accounts – Lower Value Accounts

A “Lower Value Account” is a Preexisting Individual Account with an aggregate balance or value that did not exceed USD 1 million on 31 December 2016. It will remain a Lower Value Account as long as the balance or value has not exceeded USD 1 million as of 31 December of any subsequent year.

Figure 8 below summarizes the due diligence rules for Lower Value Accounts from the perspective of the RFI:

Figure 8. Due Diligence Rules for Lower Value Accounts



6.3.1.1. Residence Address Test

Section 4(1)(a) of the AEOI Regulations permits RFIs to apply the residence address test to Lower Value Accounts. The residence address test allows RFIs to apply a simplified approach of relying on Account Holders' current residence address based on Documentary Evidence to determine their residence for tax purposes, as well as whether the account is a Reportable Account. RFIs can apply the residence address test to all Lower Value Accounts or, separately, to any clearly identified group of them.

The residence address test is an alternative to, and not a replacement for, the default indicia-based electronic record search for establishing residence. If the residence address test cannot be applied, the RFI must perform the electronic record search.

RFIs may only apply the residence address test instead of the default approach on accounts where all requirements set out in the CRS Commentary on Section III(B)(1) are met, including that:

- the RFI has in its records a residence address for the individual Account Holder;
- such residence address is current; and
- such residence address is based on Documentary Evidence.

Residence Address

An "in-care-of" address or a post office box address is not a residence address unless it clearly identifies the actual residence of the Account Holder.

Current Residence Address

A residence address is considered "current" where it is the most recent residence address that was recorded by the RFI for the individual Account Holder. A residence address is not considered "current" if it has been used for mailing purpose and mail has been returned undelivered. However, a residence address associated with a "dormant account" (as defined in the CRS Commentary on Section III) would be considered "current" during the dormancy period.

Documentary Evidence

Most relevant to the residential address test, "Documentary Evidence" includes identification or official documentation issued by an authorized governmental body (e.g., identity card, driving license, voting card, or certificate of residence). As stated in CRS Section VIII(E)(6), the term also includes audited financial statements, third-party credit reports, bankruptcy filings, or securities regulator reports.

The current residence address satisfies the requirement to be based on Documentary Evidence where the RFI's policies and procedures ensure that the current residence address in its records is the same address, or in the same jurisdiction, as that on the Documentary Evidence. If the RFI is unable to match the current resident address to Documentary Evidence, the current residence address satisfies the requirement to be based on Documentary Evidence if the RFI's policies and procedures ensure the address is in the same jurisdiction as the government issuing the Documentary Evidence.

If the RFI knows or has reason to know that the Documentary Evidence is unreliable, including as a result of a change in circumstances, then that Documentary Evidence cannot be relied upon. Therefore, either the residence address test cannot be used in the first place or, if it is due to a change in circumstances, the

RFI has until the later of the last day of the relevant calendar year or 90 days to obtain a self-certification and new Documentary Evidence. If this is not obtained, then the RFI must apply the electronic record search procedures described in Section 6.3.1.2 below. Refer to paragraph 13 of the Commentary on Section III for examples that illustrate the procedures to be followed in case of a change in circumstances.

6.3.1.2. Electronic Record Search

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

Indicia

Under the electronic record search, the RFI must review its electronically searchable data for any of the following indicia (i.e., factors that indicate where an Account Holder is resident):

- a) identification of the Account Holder as a resident of a Reportable Jurisdiction(s);
- b) current mailing or residence address (including a post office box) in a Reportable Jurisdiction(s);
- c) one or more current or most recent telephone numbers in a Reportable Jurisdiction(s) and no telephone number in the jurisdiction of the RFI;
- d) current standing instructions (other than with respect to a Depository Account) to repeatedly transfer funds to an account maintained in a Reportable Jurisdiction(s);
- e) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction(s); or
- f) a current "hold mail" instruction or "in-care-of" address in a Reportable Jurisdiction(s) if the RFI does not have any other address on file for the Account Holder.

If none of the indicia listed above is discovered in the electronic record 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 (described in Section 6.3.2 below).

Effect of Finding Indicia & Curing Procedures

If the RFI discovers any of the indicia of foreign tax residence listed in a) through f) above in the electronic record search, or if there is a change in circumstances that results in one or more indicia being associated with the account, the RFI must treat the Account Holder as a resident for tax purposes of each foreign jurisdiction for which an indicium is identified, unless it chooses to (and is able to) "cure" the indicia.

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

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

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

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

Where the *only* indicium found or arising is *f)* above (a "hold mail" instruction or an "in-care-of" address in a foreign jurisdiction with no other address on file), the RFI must undertake at least one of these actions:

- conduct a paper record search (see Section 6.3.2.2 below) to identify any additional foreign indicia, or
- seek a self-certification or Documentary Evidence from the Account Holder to establish their tax residency.

If the chosen course of action fails to resolve the status of the account, the RFI must attempt the other. If neither course of action is successful in resolving the account's reporting status (i.e., no address(es) found in the paper record search and no valid self-certification or Documentary Evidence obtained), the RFI must report the account as an undocumented account.¹

6.3.1.3. Additional Procedures for Lower Value Accounts

The review of Preexisting Individual Accounts that are Lower Value Accounts to identify Reportable Accounts was required to be completed by 31 December 2018.

Any Lower Value Account that has been identified as a Reportable Account pursuant to the due diligence procedures described in this Section 6.3.1 must be treated as a Reportable Account in all subsequent years unless and until the Account Holder ceases to be a Reportable Person.

6.3.2. Preexisting Individual Accounts – High Value Accounts

A "High Value Account" is a Preexisting Individual Account with an aggregate balance or value that exceeded USD 1 million as of 31 December 2016. It will remain a High Value Account as long as the balance or value exceeds USD 1 million as of 31 December of any subsequent year.

An RFI must apply enhanced review due diligence procedures to identify Reportable Accounts in respect of High Value Accounts. This includes, in addition to an electronic record search:

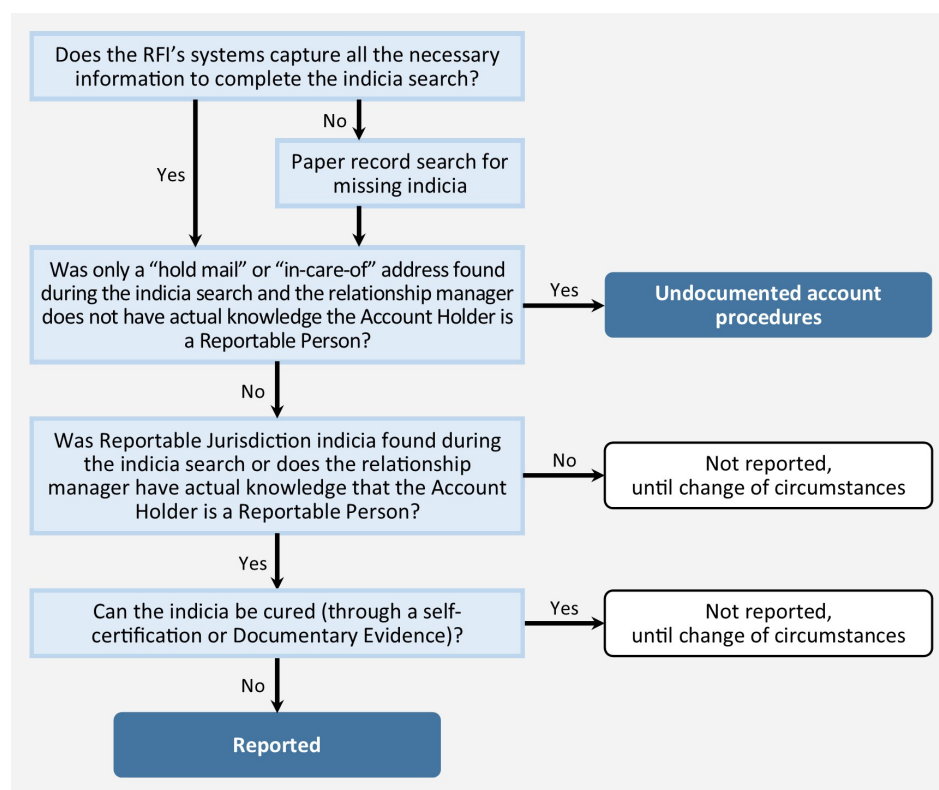
- conducting a paper record search for such indicia in some cases; and
- applying an actual knowledge test when a relationship manager has actual knowledge that the account is held by a Reportable Person (the "relationship manager inquiry").

High Value Accounts are not eligible for the residence address test described in Section 6.3.1.1 above.

¹ **NOTE:** The term "undocumented" may be subject to misinterpretation. An account may only be treated as "undocumented" under the CRS where (i) it is a Preexisting Account, (ii) there is only a "hold mail" instruction or "in-care-of" address associated with the account, and (iii) a search results in no indicia being identified.

Figure 9 below summarizes the due diligence rules for High Value Accounts from the perspective of the RFI.

Figure 9. Due Diligence Rules for High Value Accounts



6.3.2.1. Electronic Record Search

For High Value Accounts, the RFI must start with an electronic record search and then, where appropriate, continue with a paper record search and a relationship manager inquiry. The electronic record search is a search for the same indicia as described in Section 6.3.1.2 above.

6.3.2.2. Paper Record Search

If the RFI's electronically searchable databases include all the fields, and capture all information required to complete the electronic record search, then a further paper record search is not required.

Where the RFI's electronically searchable databases do not capture the necessary information, then a further paper record search is required for the information not held electronically. The paper record search for indicia should include a review of the current master file and, to the extent that they are not contained in the current master file, the following documents associated with the account and obtained by the RFI within the last five (5) years:

- the most recent Documentary Evidence collected with respect to the account;
- the most recent account opening contract or documentation;
- the most recent documentation obtained by the RFI pursuant to AML/KYC Procedures or for other regulatory purposes;

- any power of attorney or signature authority forms currently in effect; and
- any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.

6.3.2.3. Relationship Manager Inquiry

For High Value Accounts, the relationship manager inquiry is required in addition to the electronic record search and (if needed) the paper record search. The inquiry requires the RFI to consider whether any relationship manager associated with the account, or any accounts aggregated with the account, has actual knowledge that would identify the Account Holder as a Reportable Person.

The RFI must treat a High Value Account as a Reportable Account if a relationship manager has actual knowledge that the Account Holder is a Reportable Person.²

The relationship manager also has an important role in identifying any change in circumstances in relation to a High Value Account. An RFI must ensure that it has procedures in place to capture changes that are made known to the relationship manager regarding the Account Holder's reportable status.

6.3.2.4. Effect of Finding Indicia & Curing Procedures

If none of the relevant indicia are found in the enhanced review of the High Value Account and there is no relationship manager with actual knowledge that the Account Holder is a Reportable Person, 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.

In the special case where the *only* indicium is a "hold mail" instruction or "in-care-of" address in a foreign jurisdiction (indicia *f*) in Section 6.3.1.2 above) and there is no other address on file for the Account Holder, the RFI must obtain a self-certification or Documentary Evidence from the Account Holder to establish tax residency. If the RFI cannot obtain either, it must report the account as an undocumented account.

Other than the special case mentioned above, if any of indicia *a*) through *e*) listed in Section 6.3.1.2 above is found in the review of the account, or there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the RFI must treat the account as a Reportable Account for each jurisdiction indicated unless it elects to apply the curing procedure described in Section 6.3.1.2 above and one of the exceptions described in that section applies.

² A "relationship manager" is an officer or other employee of an RFI who: (i) is assigned responsibility for specific Account Holders on an on-going basis (including as an officer or employee that is a member of an RFI's private banking department); (ii) advises Account Holders regarding their banking, investment, trust, fiduciary, estate planning, or philanthropic needs; and (iii) recommends, makes referrals to, or arranges for the provision of financial products, services, or other assistance by internal or external providers to meet those needs. To be considered a relationship manager, relationship management must be more than ancillary or incidental to the person's job function, and the person must ultimately be charged with managing the Account Holder's affairs at the RFI.

6.3.2.5. Additional Procedures for High Value Accounts

For Preexisting Individual Accounts that are High Value Accounts, RFIs were required to complete the enhanced review procedures (including the electronic record search, paper record search if needed, and relationship manager inquiry) described above by 31 December 2017.

Any High Value Account that has been identified as a Reportable Account pursuant to the due diligence procedures described in this Section 6.3.2 must be treated as a Reportable Account in all subsequent years unless and until the Account Holder ceases to be a Reportable Person.

6.3.3. New Individual Accounts

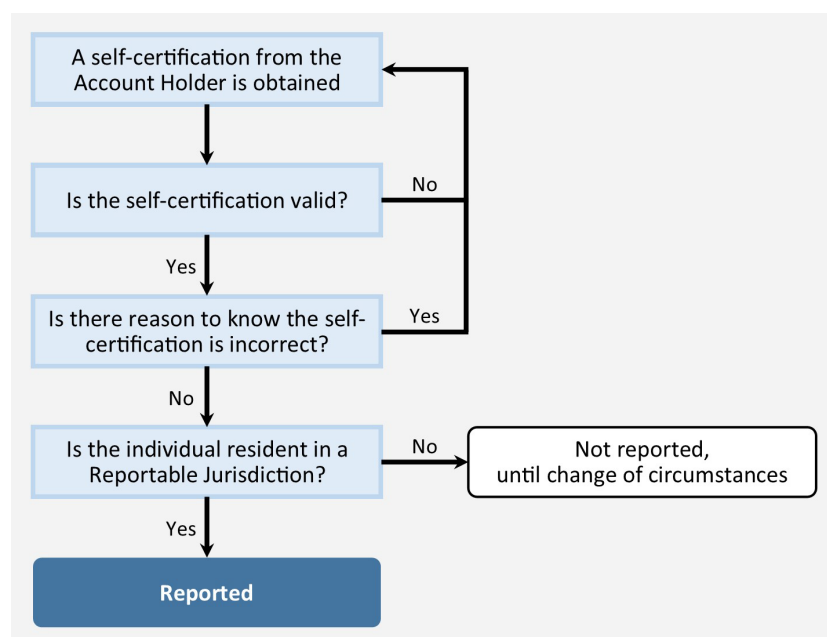
A “New Individual Account” is generally an individual account opened on or after 01 January 2017. However, an account that would otherwise be treated as a New Account may be instead treated as a Preexisting Account under certain circumstances (see definition of “preexisting account” in Section 2(1) of the AEOI Regulations).

While the due diligence for Preexisting Individual Accounts relies mainly on information the RFI already has on file, the opening of a New Individual Account requires the RFI to request additional information relevant to the CRS. Upon opening of a New Individual Account, a RFI must:

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

Figure 10 below sets out the process for New Individual Accounts:

Figure 10. Due Diligence Rules for New Individual Accounts



6.3.3.1. Obtaining a Self-Certification

Obtaining a self-certification of residency and, if needed, the date of birth and the foreign TIN is generally a prerequisite to opening a New Individual Account. The self-certification should cover residency status in all cases and, where foreign tax residency is identified, affirmation by the Account Holder of their date of birth and the TIN provided. The RFI must have robust procedures in place to ensure self-certifications are obtained in all cases. The account opening should not proceed if the person seeking the account cannot (or refuses to) provide these items.

An RFI may rely on a valid self-certification previously provided by an individual in connection with an account in meeting due diligence obligations for another account, so long as the self-certification remains reliable for the older account (no change in circumstances has affected its reliability). If any of the information collected on the opening of the new account conflicts with the existing self-certification, this should be followed up through the change in circumstances process (see Section 6.5.3 below).

There may be a limited number of exceptional circumstances, due to the specificities of a business sector, where it is not possible to obtain a self-certification on “day one” of the account opening process. The bar for exceptional circumstances is set very high and therefore does not extend to circumstances where it is merely difficult to obtain a self-certification upon account opening. Where exceptional circumstances are present, the self-certification must be obtained and validated as quickly as feasible, and within 90 days.

Failure to obtain a valid self-certification in a timely manner is an offence under §510 of the AEOI Act.

Self-certifications for New Individual Account must be valid. The criteria for a self-certification to be “valid” are detailed in Section 6.5.1.1 below.

Once the RFI has obtained a valid self-certification, it must confirm the self-certification’s reasonableness based on the information obtained in connection with account opening. The reasonableness test for self-certifications is described in Section 6.5.1.2 below.

6.3.3.2. Resident in a Reportable Jurisdiction

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

6.4. Entity Accounts

Entity accounts are accounts held by legal persons or legal arrangements. Applicable due diligence procedures depend on whether the account is a Preexisting Account or New Account.

6.4.1. Preexisting Entity Accounts

A “Preexisting Entity Account” is an account held by an Entity (a non-individual) as of 31 December 2016.

A de minimis exception applies to Preexisting Entity Accounts. If a Preexisting Entity Account has a balance or value that does not exceed USD 250,000 as of 31 December 2016, it will not be subject to due diligence until it exceeds USD 250,000 as of the last day of any subsequent calendar year.

An RFI can choose to disregard this de minimis exception and review all Preexisting Entity Accounts (or a clearly identified group of such accounts) irrespective of the balance or value of the account.

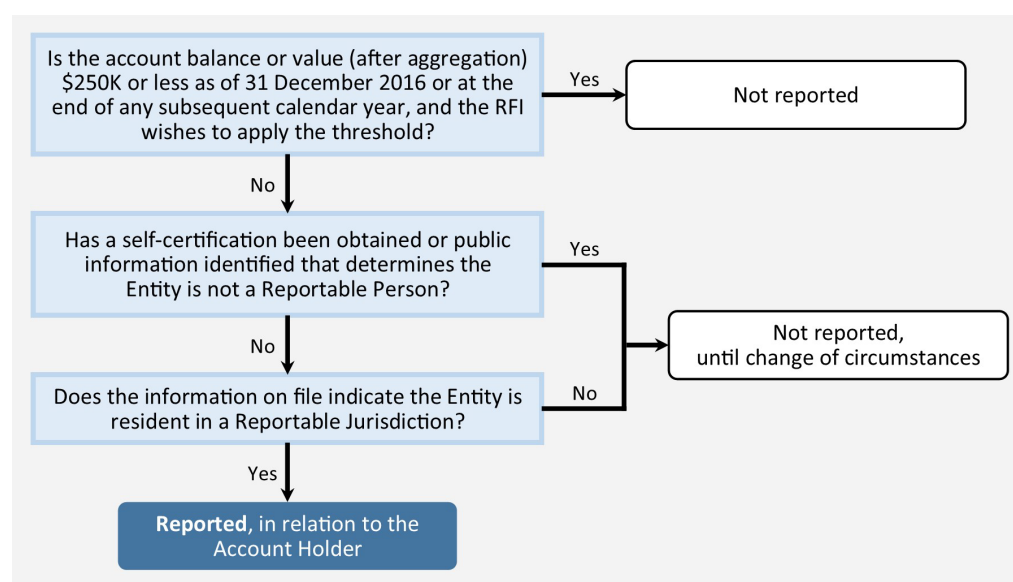
The due diligence for Preexisting Entity Accounts has two parts:

1. First, the RFI must establish whether the Entity is a Reportable Person (for additional reference, see Section 5.3 above). If so, the account is a Reportable Account.
2. Second, for certain Entity Account Holders (Passive NFEs), the RFI must establish whether the Entity is controlled by a Reportable Person(s) (for additional reference, see Section 5.4 above).

6.4.1.1. Account Holder as a Reportable Person

Figure 11 below sets out the process to establish whether the Entity Account Holder is a Reportable Person. Note that steps 2 and 3 of Figure 11 may be taken in either order.

Figure 11. Due Diligence Rules for Preexisting Entity Accounts



An RFI must review information maintained for regulatory or customer relationship purposes, including information collected for AML/KYC purposes, to determine whether an Entity is resident in a Reportable Jurisdiction. Information indicating that an Account Holder is resident in a Reportable Jurisdiction includes:

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

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

- obtaining a self-certification from the Account Holder (signed by a person with authority to sign on behalf of the Entity); or
- reasonably determining that the Account Holder is not a Reportable Person based on information in the RFI's possession or that is publicly available.

“Publicly available” information includes:

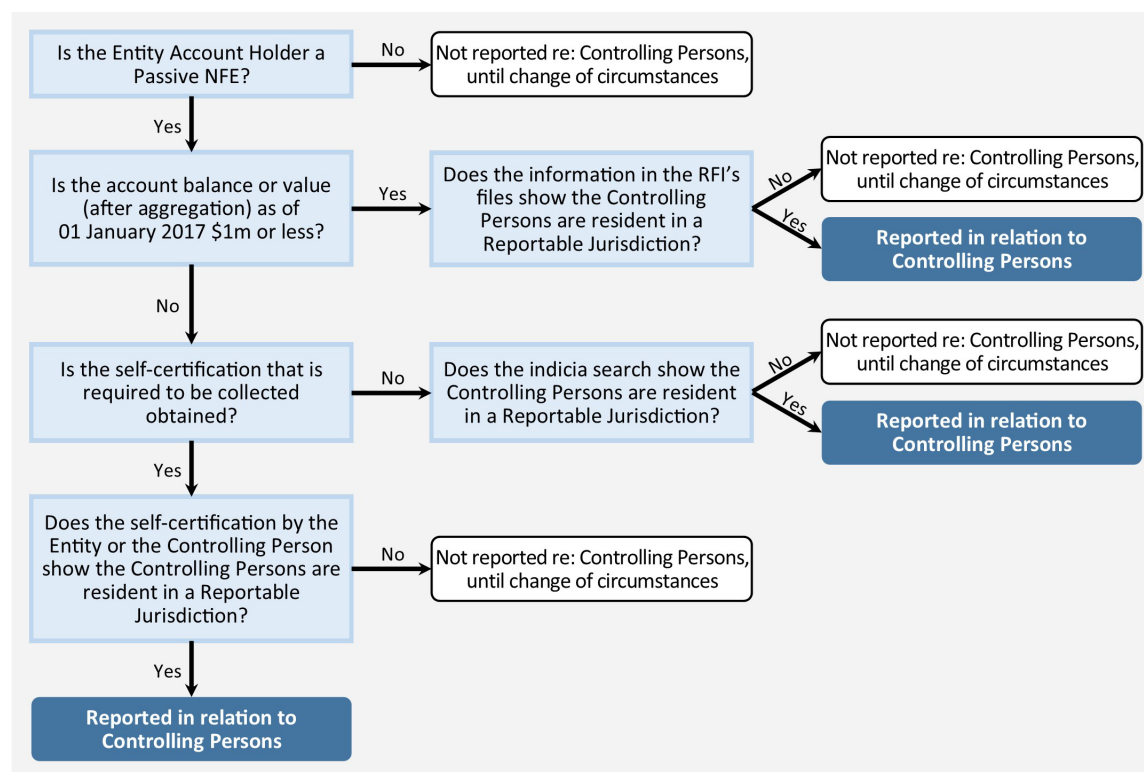
- information published by, or maintained in a publicly accessible register by, an authorized government body, such as the [FATCA Foreign Financial Institution \(FFI\) list](#);
- information disclosed on an established securities market; and
- any publicly accessible classification with respect to the Account Holder that was determined based on a standardized industry coding system.

6.4.1.2. Controlling Person(s) for Preexisting Entity Accounts

Whether or not the account has been identified as a Reportable Account during the first part of the review procedure, the RFI must carry out the second part of the review procedure.

As a general rule, an account held by an FI is not a Reportable Account. However, there is an exception to that rule under the CRS. Where the FI is a Type B Investment Entity (see Section 3.2.2.3 above) and is resident in a jurisdiction that is not a Participating Jurisdiction, the Entity is deemed a Passive NFE. In this case, due diligence must be performed on the Entity’s Controlling Persons. This could result in additional information becoming reportable in relation to an account already identified as a Reportable Account or in the account becoming a Reportable Account by virtue of the Entity Account Holder’s Controlling Person(s) (see Section 5.4 above). The process is set out in Figure 12 below.

Figure 12. Due Diligence Rules in relation to Controlling Persons for Preexisting Entity Accounts



The review procedure is designed to determine whether a Preexisting Entity Account is held by one or more Entities that are Passive NFEs with one or more Controlling Persons that are Reportable Persons.

Is the Entity Account Holder a Passive NFE?

The RFI must determine whether the Entity is a Passive NFE (see Section 3.3.1 above). To make this determination, the RFI must request a self-certification unless it has information in its possession or that is publicly available to reasonably determine the status of the Account Holder.

If the Entity is a Passive NFE, the RFI must:

- identify the Controlling Persons of the Passive NFE; and
- determine whether any of those Controlling Persons are Reportable Persons.

Identifying Controlling Persons and Determining Whether They Are Reportable Persons

To identify the Controlling Persons, the RFI may rely on information collected and maintained in line with AML/KYC procedures. Controlling Persons are defined as set out in Section 5.4 above.

The procedure for determining whether any Controlling Persons are Reportable Persons differs based on the account balance or value, so the balance or value must be determined. The due diligence procedures are less stringent for accounts with a balance or value (after aggregation) of USD 1 million or less.

Where the account balance is USD 1 million or less, the RFI may rely on information collected and maintained pursuant to AML/KYC Procedures to determine whether the Controlling Persons of a Passive NFE are Reportable Persons.

Where the account balance or value exceeds USD 1 million, the RFI must seek a self-certification from either the Account Holder or the Controlling Person to establish whether that Controlling Person is a Reportable Person. This may be provided in or with the same self-certification provided by the Account Holder to determine its own status. The guidance in Section 6.5 below, including the criteria for a self-certification to be “valid” and the requirement for RFIs to confirm the reasonableness of self-certifications, apply to Preexisting Entity Accounts.

If a self-certification is required but is not received after reasonable efforts to obtain it, the RFI must then rely on an electronic record search (Section 6.3.1.2 above) for indicia to determine if any Controlling Persons are Reportable Persons. If no indicia are present, no further action is required until there is a change in circumstances that results in foreign tax residence indicia for a Controlling Person linked to the account.

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

If there is a change in circumstances that causes the RFI to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the RFI must re-determine the status of the account by the later of the end of the reporting period or 90 days.

6.4.2. New Entity Accounts

A “New Entity Account” is an account opened by an Entity on or after 01 January 2017. However, an account that would otherwise be treated as a New Account may be instead treated as a Preexisting Account in certain cases (see definition of “preexisting account” in Section 2(1) of the AEOI Regulations).

There is no minimum threshold for due diligence on New Entity Accounts—all must be reviewed.

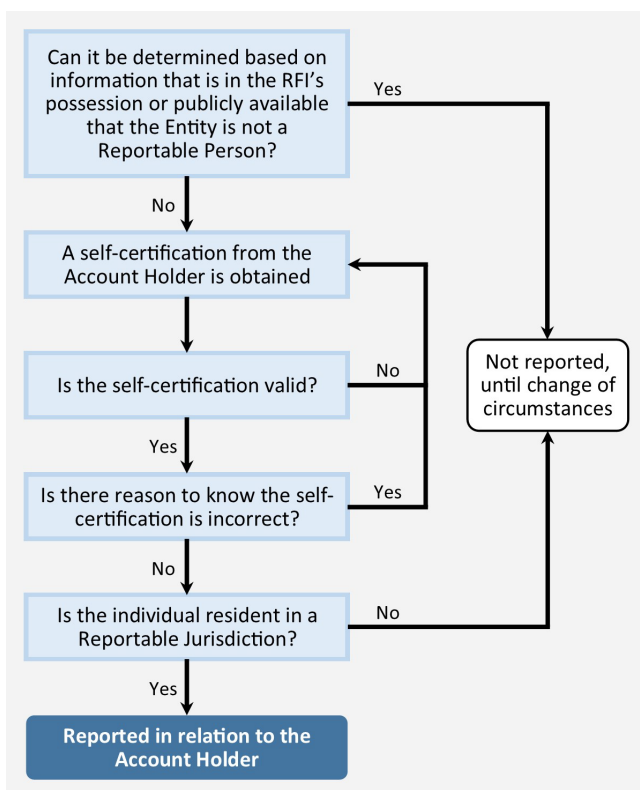
As with Preexisting Entity Accounts, the due diligence procedure for New Entity Accounts has two parts:

1. First, the RFI must establish whether the Entity is a Reportable Person (for additional reference, see Section 5.3 above). If so, the account is then a Reportable Account.
2. Second, for certain Entity Account Holders (Passive NFEs), the RFI must establish whether the Entity is controlled by a Reportable Person(s) (for additional reference, see Section 5.4 above).

6.4.2.1. Account Holder as a Reportable Person

Figure 13 below sets out the process to establish whether the Entity Account Holder is a Reportable Person and, therefore, whether the account is a Reportable Account by virtue of its Account Holder.

Figure 13. Due Diligence Rules for New Entity Accounts



In determining whether a New Entity Account is held by one or more Entities that are Reportable Persons, the RFI may follow the procedures in the order most appropriate under the circumstances.

To determine whether an Entity Account Holder is a Reportable Person, the RFI generally must obtain a self-certification as part of the account opening procedure. The guidance in Section 6.5 below, including the criteria for a self-certification to be “valid” and the requirement for RFIs to confirm the reasonableness of self-certifications, apply to New Entity Accounts.

An RFI may rely on a valid self-certification provided for one account in meeting the due diligence obligations for another account. For example, a self-certification provided by an Entity for an existing

account can be relied upon for the opening of a new account, so long as the self-certification remains reliable the older account (i.e., no change in circumstances has affected its reliability). The earlier self-certification must also be reasonable when considered against information collected on the opening of the new account.

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

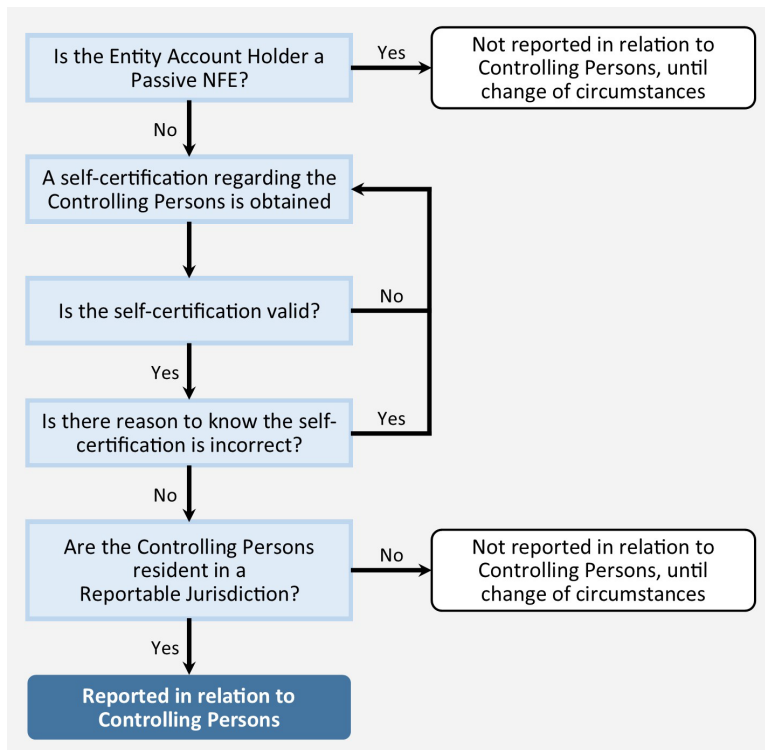
A self-certification is not required where the RFI reasonably determines, based on information in its possession or publicly available, that the Account Holder is clearly not a Reportable Person. For example, where information shows the Entity is publicly traded, the RFI may make this reasonable determination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

If an Account Holder is an FI, the account generally would not be a Reportable Account, unless the FI is a Type B Investment Entity (see Section 3.2.2.3 above).

6.4.2.2. Controlling Person(s) for New Entity Accounts

Whether or not the account has been identified as a Reportable Account during the first part of the review procedure, the RFI must carry out the second part of the review procedure. This could result in additional information becoming reportable or in the account becoming a Reportable Account by virtue of the Entity Account Holder's Controlling Person(s). The process is set out in Figure 14 below.

Figure 14. Due Diligence Rules in relation to Controlling Persons for New Entity Accounts



The review procedure is designed to determine whether a New Entity Account is held by one or more Entities that are Passive NFEs with one or more Controlling Persons that are Reportable Persons.

Is the Entity Account Holder a Passive NFE?

The RFI must determine whether the Entity is a Passive NFE (see Section 3.3.1 above). To make this determination, the RFI must request a self-certification unless it has information in its possession or that is publicly available to reasonably determine the status of the Account Holder.

If the Entity is a Passive NFE, the RFI must:

- identify the Controlling Persons of the Passive NFE; and
- determine whether any of those Controlling Persons are Reportable Persons.

Identifying Controlling Persons and Determining Whether They Are Reportable Persons

To identify the Controlling Persons, the RFI may rely on information collected and maintained in line with AML/KYC procedures. Controlling Persons are defined as set out in Section 5.4 above.

To establish whether any Controlling Persons are Reportable Persons, the RFI must seek a self-certification from either the Account Holder or the Controlling Person. This may be provided in or with the same self-certification provided by the Account Holder to determine its own status. The guidance in Section 6.5 below, including the criteria for a self-certification to be “valid” and the requirement for RFIs to confirm the reasonableness of self-certifications, apply to New Entity Accounts.

As a self-certification is required to establish the status of the Controlling Persons, this may be an opportune time to request or confirm the identity of the Controlling Persons.

If any Controlling Person of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account (even if the Controlling Person is resident in the same jurisdiction as the Passive NFE).

If there is a change in circumstances that causes the RFI to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the RFI must re-determine the status of the account by the later of the end of the reporting period or 90 days.

6.5. Other Rules and Definitions

6.5.1. Validity and Reasonableness of Self-Certifications

6.5.1.1. Validity of Self-Certifications

A self-certification must be valid. To be “valid,” a self-certification from an Account Holder, or in some cases a Controlling Person of an Entity (see Section 6.4 above), must be signed (or otherwise positively affirmed) by the Account Holder or Controlling Person, dated at the latest as of the date of receipt, and contain the Account Holder’s or Controlling Person’s:

- name;
- residence address; and
- jurisdiction(s) of residence for tax purposes; and
- if the Account Holder is resident for tax purposes in a Reportable Jurisdiction, (i) TIN with respect to each Reportable Jurisdiction, and (ii) date of birth (if a natural person).

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

If the Account Holder or Controlling Person claims not to have a TIN for a Reportable Jurisdiction, the self-certification should confirm this. The RFI should seek and record the reason for the lack of TIN. An RFI may rely on the self-certification and explanation provided there is no reason to believe the statement is false.

6.5.1.2. Reasonableness of Self-Certifications

When a valid self-certification is obtained, the RFI must confirm the reasonableness of the self-certification based on the information obtained in connection with account opening, including any documentation collected pursuant to AML/KYC procedures. An RFI is considered to have confirmed the reasonableness of a self-certification if, based on the information obtained, it does not know or have reason to know that the self-certification is incorrect or unreliable.

Examples of when an RFI would have “reason to know” that a self-certification is unreliable (i.e., where the self-certification would not pass this reasonableness test) include:

- the self-certification is incomplete with respect to any item on the self-certification that is relevant to the person’s claims;
- the self-certification contains any information which is inconsistent with the person’s claims; or
- there is information in the RFI’s account files that conflicts with or calls into question the person’s self-certification.

A claim of tax residency in some foreign jurisdictions may require closer scrutiny of documentation provided. The OECD has highlighted the risks with documentation related to residence and citizenship by investment schemes (see the [relevant OECD webpage](#) for more information).

If an RFI determines that a self-certification is incorrect or unreliable, it must either:

- obtain another valid self-certification; or
- obtain a reasonable explanation and appropriate documentation that supports the accuracy of the original self-certification and retain a copy or notation of such explanation and documentation.

The question of what appropriate documentation is depends on the nature of the reasonable explanation. Appropriate documentation could include documentation already provided if relevant to the explanation.

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

If the RFI cannot obtain a self-certification or cannot obtain an explanation or appropriate documentation to support the validity of a self-certification, it should apply all reasonable measures to compel the person to comply. In the interim, if an annual reporting deadline occurs it must treat the person as a resident of

the jurisdiction in which the person originally claimed to be resident as well as any other jurisdiction in which the RFI has indicia that the person may be resident.

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

6.5.2. Validity of Documentary Evidence

For the due diligence procedures described in this Section 6, acceptable Documentary Evidence includes any of the following:

- A certificate of residence issued by an authorized government body (e.g., a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
- With respect to an individual, any valid identification issued by an authorized government body (e.g., a government agency or municipality) that includes the individual’s name and is typically used for identification purposes.
- With respect to an Entity, any documentation issued by a public agency or authorized government body that includes the name of the Entity, and either the address of its principal office in the jurisdiction in which it claims to be resident or in which the Entity was organized or created.
- Any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator’s report.

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

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

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

An RFI may rely on Documentary Evidence unless it knows or has reason to know that it is incorrect or unreliable. However, an RFI is expected to give preference to Documentary Evidence that is more recent, or more specific, over another piece of Documentary Evidence.

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

6.5.3. Change in Circumstances

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

An RFI is expected to have procedures that ensure a change in circumstances is identified by the RFI. These procedures should cover information that comes to a relationship manager of a High Value Account (if there is one). RFIs should encourage any persons providing a self-certification to notify the RFI of a change in circumstances affecting the validity of the self-certification.

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

Table 5. Changes in Circumstances Requiring Action or Reporting

Account Type	Change in Circumstance	Action Required	Time for Action or Change in Status
Preexisting Individual Accounts that are Lower Value Accounts, where initial due diligence was the residential address test	Change causes documentation supporting original residential address to be incorrect or unreliable	Seek a self-certification and Documentary Evidence to establish tax residence; if not received, perform electronic record search for indicia	By the last day of calendar year or 90 calendar days from change, whichever is later
Preexisting Individual Accounts that are Lower Value Accounts, where initial due diligence was the electronic record search	Change causes one or more new indicia to be associated with the account, see Section 6.3.1	Account is reportable, unless curing procedure is applied, see Section 6.3.1	RFI has the option to delay treating the account as reportable for up to the last day of the calendar year or 90 calendar days from the change if carrying out curing procedure
Preexisting Individual Accounts that are High Value Accounts	Change causes one or more new indicia to be associated with the account, see Section 6.3.2	Account is reportable, unless curing procedure is applied, see Section 6.3.2	RFI has the option to delay treating the account as reportable for up to 90 calendar days from the change if carrying out curing procedure
New Individual Accounts	Change causes the RFI to know or have reason to know that the self-certification is incorrect or unreliable, see Section 6.5.1	Obtain either a new self-certification or a reasonable explanation with documentation supporting the original self-certification	RFI has the option to delay treating the account as reportable until the earlier of 90 calendar days from the change, a new self-certificate is obtained or the original is satisfactorily explained
Preexisting Entity Accounts	Change causes the RFI to know or have reason to know that a self-certification or other documentation is incorrect or unreliable, see Section 6.5.1	Re-determine the status of the account in accordance with the original due diligence, see below	Carry out the due diligence by the end of the calendar year or 90 calendar days from the discovery of the change, whichever is the later
New Entity Accounts	Change causes the RFI to know or have reason to know that a self-certification is incorrect or unreliable, see Section 6.5.1	Re-determine the status of the account in accordance with the original due diligence, see below	Carry out the due diligence by the end of the calendar year or 90 calendar days from the discovery of the change, whichever is the later

Re-Determining the Status of an Entity Account

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

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

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

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

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

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

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

If the RFI is unable to obtain either of the above, it must rely on an electronic record search as described in Section 6.3.1.2 above to determine whether a Controlling Person is a Reportable Person.

6.5.4. Aggregation of Account Balance or Value

The aggregate account balance or value is relevant to various due diligence thresholds, such as the USD 1 million threshold in the case of High Value Preexisting Individual Accounts or the USD 250,000 threshold for Preexisting Entity Accounts. The primary purpose of account aggregation is to serve as an anti-abuse mechanism to prevent accounts from being divided up solely to evade reporting. Other than the special aggregation rule for relationship managers (see below), identical rules apply to aggregation for Individual Accounts and Entity Accounts.

An RFI is required to aggregate all Financial Accounts maintained by it or by a related entity, but only to the extent that the RFI's computerized systems link the Financial Accounts by reference to a data element such as client number or foreign TIN and allow account balances or values to be aggregated.

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

In determining the aggregate balance or value of a Preexisting High Value Account, an RFI also must aggregate all accounts held by that person which a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by that person.

6.5.5. Currency Translation

Where an account is denominated in a currency other than US dollars, the US dollar threshold amounts described in the CRS or AEOI Regulations must be converted to the currency that the accounts are denominated in, using the spot rate of exchange on the date for which the RFI is determining the threshold amounts. The method of conversion must be applied consistently.

6.5.6. Reliance on Third Parties

An RFI may appoint a third-party service provider as its agent to carry out its CRS obligations. The appointed service provider must, upon the RFI's request, provide the RFI with all records, Documentary Evidence, and information in the service provider's possession/control that the service provider used to carry out the RFI's CRS obligations or obtained while carrying out the RFI's CRS obligations.

When an RFI relies on a third-party service provider to carry out its CRS obligations, the service provider must meet the due diligence requirements as set out in this Section 6. These due diligence obligations remain the responsibility of the RFI, and any due diligence failures will be the responsibility of the RFI.

7. Information Reported & Exchanged

Once an account is determined to be Reportable Account, the RFI must report information in relation to that account to the Secretary via [MDES](#). In broad terms, an RFI will be required to report information about a Financial Account it maintains where the account is held (and/or, in the case of a Passive NFE, controlled) by a Reportable Person from a Reportable Jurisdiction (see Section 5 above).

RFIs must report two types of information about Reportable Accounts:

- **identity information** about the relevant Account Holder (and/or Controlling Person in the case of accounts held by a Passive NFE); and
- **financial account information**, such as the account balance or value and various amounts paid or credited to the account.

These reporting requirements apply on an annual basis. In other words, RFIs that have identified an account as reportable should continue to report the prescribed account information annually to the Secretary unless there is a change in circumstances that means that the account is no longer reportable.

An RFI that does not have any accounts to report for a particular reporting period must file a nil report.

7.1. Identity Information to Be Reported

The following information is required to be reported for each Reportable Person that is an Account Holder of the account and, in the case of an Account Holder that is an Entity, each Controlling Person of the Entity that is a Reportable Person:

- **name**;
- **address** – for individuals, current residence address (or the mailing address if no current residence address is held);
- **jurisdiction(s) of residence** – based on the residence address test or the indicia search (or self-certification if obtained) for Preexisting Accounts, or based on self-certification for New Accounts;
- **TIN(s)** – see Section 7.1.1 below; and
- **if an individual, date of birth** – see Section 7.1.2 below.

7.1.1. Taxpayer Identification Numbers (TINs)

A “TIN” is a Taxpayer Identification Number. Some jurisdictions use a functional equivalent as the TIN to identify their taxpayers. TIN is a common international term for what is referred to in the Marshall Islands tax system as an employer identification number (EIN) for entities or a social security number (SSN) for individuals. The [OECD’s Automatic Exchange of Information Portal](#) has information on the usage and structure of TINs as submitted by each participating jurisdiction.

The TIN to be reported with respect to an account is the TIN assigned to the Account Holder by the jurisdiction of residence.

Where an RFI determines an Account Holder (or Controlling Person) of a reportable Preexisting Account is a Reportable Person but does not otherwise have that person’s TIN in its records, the RFI must use

reasonable efforts to obtain the TIN. “Reasonable efforts” means genuine attempts to acquire the TIN. Such efforts must be made at least once a year during the period between the identification of the Examples of reasonable efforts include contacting the Account Holder (e.g., by letter, email, or request during online login). Reasonable efforts do not necessarily require closing, blocking, or transferring the account, nor limiting its use. An unsuccessful request for a TIN should be followed by a second request within a year.

For both New Accounts and Preexisting Accounts, a TIN is not required if a TIN was not issued to the person by the relevant jurisdiction. This may arise because either:

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

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

7.1.2. Date of Birth

An RFI generally must report date of birth information for the relevant individual Account Holder(s) (or Controlling Person(s)) for Reportable Accounts.

For Preexisting Accounts, an RFI might already have date of birth information in its records because it has already collected it for AML or other regulatory purposes. Where an RFI determines that an individual Account Holder (or Controlling Person) of a Preexisting Account is a Reportable Person but does not otherwise have the person’s date of birth in its records, the RFI must use reasonable efforts to obtain and report the date of birth. Reasonable efforts are the same as those described under Section 7.1.1 above.

7.2. Financial Account Information to Be Reported

Certain information needs to be reported for every Reportable Account. Some information varies according to the type of account and information available about each Reportable Person for the account.

RFIs must report the following financial account information for Reportable Accounts:

- the **account number** (or if no such number is assigned to the account, a functional equivalent);
- the **RFI’s name and identifying number** (if any);
- the **account balance or value** as of the end of the reporting period (generally, 31 December of a calendar year) or, if the account was closed during that period, as of the closure of the account – see Sections 7.2.1 and 7.2.2 below;
- for a **Custodial Account**:
 - the total gross amount of interest paid or credited to the account (or with respect to the account) during the relevant period ending 31 December;
 - the total gross amount of dividends paid or credited to the account (or with respect to the account) during the relevant period ending 31 December;

- the total gross amount of other income generated with respect to the assets held in the account and paid or credited to the account (or with respect to the account) during the relevant period ending 31 December; and
- the total gross proceeds from the sale or redemption of financial assets paid or credited to the account (or with respect to the account) during the relevant period ending 31 December with respect to which the RFI acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- for a **Depository Account**, the total gross amount of interest paid or credited to the account during the relevant period ending 31 December; and
- for **any other type of account**, the total gross amount paid or credited to the Account Holder with respect to the account during the relevant period ending 31 December with respect to which the RFI is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the reporting period.

Where an account is jointly held, each holder of the account is attributed the entire balance or value of the joint account, as well as the entire amounts paid or credited to the joint account (or with respect to the joint account).

7.2.1. Account Balance or Value

Generally, the balance or value of a Financial Account is the balance or value that is calculated by the RFI for the purposes of reporting to the Account Holder. The balance to be reported is the balance or value of the account at the end of the reporting period (as a general rule, 31 December of a calendar year) except in the case of closed accounts (see Section 7.2.2 below).

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

The balance or value in the case of Depository Accounts is simply the amount in the account on 31 December (unless the account is closed prior to that date).

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

The balance or value of an equity interest is the value calculated by the RFI for the purpose needing the most frequent determination of value (which may be for reporting/investment purposes), and the balance or value of a debt interest is its principal amount.

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

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

7.2.2. *Account Balance or Value for Closed Accounts*

For a Reportable Account closed during the year, the CRS does not require a balance or value. Instead, the fact of closure is reported. The payments that are reportable are those payments paid or credited to the account up until closure.

An account will be considered closed according to the RFI's normal operating procedures that are consistently maintained for all accounts. In most cases, closure will be self-explanatory. An equity or debt interest account would generally be considered closed upon termination, transfer, surrender, redemption, cancellation, or liquidation. An account with a balance or value equal to zero or that is negative will not be considered closed solely by reason of having such a balance or value.

7.3. **Currency**

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

7.4. **Undocumented Accounts**

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

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

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

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

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

The "hold mail" or "in-care-of" circumstances described above for Preexisting Individual Accounts are the only situations where a Reportable Account should be reported as "undocumented."

Undocumented accounts must be reported and must continue to be reported for subsequent years until its status is resolved. For a High Value Account, an RFI must repeat its request for documentation (e.g., by

letter, email, or in-person) annually until resolved. Annual requests are not required for Lower Value Accounts, but RFIs are nevertheless encouraged to renew their requests from time to time.

7.5. How to Report

Marshall Islands RFIs must report CRS information through the [MDES portal](#). For more information on how to create and submit a CRS report, please see refer to the [MDES portal](#).

8. Compliance

RFIs are required to have procedures and systems in place to ensure that Reportable Accounts are identified, that relevant information collected, and that information is reported to the Secretary. The international agreements to which the Marshall Islands is a party expect the Secretary, as the competent authority for the Marshall Islands, to ensure that RFIs provide complete and accurate information for exchange with partner jurisdictions.

The AEOI Act contains a range of sanctions that may be applied to RFIs that are not complying with their reporting obligations, including:

- penalties that apply to RFIs that fail to file CRS information returns as/when required; and
- penalties that apply to RFIs that make false statements or omissions.

An RFI that fails to comply with the due diligence procedures in identifying any Reportable Accounts (e.g., the requirement to obtain self-certifications for New Accounts) is unlikely to provide complete and accurate information to the Secretary. Accordingly, sanctions may likewise be applied to RFIs that fail to comply with due diligence requirements under the CRS.

8.1. Keeping and Retaining Records

An RFI must keep adequate records of the procedures used in preparing their CRS reports to ensure the Secretary can properly assess whether they have complied with their reporting obligations. Specifically, an RFI must keep records for at least six (6) years following:

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

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

An RFI that fails to keep or retain records as required by the AEOI Regulations is liable to a penalty.

8.2. Failure to Obtain a Self-Certification

A penalty applies where an RFI fails to obtain a self-certification in circumstances where the CRS requires one to be obtained, unless there is a reasonable justification for the failure (e.g., where it was not due to an act/failure to act of the RFI).

Where an RFI is required to obtain a self-certification when opening a New Account, an RFI failing to do so would generally be liable to a penalty. As noted in Section 6.3.3.1 above, in exceptional circumstances an

RFI is permitted to open an account without a self-certification, subject to having robust procedures in place to obtain the self-certification from the Account Holder after account opening. An isolated failure to obtain a self-certification in such circumstances might not result in a penalty, but a material number of failures over time may indicate that the procedures used are not sufficiently robust.

As noted under Section 6 above, there are other circumstances, aside from opening a New Account, where an RFI may be required to obtain a self-certification or a new self-certification. An RFI will not be liable to a penalty for failing to obtain a self-certification when obtaining it is merely one course of action available to the RFI in conducting due diligence for the account. An RFI would also not be liable to a penalty where it is required to request a self-certification for a Preexisting Account, and the request is made, but the Account Holder fails to provide it.

8.3. Collaboration with Partner Jurisdictions

The international agreements that support the CRS give a foreign tax administration the ability to notify the Marshall Islands when it has reason to believe an error may have led to incorrect or incomplete information reporting, or there is non-compliance with the CRS's due diligence or reporting requirements by a Marshall Islands RFI. In those situations, the Marshall Islands is obliged to take all appropriate measures, including applying penalties to the RFI, to address errors or non-compliance.

If the CRS information reported by an RFI is corrupted or incomplete, the recipient jurisdiction will notify the Marshall Islands, and Marshall Islands authorities will contact the RFI to address the issue. Examples of minor errors may include data fields missing or incomplete, data that has been corrupted, or use of an incompatible format.

In some cases, even minor errors may contravene the AEOI Act or AEOI Regulations. While a penalty might not be assessed for an isolated minor error, continual minor errors that repeatedly disrupt or prevent transfer of CRS information may be indicative of more substantial non-compliance.

8.4. Anti-Avoidance Measures

The AEOI Act includes an anti-avoidance measure which is aimed at arrangements or practices taken by any person to avoid the obligations placed upon them by the AEOI Act and the AEOI Regulations.

Where an RFI or Account Holder has entered into an arrangement or engaged in a practice for the main purpose of avoiding an RFI identifying the account as a Reportable Account (or where that can reasonable be considered as one of the main purposes), then the AEOI Act and the AEOI Regulations have effect as if the person had not entered into the arrangement or engaged in the practice. This may result in an account being treated as a Reportable Account or requiring an FI to act as an RFI.

8.5. Undocumented Accounts

As explained in Section 7.4 above, the term “undocumented account” has a specific meaning under the CRS. The “hold mail” or “in-care-of” circumstances for Preexisting Individual Accounts described in that section are the only situations where a reported account should be reported as “undocumented.”