

# Financial Secretary in the Ministry of Finance



**THE BAHAMAS**

## **GUIDANCE NOTES ON THE COMMON REPORTING STANDARD FOR AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION IN TAX MATTERS**

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These Guidance Notes are issued under The Bahamas Automatic Exchange of Financial Account Information Act 2016.

This document will continually be under review with updates being issued periodically.

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## I. OVERVIEW

### A. Abbreviations and Acronyms

<b>AEOI</b>	Automatic Exchange of Information
<b>BCAA</b>	Bilateral Competent Authority Agreement
<b>CRS</b>	Common Reporting Standard
<b>FATF</b>	Financial Action Task Force
<b>FATCA</b>	Foreign Account Tax Compliance Act
<b>FCSP</b>	Financial and Corporate Service Provider
<b>FI</b>	Financial Institution
<b>IT</b>	Information Technology
<b>CAA</b>	Competent Authority Agreement
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>MCAA</b>	Multilateral Competent Authority Agreement

### B. General

The Common Reporting Standard (CRS) was developed by the Organisation for Economic Co-operation and Development (OECD) on the mandate of the G20. It is the global standard for the automatic exchange of financial account information for tax purposes. CRS builds on the intergovernmental approach adopted by many jurisdictions for the implementation of the United States Foreign Account Tax Compliance Act (FATCA) and is designed to maximise efficiency and minimise costs.

Under CRS, jurisdictions obtain specified financial account information from their Financial Institutions and automatically exchange that information with Reportable Jurisdictions on an annual basis.

### C. CRS Implementation in The Bahamas

CRS is implemented in The Bahamas through the Automatic Exchange of Financial Account Information, Act 2016 SI 37 of 2016 (the CRS Act) which authorises the automatic exchange of information for the purposes of CRS. The CRS Act came into

force on 1 January 2017. CRS is to be applied in The Bahamas subject to the provisions set out in the CRS Act and the regulations made thereunder by the CRS Act.

The CRS Regulations are the Automatic Exchange of Financial Account Information Regulations, 2017 signed by the Minister of Finance on March 8, 2017 and also published by Extraordinary Gazette S.I. No. 16 of 2017 on March 8, 2017. The CRS Regulations are presently in force.

On May 29, 2017, the Government of The Bahamas formally advised the OECD of its intention to accede to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention). This indication is the consistent approach taken by Global Forum members committed to automatic exchange of information.

The Multilateral Convention will be supported by the Government of The Bahamas signing the CRS Multilateral Competent Authority Agreement (MCAA). The MCAA is a multilateral framework agreement that specifies the details of what information will be exchanged between signatories and when exchange shall occur. Notwithstanding the fact that The Bahamas will sign onto the MCAA, the MCAA will only be binding on The Bahamas with respect to another signatory of the MCAA if:-

(a) The Bahamas Competent Authority has notified the OECD's Co-ordinating Body Secretariat that such signatory is on the list of the jurisdictions of the Competent Authorities, with respect to which it intends to have the MCAA in effect; and

(b) the Competent Authority of the signatory has notified to the OECD's Co-ordinating Body Secretariat that, amongst other things, The Bahamas is on the list of the jurisdictions of the Competent Authorities with respect to which it intends to have the MCAA in effect.

The Government of The Bahamas may also enter into Bilateral Competent Authority Agreements (BCAAs) with jurisdictions, governing the basis upon which The Bahamas' Competent Authority will share information with the jurisdiction of the Party to the BCCA's Competent Authority.

Exchange of information under the MCAA or a BCAA will be on a non-reciprocal basis. As a result, The Bahamas will exchange information with Reportable Jurisdictions, but will not receive information from such jurisdictions.

The Bahamas has adopted the “wider approach” to CRS, which means that Bahamian Reporting Financial Institutions will need to collect and retain the required information for all account holders.

#### **D. Core Documents for Effective Application of CRS**

CRS consists of the Common Reporting Standards and the Commentary on CRS as published by the OECD on 15 July 2014 and on the OECD website (<http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>).

CRS contains the due diligence and reporting rules for Financial Institutions and the Commentary on CRS, which is an integral part of CRS, is intended to illustrate and interpret its provisions.

The Commentary on CRS as published by the OECD on 15 July 2014 is incorporated by reference and any updates by way of Commentaries forms an integral part of these Guidance Notes.

The OECD has developed a comprehensive Automatic Exchange Portal (<http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/>) that is the principal source for CRS materials and resources.

#### **E. Resources to Aid CRS Application**

In addition to the Commentaries on CRS, Financial Institutions are encouraged to consult the CRS Implementation Handbook and CRS-related FAQs, which are published on the OECD website (<http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf>).

Financial institutions should use The CRS Implementation Handbook and the FAQs for guidance when implementing The Standard. The OECD maintains and regularly updates the list of frequently asked questions (FAQs) on the application of the Common Reporting Standard (CRS). The FAQs were received from business and government delegates. The answers to such questions provide further precisions on the CRS and help to ensure consistency in implementation.

## **F. Purpose of Guidance Notes**

As CRS is a global standard, the OECD has developed extensive and comprehensive materials for the consistent application and interpretation of CRS by all jurisdictions. These Guidance Notes are therefore limited to providing guidance on aspects of CRS that are particular to The Bahamas. The guidance notes are not intended to replicate the information in the aforementioned OECD documents, which form the core of CRS and its interpretation thereof.

A Financial Institution must apply the CRS Act and the CRS Regulations in force at the time, using these Guidance Notes as a form of reference. Financial Institutions may also have regard to the OECD CRS Implementation Handbooks and CRS-related FAQs previously mentioned in interpreting the CRS..

Certain issues may not be covered in these Guidance Notes this is in circumstances where the CRS Act and CRS Regulations are considered to be sufficiently clear. Where topics are covered, these Guidance Notes are not exhaustive, however they do seek to convey principles which can be applied to various situations and circumstances which are particularly are of significance to The Bahamas. If further guidance is required, it may be sought from The Bahamas Competent Authority.

A guiding principle in implementing the CRS legislation, and therefore of these Guidance Notes, is the desire to avoid any unnecessary administrative and cost burdens and to ensure the efficient operation of the reporting requirements.

These Guidance Notes are a living document that may be amended from time to time by The Bahamas Competent Authority, as permitted under the CRS Regulations. Accordingly, valid suggestions for alterations and amendments arising from the use of the Guidance Notes may be raised with The Bahamas Competent Authority.

These Guidance Notes apply to and are designed to assist persons who may be affected by the CRS Act. These Guidance Notes are not intended to take the place of independent professional advice and should therefore not be treated as such independent professional advice should be sought when it is required.

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

## **G. The Bahamas Competent Authority**

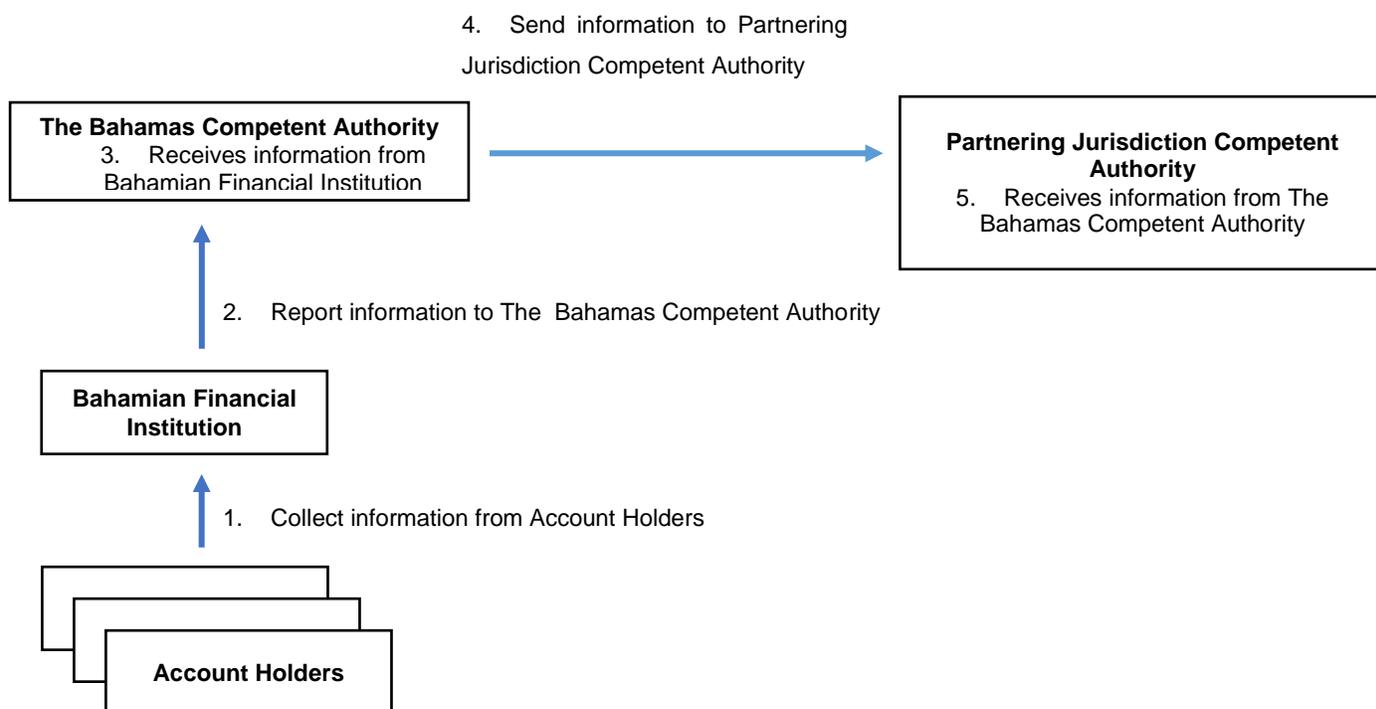
The Bahamas Competent Authority is the Minister of Finance of the Ministry of Finance (The Bahamas Competent Authority) as designated by the CRS Act, or his delegate. The delegated functions are carried out by the Designated Officer and staff of The Bahamas Competent Authority, which is the government department responsible for the operation of all mechanisms for the exchange of information for tax purposes.

The Bahamas Competent Authority will receive the information required to be disclosed by Reporting Financial Institutions and transmit that information to the partnering jurisdiction's Competent Authority in respect of the CAA. Only entities can be Reporting Financial Institutions. The definition of Entity consists of legal persons and legal arrangements, such as corporations, partnerships, trusts and foundations.

The Bahamas Competent Authority will periodically verify the compliance of Reporting Financial Institutions. It is the responsibility of each Reporting Financial Institution to provide the correct information in the prescribed format to The Bahamas Competent

Authority. The prescribed format for reporting will be provided by The Bahamas Competent Authority.

The Bahamas Competent Authority will monitor compliance by Financial Institutions with domestic legal requirements and, as necessary, will enforce the CRS Act and CRS Regulations, including cases where significant non-compliance is brought to its notice by the partnering jurisdiction's Competent Authorities. The diagram below outlines the process and role of The Bahamas Competent Authority and Bahamian Financial Institutions in the transmission of data under CRS. .



## H. Client Privacy and Data Protection

The Bahamas will not exchange information under CRS until it is satisfied that a Reportable Jurisdiction has in place, adequate privacy and data protection measures in accordance with OECD standards. This latter requirement is to ensure that the required confidentiality and data safeguards are met by the Reportable Jurisdiction that The Bahamas is intended to exchange information with.

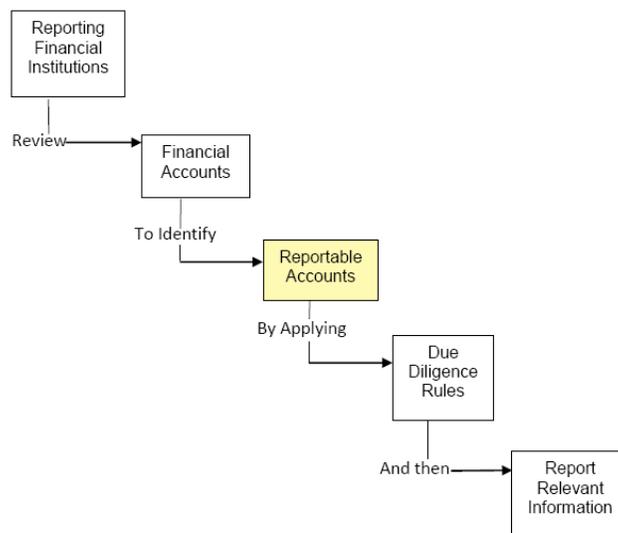
These confidentiality obligations are evaluated by the Global Forum on Transparency and Exchange of Information for Tax Purposes through its implementation monitoring programme. Confidentiality and data safeguard questionnaires and reports for all CRS jurisdictions (Annex 4 of the CRS) are filed with the Global Forum and are made available to the relevant tax officials of all Participating Jurisdictions.

Where client confidentiality is breached or there is reason to believe that data which has been exchanged is being used for purposes other than which it was provided to the Competent Authority of the reportable jurisdiction, the agreement for automatic exchange will be subject to review.

## I. Reporting to the Tax Information Authority

Reporting for CRS will be conducted through The Bahamas AEOI Portal, available at [www.taxreporting.finance.gov.bs](http://www.taxreporting.finance.gov.bs).

The following figure depicts the different steps for reporting of information by Bahamian Reporting Financial Institutions under CRS to The Bahamas Competent Authority.



## II. CRS DUE DILIGENCE AND REPORTING OBLIGATIONS

### A. Reporting

The first reporting date for CRS by The Bahamas Competent Authority is 30 September 2018. In order to enable The Bahamas Competent Authority to report by the reporting due date, Reporting Financial Institutions will be required to report with respect to accounts held or controlled by Reportable Persons to The Bahamas Competent Authority by 31 July 2018.

Reporting is an annual event. The Bahamas Competent Authority will report on 30 September of the year following each reporting period. Reporting Financial Institutions will be expected to report to The Bahamas Competent Authority by 31 August, 2018 and 31 July in subsequent years.

A Reporting Financial Institution must register with The Bahamas Competent Authority if it has one or more Reportable Accounts.

The information required to be reported by financial institutions in accordance with CRS in respect of each reporting year ending 31 December shall be as follows:

Relevant Account	Information to be reported	Reporting due date for Reporting Financial Institutions	Reporting date to Reportable Jurisdiction Competent Authority
Each Reportable Person either <ul style="list-style-type: none"> <li>• Holding a Reportable Account, or</li> <li>• Is Controlling Person of an entity account</li> </ul>	<ul style="list-style-type: none"> <li>• Name</li> <li>• Address</li> <li>• Jurisdiction of residence</li> <li>• Tax Identification Number (TIN)</li> <li>• Date of Birth</li> <li>• Place of Birth</li> <li>• Account number or functional equivalent</li> <li>• Name and identifying number (if any) of Reporting Financial Institution</li> <li>• Account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other</li> </ul>	31 July	30 September

	appropriate reporting period or, if the account was closed during such year or period, the closure of the account		
Custodial Account	<ul style="list-style-type: none"> <li>• Total gross amount of interest</li> <li>• Total gross amount of dividends</li> <li>• Total gross amount of other income paid or credited to the account</li> <li>• The total gross proceeds from the sale or redemption of financial assets paid or credited to the account</li> <li>•</li> </ul>		
Depository Account	The total amount of gross interest paid or credited to the account in the calendar year.		
Other Accounts	The total amount of gross interest paid or credited to the account including the aggregate amount of redemption payments made to the Account Holder during the calendar year.		

Each holder of a jointly held account is attributed the entire balance or value of the joint account, as well as the entire amounts paid or credited to the joint account. The same is applicable to:-

- i. An account held by a Passive NFE with more than one Controlling person that is a Reportable Person;
- ii. An account held by an Account holder that is a Reportable Person (on NFE with a Reportable Controlling Person) and is identified as having more than one Jurisdiction of residence; and
- iii. An account held by a Passive NFE that is a Reportable Person with a Controlling Person that is a Reportable Person.

The Bahamas Competent Authority will issue further updates, as necessary, when the Portal will be available for reporting for CRS.

The Bahamas reporting schema for CRS will be the published CRS XML Schema that is available on the OECD Automatic Exchange Portal.

A user guide will also be available to assist with CRS notification and reporting process through The Bahamas AEOI Portal ([www.taxreporting.finance.gov.bs](http://www.taxreporting.finance.gov.bs)) including the prescribed format for reporting.

## B. Closed Accounts

In the case of an account closure, where an account held or controlled by one or more Reportable Persons is closed within the reporting period, the Reporting Financial Institution shall not report the balance of the account on closing but, rather, that the account was closed. The necessary information with respect to the account holder, the account number and the Reporting Financial Information should be reported. ( Reference: Commentaries page 99 para 14 and Table 6 of the Implementation Handbook at page 74).

## C. Dormant Accounts

An account (other than an Annuity Contract) is a “dormant account” if:-

- (i) the Account Holder has not initiated a transaction with regard to the account or any other account held by the Account Holder with the Reporting Financial Institution in the past three years;
- (ii) the Account Holder has not communicated with the Reporting Financial Institution that maintains such account regarding the account or any other account held by the Account Holder with the Reporting Financial Institution in the past six years; and
- (iii) in the case of a Cash Value Insurance Contract, the Reporting Financial Institution has not communicated with the Account Holder that holds such account regarding the account or any other account held by the Account Holder with the Reporting Financial Institution in the past six years.

Alternatively, an account (other than an Annuity Contract) may also be considered as a “dormant account” under applicable laws or regulations or the normal operating procedures of the Reporting Financial Institution that are consistently applied for all accounts maintained by such institution in The Bahamas.

An account ceases to be a dormant account when:-

- (i) the Account Holder initiates a transaction with regard to the account or any other account held by the Account Holder with the Reporting Financial Institution;
- (ii) the Account Holder communicates with the Reporting Financial Institution that maintains such account regarding the account or any other account held by the Account Holder with the Reporting Financial Institution; or

(iii) the account ceases to be a dormant account under applicable laws or regulations or the Reporting Financial Institution's normal operating procedures.

#### **D. Trustee Documented Trusts**

Trustee Documented Trusts are treated differently than other types of Non-Reporting Financial Institutions see Paragraphs 55 and 56 of the CRS Commentary.

The trustee is responsible for all the reporting requirements of each Trusts.

If there are multiple trusts contact should be made with The Bahamas Competent Authority for further guidance.

#### **E. Wider Approach**

The Bahamas has decided to implement the "wider approach" to CRS. Accordingly, Bahamian Reporting Financial Institutions shall be required to collect and retain the required information, ready to report, in relation to all accounts held or controlled by non-residents. Bahamian Reporting Financial Institutions shall only be required to report annually with respect to accounts held or controlled by persons resident in Reportable Jurisdictions. Any information obtained in respect of a person that is not resident in a Reportable Jurisdiction will not be exchanged with the Competent Authority by a Bahamian Reporting Financial Institution until such time as the Competent Authority notifies it that such jurisdiction is a Reportable Jurisdiction.

### **III. KEY DATES UNDER CRS**

The following are key effective dates for the implementation of the CRS in The Bahamas:

- 1. Preexisting Accounts to be subject to due diligence procedures are those in existence as of 30 June 2017.*
- 2. New Accounts requiring a self-certification by the account holder or controlling person are those opened on or after 1 July 2017.*

3. *The review of High Value Individual Accounts must be completed by 31 December 2017, and such Accounts that have been identified as Reportable Accounts should be reported to the Competent Authority by 31 July, 2018.*
4. *The review of Lower Value Accounts and Preexisting Entity Accounts must be completed by 31 December 2018, and such Accounts that have been identified as Reportable Accounts should be reported to the Competent Authority by 31 July, 2019.*
5. *If the review of any or all Lower Value Accounts or Preexisting Entity Accounts is completed prior to 31 December 2017, such Accounts that have been identified as Reportable Accounts should be reported to the Competent Authority by 31 July, 2018.*
6. *Financial Institutions must complete their initial registration on or before 30 June 2018 or, if an entity becomes a Financial Institution after 30 April, 2018, registration must be completed with the Competent Authority at the next available registration date after the entity became a Financial Institution.*
7. *Financial Institutions must complete their reporting to the Competent Authority by 31 July 2018 and at 31 July of each year thereafter.*
8. *First Exchanges of information by the Competent Authority to Reportable Jurisdictions will occur on 30 September 2018 and at 30 September of each year thereafter.*
9. *A Financial Institution is not required to perform review procedures on any accounts that were closed before 1 July 2017.*

1. First Exchanges of information by the Competent Authority to Reportable Jurisdictions will occur on 30 September 2018 and at 30 September of each year thereafter.
2. A Financial Institution is not required to perform review procedures on any accounts that were closed before **1 July 2017**.

## **IV. CRS JURISDICTIONS**

### **A. Participating Jurisdictions List**

“Participating Jurisdiction” is defined in the CRS Regulations. For the purposes of identifying Participating Jurisdictions, the OECD has provided guidance in the CRS Implementation Handbook. In line with the approach adopted by the CRS Implementation

Handbook at paragraph 31, The Bahamas will specify all committed jurisdictions as Participating Jurisdictions.

The Bahamas' CRS Participating Jurisdiction List can be found at the First Schedule of the CRS Regulations.

In the event of changes to jurisdictions committed to implementation of CRS, the list of Participating Jurisdictions will be amended in the CRS Regulations.

## **B. Reportable Jurisdictions**

“Reportable Jurisdiction” is defined in the CRS Regulations.

A Reportable Jurisdiction is any jurisdiction with which:

- (a) The Bahamas has a Competent Authority Agreement (CAA) agreement in place;
- (b) there is an obligation in place to provide the due diligence information specified in Section II of CRS; and
- (c) which is identified as such in the list published under the CRS Regulations.

The CRS Reportable Jurisdiction List can be found at the Second Schedule of the CRS Regulations.

The Reportable Jurisdiction List will be amended, as required, and the requisite notice of any amendments will be provided to Financial Institutions by The Bahamas Competent Authority.

Where the same information is reportable to two or more Jurisdictions the Reporting Financial Institution is required to provide notification to The Bahamas Competent Authority confirming to which Jurisdiction the Reporting Financial Institution has reported.

## V. GUIDANCE ON TECHNICAL ISSUES

### A. Self-Certifications

Self-certifications should be obtained as part of a Financial Institution's account opening procedures. Where it is not possible to obtain a self-certification on 'day one' of the account opening process, one should be obtained as soon as practicable, and in any event, no later than 90 days after the account has been opened.

For New Accounts a self-certification containing both the TIN(s) (where issued by the jurisdiction(s) in question), and date of birth (in the case of an individual) are required to be obtained (Refer to Commentary Section IV pages 127-134).

#### **Reasonableness of self-certifications**

Upon account opening, once the Reporting Financial Institution has obtained a self-certification that allows it to determine the Account Holder's residence(s) for tax purposes, the Reporting Financial Institution must confirm the reasonableness of such self-certification based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures (i.e. the "reasonableness" test).

A Reporting Financial Institution is considered to have confirmed the "reasonableness" of a self-certification if, in the course of account opening procedures and upon review of the information obtained in connection with the opening of the account (including any documentation collected pursuant to AML/KYC Procedures), it does not know or have reason to know that the self-certification is incorrect or unreliable (see paragraphs 2-3 of the Commentary on Section VII). Reporting Financial Institutions are not expected to carry

out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification.

The following examples illustrate the application of the “reasonableness” test:

- Example 1: A Reporting Financial Institution obtains a self-certification from the Account Holder upon account opening. The jurisdiction of the residence address contained in the self-certification conflicts with that contained in the documentation collected pursuant to AML/KYC Procedures. Because of the conflicting information, the self-certification is incorrect or unreliable and, as a consequence, it fails the reasonableness test.

- Example 2: A Reporting Financial Institution obtains a self-certification from the Account Holder upon account opening. The residence address contained in the self-certification is not in the jurisdiction in which the Account Holder claims to be resident for tax purposes. Because of the conflicting information, the self-certification fails the reasonableness test.

In the case of a self-certification that would otherwise fail the reasonableness test, it is expected that in the course of the account opening procedures the Reporting Financial Institution would obtain either *(i)* a valid

self-certification, or (ii) a reasonable explanation and documentation (as appropriate) supporting the reasonableness of the self-certification (and retain a copy or a notation of such explanation and documentation).

Examples of such “reasonable explanation” include a statement by the individual that he or she –

- (1) is a student at an educational institution in the relevant jurisdiction and holds the appropriate visa (if applicable);
- (2) is a teacher, trainee, or intern at an educational institution in the relevant jurisdiction or a participant in an educational or cultural exchange visitor program, and holds the appropriate visa (if applicable);
- (3) is a foreign individual assigned to a diplomatic post or a position in a consulate or embassy in the relevant jurisdiction; or
- (4) is a foreign individual with documentary evidence from the appropriate regulatory body that that they are no longer liable for taxes in their previous country of residence.
- (5) is a local individual with a mailing address in another country who has provided with a government issued identification from the local authorities

The following example illustrates the application of this paragraph:

A Reporting Financial Institution obtains a self-certification for the Account Holder upon account opening. The jurisdiction of residence for tax purposes contained in

the self-certification conflicts with the residence address contained in the documentation collected pursuant to AML/KYC Procedures. The Account Holder explains that she is a diplomat from a particular jurisdiction and that, as a consequence, she is resident in such jurisdiction; she also presents her diplomatic passport. Because the Reporting Financial Institution obtained a reasonable explanation and documentation supporting the reasonableness of the self-certification, the self-certification passes the reasonableness test.

Note: Refer to paragraphs 22-25 on page 133 of The Commentary

The OECD has provided guidance as to the format for self-certification forms which you should be guided by:

(a) Entity - [http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS\\_ENTITIES\\_Self-Cert\\_Form.pdf](http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS_ENTITIES_Self-Cert_Form.pdf)

(b) Individual - [http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS\\_CONTROLLING\\_PERSONS\\_Self-Cert\\_form.pdf](http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS_CONTROLLING_PERSONS_Self-Cert_form.pdf)

If there is a reasonable explanation and documentation supporting the validity of the original self-certification the Reporting Financial Institution will be required to retain a copy or a notation of the explanation and documentation. This is in addition to the requirement to keep a record of the actual self-certification.

## **B. CRS Implementation Options**

There are areas where CRS provides optional approaches for jurisdictions to adopt the ones most suited to their circumstances. For further detail on these CRS implementation options, please refer to pages 12 – 17 of the CRS Implementation Handbook.

The table below outlines these 16 implementation options and how they have been incorporated into The Bahamas CRS legislative framework. Some of these implementation options are also further elaborated upon in the Guidance Notes below.

Options under CRS	Implemented	Reference (s)
1. Alternative approach to calculating account balances	No	N/A
2. Use of reporting period other than calendar year	Yes	Para. I of Section I of CRS / Commentary on CRS page 99
3. Phasing in the requirements to report gross proceeds	No	Reg. 5(3) of the AEOI Regulations <sup>1</sup> ; Commentary on CRS page 107.
4. Filing of nil returns	No	N/A
5. Allowing third party service providers to fulfil obligations for FIs	Yes	Section 8 of the AEOI Act; Commentary on CRS para. D - page 108
6. Allowing due diligence procedures for New Accounts to be used for Preexisting Accounts	Yes	Reg. 4(1)(c) and 4(2)-(4) of the AEOI Regulations; Commentary on CRS para. E - page 108
7. Allowing the due diligence procedures for High-Value Accounts to be used for Low-Value Accounts	Yes	Reg. 4(1)(b) of the AEOI Regulations
8. Residence address test for Lower Value Accounts	Yes	Reg. 4(1)(a) of the AEOI Regulations; Commentary on CRS, Section IV subpara. B (1) page 111

<sup>1</sup> Reg. 5(3) of the CRS Regulations incorporates paragraphs A-E of Section 1 of CRS but not paragraph F of Section I.

9. Threshold of \$250,000 for Pre-existing Entity Accounts	Yes	Reg. 5(5) of the AEOI Regulations; Commentary on CRS, Section V Paragraph A – page 135
10. Simplified due diligence rules for Group Cash Value Insurance Contracts and Group Annuity Contracts	Yes	Reg. 6 of the AEOI Regulations; Commentary on CRS, Section VII Para B page 152
11. Allowing greater use of existing standardised industry coding systems for the due diligence process	Yes	Reg. 4(5)(a) of the AEOI Regulations
12. Permitting a single currency translation rule	Yes	Para. C4 of Section VII of CRS; Commentary on CRS, Section VII, Subpara. C(4) page 156.
13. Expanding definition of Pre-existing Account when Preexisting customers open a new account	Yes	Reg. 2(1) of the AEOI Regulations
14. Expanded Related Entity definition	Yes	Reg. 2(1) of the AEOI Regulations; Commentary on CRS, Section VIII Subpara. E(3) and (4) page 202.
15. Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle	Yes	Para. B9 of Section VIII of CRS
16. Controlling Persons of a trust or other similar legal arrangement	Yes	Reg. 2(1) of the AEOI Regulations;

		Commentary on CRS, Section VIII, page 198
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### **C. Reporting Periods Other Than Calendar Year**

Although, under regulation 5(3) of the CRS Regulations, which imports paragraph A of Section I of CRS, Reporting Financial Institutions are permitted to report with respect to other appropriate reporting periods rather than the calendar year, information must be reported with respect to the calendar year unless there is a reasonable basis for not doing so.

For Depository Accounts, the balance or value will be that shown on the 31 December, unless the account is closed prior to that date. For other Financial Accounts, the balance or value will either be that shown on 31 December of the year to be reported or, where it is not possible or usual to value an account at 31 December, the normal valuation point for the account that is nearest to 31 December is to be used.

#### **Example**

When a Specified Insurance Company has chosen to use the anniversary date of a policy for valuation purposes, if for example the policy was opened on 3 June 2016, it will be valued on 2 June 2017 but will be reported for the year ending 31 December 2017. This will be reported to The Bahamas Competent Authority in 2018.

Where 31 December falls on a weekend or non-working day, the date to be used is the last working day before 31 December.

### **D. Nil returns**

Bahamas Reporting Financial Institutions are not required to file nil returns with The Bahamas Competent Authority.

## **E. Third party service providers**

Under Section 8 of the CRS Act, Reporting Financial Institutions may rely on a third-party service provider to fulfil due diligence and reporting obligations under the CRS Regulations. However, the Reporting Financial Institution remains ultimately responsible for fulfilling these obligations and any failures on the part of the service provider are imputed to the Reporting Financial Institution.

Where a Reporting Financial Institution is an Investment Entity because it is managed by another Reporting Financial Institution it should nevertheless fulfil its own due diligence and reporting obligations unless the managing entity has expressly agreed to do so.

## **F. Threshold Exemption**

The CRS Regulations allow Reporting Financial Institutions to apply a threshold exemption for the review, identification and reporting of Pre-existing Entity Accounts. For Reporting Financial Institutions applying the threshold exemption, Pre-existing Entity Accounts with a balance or value not exceeding \$250,000 at 30 June 2017 do not need to be reviewed, identified or reported until the account balance exceeds \$250,000 at 31 December of a subsequent calendar year.

For the avoidance of doubt, there is no threshold exemption for the review, identification or reporting of New Entity Accounts, Preexisting Individual Accounts or New Individuals Accounts.

Reporting Financial Institutions applying the threshold exemptions must keep an internal record of the application of the exemptions as part of the policies and procedures which they are required to have in place in accordance with the CRS Regulations.

Reporting Financial Institutions applying the threshold exemption must keep an internal record of the application of the exemption as part of the policies and procedures which

they are required to have in place in accordance with the CRS Regulations. The Account Aggregation Rules apply. Refer to The Commentary Section VII at pages 154 – 156.

## **G. Due Diligence Modifications**

Under the CRS Regulations, Reporting Financial Institutions may choose to apply modified due diligence rules. This includes:

- Applying the due diligence procedures for New Accounts to Preexisting Accounts – regulation 4(1)(c) and 4(2)-(4) of the CRS Regulations; and
- Applying the due diligence procedures for High Value Accounts to Lower Value Accounts – regulation 4(1)(b) of the CRS Regulations.
- Applying due diligence on discretionary beneficiaries should not be required until immediately prior to first distribution from a trust. A distribution shall not be made until due diligence is received on the discretionary beneficiary.

## **H. Residence Address Test for Lower Value Accounts**

For the purposes of determining whether an individual Account Holder is a Reportable Person, the Reporting Financial Institution may treat such individual as being a resident for tax purposes of the jurisdiction in which an address is located if: (a) the Reporting Financial Institution has in its records a residence address for the individual Account Holder; (b) such residence address is current; and (c) such residence address is based on Documentary Evidence. The residence address test relies on the permanent residential address of the individual on file, and the address must be validated to ensure it is the same address, or in the same jurisdiction, as the one that is included on any Documentary Evidence (e.g. identity card, driving license, voting card, or certificate of residence, etc). As in some circumstances the address cannot be relied on additional documentary evidence or a self-certification is required. Refer to The Commentary Section III pages 111- 116.

## **I. Group Cash Value Insurance Contracts or Group Annuity Contracts**

Under the CRS Regulations, a Reporting Financial Institution may treat an account that is a Group Cash Value Insurance Contract or a Group Annuity Contract, as a non-reportable account until the date on which an amount is payable to an

employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements:

- The Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;
- The employees/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- The aggregate amount payable to any employee/certificate holder or beneficiary does not exceed \$1,000,000.

Please refer to regulation 6 of the CRS Regulations.

## **J. Currency Translation**

All amounts in CRS are stated in US dollars. The CRS Regulations permit Reporting Financial Institutions to convert the threshold limits into the currency in which accounts are denominated before applying a threshold amount under CRS. This allows a multinational Reporting Financial Institution to apply the amounts in the same currency in all jurisdictions in which they operate. For example, a Lower Value Account is an account with an aggregate account balance or value of less than \$1,000,000, and this threshold amount may be converted to the relevant currency for the Reporting Financial Institution by reference to the spot rate of exchange on the date for which the Reporting Financial Institution is determining that threshold amount.

Please refer to regulation 3(2)(a) of the CRS Regulations, which imports paragraph C of Section VII of CRS, for further details on the currency translation and account balance aggregation rules.

## **K. Expanded Definitions**

The CRS Regulations have incorporated the expanded definitions that are available under CRS. This includes expanded definitions for:

- *Preexisting Accounts* (please refer to regulation 2(1) of the CRS Regulations for the full definition); and
- *Expanded Related Entities* (please refer to 2(1) of the CRS Regulations for the full definition).

## **VI. IDENTIFICATION OF CONTROLLING PERSONS**

A Controlling Person is defined in CRS to mean the natural persons who exercise control over an Entity ( Refer to Section VIII; Defined Terms at paragraph D 6 of The Common Reporting Standard). The term “Controlling Persons” corresponds to the term “beneficial owner” as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force Recommendations.

Determining a controlling interest will depend on the ownership structure of the Entity and control over the Entity may be exercised by direct ownership (or shareholding) or through indirect ownership or control (or shareholding) of one or more intermediate Entities. If no such person exists, then any natural person that otherwise exercises control over the management of the Entity (e.g., the senior managing official of the company) should be treated as the Controlling Person of the Entity.

### **A. Entities**

The CRS Regulations provide that the definition of Controlling Persons includes such other definition or procedure contained in applicable AML and KYC procedures, as amended. For the 2018 CRS reporting period Reporting Financial Institutions should apply a 25 percent (25%) threshold for determining Controlling Persons for CRS purposes. For subsequent reporting periods commencing in 2019, the Controlling Persons threshold shall be 10%.

Indirect control may extend beyond legal (direct) ownership or could be through a chain of corporate vehicles and through nominees (i.e. shareholder or nominee agreements). This indirect control could be identified through various means, as shareholder’s

agreement, exercise of dominant influence or power to appoint senior management. Shareholders may thus collaborate to increase the level of control by a person through formal or informal agreements, or through the use of nominee shareholders. Voting or economic rights, whether the company has issued convertible stock or has any outstanding debt that is convertible into voting equity will also have to be considered and based on the facts a determination made as to whether there is indirect ownership and/or control.

Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official. This can include the managing director or it could be all of the directors.

For CRS, Controlling Persons shall include:

- Any natural person that holds directly or indirectly more than twenty-five percent (25%) of the shares or voting rights of an Entity as a beneficial owner.
- Any natural person that owns or controls 25% or more of any class of the person's voting securities, excluding any securities that the security holder, if a registrant, holds in the course of a public distribution; or
- Any natural person who is able to affect materially the control of the person, whether alone or by acting in concert with another person."

#### Example

An Individual ( Individual A) owns ten percent (10%) beneficial interest in Entity "B" which is held in the name of Individual C. Individual A also controls twenty percent (20%) of the voting shares in Entity B. Although the 10% is held in the name of Individual C, pursuant to a contractual agreement, in such instance, Individual A falls within the definition of Controlling Person.

## **B. Trusts**

In the case of a trust, Controlling Person(s) means –

- the settlor(s);

- the trustee(s);
- the protector(s) (if any);
- the beneficiary(ies) or classes of beneficiary(ies) if such person(s) has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or has received, directly or indirectly, in the relevant reporting period, a discretionary distribution from the trust; and
- any other natural person(s) exercising ultimate effective control over the trust.

The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries if such person(s) has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the trust.

Discretionary beneficiaries will only be Controlling Persons, in the years when they receive a distribution from the trust, and the trustees will report the value of distributions made to reportable persons. A settlor or fixed beneficiary will always be a Controlling Person.

The account balance information to be reported in respect of each equity and debt interest holder of the trust may differ, depending on the type of trust, whether the settlor is a beneficiary or not, and whether the trust is discretionary or not.

The account balance to be reported in respect of each Controlling Person in respect of a trust is the balance of the account.

Where the settlor of an irrevocable trust is not a beneficiary of the trust or has no beneficial interest in the Trust, notwithstanding the settlor is classified as a Reportable Person, the account balance attributable to him is zero. Similarly, where a protector is not a beneficiary of a trust, revocable or irrevocable, notwithstanding the protector is classified as a Reportable Person, the account balance attributable to him is zero. Protectors are

always Reportable Persons for both Financial Institution Trusts and NFE Trusts. The value reported is zero. Unless otherwise defined (for example where a beneficiary has a defined equity interest), their account value will be the total value of all trust property except, in the case of a discretionary beneficiary that has received a distribution in the relevant year, in which case, the account value will be the amount of the distribution.

In addition, any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership) must also be treated as a Controlling Person of the trust. Where such person is classified as a Reportable Person but has no beneficial interest in the trust, the account balance attributable to him is zero. With a view to establishing the source of funds in the account(s) held by the trust, where the settlor(s) of a trust is an Entity, Reporting Financial Institutions must also identify the Controlling Person(s) of the settlor(s) and report them as Controlling Person(s) of the trust. For beneficiary(ies) of trusts that are designated by characteristics or by class, Reporting Financial Institutions should obtain sufficient information concerning the beneficiary(ies) to satisfy the Reporting Financial Institution that it will be able to establish the identity of the beneficiary(ies) at the time of the pay-out or when the beneficiary(ies) intends to exercise vested rights. Therefore, that occasion will constitute a change in circumstances and will trigger the relevant procedures.

In the case of a trust, a person exercises ultimate effective control over the trust when that person has the power to change the trustees, thereby influencing the distribution of trust assets. A settlor is always reported, irrespective of whether the trust is revocable (i.e. where the settlor has maintained some interest or rights in the trust) or irrevocable.

If a Settlor is a member of a class of discretionary beneficiaries, the Settlor must always be reported as the Settlor, and in the year he receives a distribution, as a Beneficiary.

In accordance with the option available under CRS with respect to trusts that are Passive NFEs (non-financial entities), Reporting Financial Institutions may align the scope of beneficiaries of a trust treated as Controlling Persons with the scope of beneficiaries

treated as Reportable Persons where the trust itself is a Financial Institution. In the case the Controlling Person(s) of a trust that is treated as a Passive NFE and the Reportable Person(s) of a trust that is treated as a Financial Institution, Reporting Financial Institutions would then only need to report discretionary beneficiaries for the reporting period in which they receive a distribution from the trust.

Each Reporting Financial Institution must ensure that it has appropriate procedures in place to identify whether a distribution is made by the trust to a discretionary beneficiary in the reporting period. Reporting Financial Institutions may, for example, receive certifications from the trustees of the trust as to whether distributions have been made and, if so, to whom.

Where no such procedures are in place to identify distributions to discretionary beneficiaries, the Reporting Financial Institution must continue to treat the discretionary beneficiary as a Controlling Person and report accordingly if that person is a Reportable Person.

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

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

### **C. Ultimate and Effective Control**

Where a Reporting Financial Institution relies on information collected and maintained pursuant to AML/KYC Procedures for purposes of determining the Controlling Persons of an Account Holder of a New Entity Account (see subparagraph A(2)(b) of Section VI of The Common Reporting Standard), such AML/KYC Procedures must be consistent with

Recommendations 10 and 25 of the FATF Recommendations as implemented in The Bahamas, including always treating the settlor(s) of a trust as a Controlling Person of the trust and the founder(s) of a foundation as a Controlling Person of the foundation. For purposes of determining the Controlling Persons of an Account Holder of a Preexisting Entity Account (see subparagraph D(2)(b) of Section V of The Standard) , a Reporting Financial Institution may rely on information collected and maintained pursuant to the Reporting Financial Institution's AML/KYC Procedures.

## **VII. ENTITY SPECIFIC ISSUES**

### **A. Financial Accounts of Investment Managers and Advisers**

Financial Institutions that are not maintaining any financial accounts have no reporting responsibilities. Under CRS, an investment advisor or investment manager, i.e. an entity which is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than itself, is regarded as not having any Financial Accounts.

The CRS Regulations further provides that an Investment Entity that is a Financial Institution established in The Bahamas is a Non-Reporting Financial Institution if the Financial Institution —

- (a) renders investment advice to, and acts on behalf of, the customer;
- (b) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity; or
- (c) performs or executes executive functions on behalf of a Reporting Financial Institution other than a Non-Reporting Financial Institution.

The CRS Regulations declares for the purposes of CRS, any Bahamian investment advisor, investment manager, fund administrator or other entity that executes executive

functions on behalf of a Reporting Financial Institution as a Non-Reporting Financial Institution. Where such entities do have financial accounts, they will not fall within this exclusion.

## **B. Non-Participating Jurisdiction Investment Entities**

In accordance with the definition of Passive NFE in the CRS Regulations, Reporting Financial Institutions are required to treat 'managed' Investment Entities, (or branches thereof) that are resident in (or located in) any Non-Participating Jurisdiction, as Passive NFEs and therefore report on the Controlling Persons of such entities that are Reportable Persons as defined in CRS.

'Managed' Investment Entities are those that meet the second limb of the definition of an Investment Entity as set out in paragraph A6.b) of section VIII of CRS.

A Managed Investments Entity in a Non-Participating Jurisdiction should default to a Passive NFE.

## **C. Determination of CRS Status of Entities**

CRS commentary provides that an Entity's status as a Financial Institution or non-financial entity (NFE) should be resolved under the laws of the participating jurisdiction in which the Entity is resident. If an Entity is resident in a Non-Participating Jurisdiction, the rules of the jurisdiction in which the account is maintained determine the Entity's status as a Financial Institution or NFE since there are no other rules available.

Therefore, when determining the status of an Entity resident in a Non-Participating Jurisdiction as an active or passive NFE, the rules of the jurisdiction in which the account is maintained determine the Entity's status. For example, a Financial Institution resident in a Non-Participating Jurisdiction with accounts maintained in The Bahamas may apply the active NFE definition applicable to Bahamian Entities.

## D. Investment Entity

An Investment Entity is an entity that:

- (a) primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
  - i. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
  - ii. individual and collective portfolio management; or
  - iii. otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
- (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in (a) above.

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph (a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph (b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g). CRS requires that this definition should be interpreted in a manner consistent with similar language set forth in the definition of 'financial institution' in the Financial Action Task Force Recommendations.

The term "**Financial Asset**" includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness),

partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term “Financial Asset” does not include a non-debt, direct interest in real property.

## E. Trusts as Financial Institutions

1. An individual account would be a “financial account” held in the name of a natural person. There are different types of financial accounts (i.e. custodial, deposit, **equity and debt interest**, cash value insurance and annuity accounts). It is the equity and debt interest held in an investment entity that is a financial account;
2. A trust will be a financial institution if it falls within the definition of an investment entity (i.e. has gross income primarily attributable to investing, reinvesting or trading financial assets and is managed by a financial\_institution). This would mean that the individuals with an equity or debt interest in such a trust would be Individual account holders subject to reporting. Where the value or balance attributable to each Account Holder is fixed or clearly ascertainable by the terms of the trust deed, such value or balance would be reportable.

Discretionary beneficiaries of trusts that are Financial Institutions are treated as Account Holders if they have received a discretionary distribution from the trust in the reportable period.

Whether a reserved investment power trust, where investment powers over the trust’s assets are reserved solely to a person who is not the trustee, should be considered to be an Investment Entity as defined under paragraph A(6)(b) of Section VIII of the CRS, will depend on whether the “managed by” criterion under subparagraph A(6)(b) of Section VIII of the CRS is met. For example, if the trustee which is a Financial Institution performs, either directly or through an individual employee, an affiliate service provider, any of the

activities or operations described in subparagraph (A)(6)(a) of Section VIII of the CRS on behalf of the managed trust, and has discretionary authority to manage the trust's assets (in whole or in part), such a trust could be considered to be an Investment Entity.

## **F. Applying the “Managed By Test”**

When applying the “managed by” test, an entity shall be an Investment Entity where:

1. It is professionally managed by a Financial Institution, provided such Financial Institution has discretionary authority to manage the entity's assets (in whole or part);
2. An Entity is “managed by” another Entity if the managing Entity performs, either directly or through another service provider, any of the activities or operations described in subparagraph D (a) on behalf of the managed Entity; and
3. The entity satisfies the financial assets test ( Refer to paragraph 7 at page 7 of The Commentary and paragraph 17 at page 162)

### **Examples**

#### *Example 1*

A company whose directors grant a Financial Institution, such as a licensed bank or investment management company, discretionary management powers over the assets of the company will be an Investment Entity as it will be ‘managed by’ that bank or investment management company.

#### *Example 2*

A trust that appoints a Financial Institution as a trustee and grants that Financial Institution discretionary management powers will be an Investment Entity as it will be ‘managed by’ the Financial Institution who is acting as trustee.

#### *Example 3*

A trust where the right to direct investments is reserved to the settlor or is vested in an individual investment manager, would not be an Investment Entity as it would not meet

the 'managed by' test, notwithstanding it may appoint a trustee that is a Financial Institution.

For the purposes of the "managed by" test, a distinction should be made between one entity 'managing' another and one entity 'administering' another. For instance the following services provided by an entity to another will not constitute the latter entity being 'managed by' the former:

- Provision of co-secretary and/or company secretarial services;
- Provision of registered office;
- Preparation of final financial statements (from company books and records);
- Preparation of Tax returns; or
- Provision of bookkeeping services.

For the purposes of clarification and for this Guidance solely, any of the activities such as those defined under the International Business Companies Act, Chapter 309, as "business of company management" does not constitute managed by an Investment Entity.

Where a Financial Institution appoints a minority of the members of the Board of Directors of a company, the company should not meet the Managed By Test as the Financial Institution would not control the company.

Where a Bahamian company's directors are employees of a Bahamian Financial and Corporate Service Provider (FCSP) which itself is a Financial Institution and the Bahamian company is administered by that Bahamian FCSP Financial Institution, the Bahamian company may be treated as an Investment Entity itself.

## **G. Financial Institution Acting as Broker**

Where a Financial Institution is acting as an executing broker, and simply executing trading instructions, or receiving and transmitting such instructions to another executing broker, (either through a recognized exchange, multilateral trading facility or non EU

equivalent of such, a clearing organization or on a bilateral basis) the Financial Institution will not be required to treat the facilities established for the purposes of executing a trading instruction, or receiving and transmitting such instructions, as a Financial Account under the CRS Act. The Financial Institution acting as custodian will be responsible for performing due diligence procedures and reporting where necessary.

## **H. Charitable Trusts**

A charitable trust will either be a Financial Institution or a NFE. The instances where a charitable trust will be a Financial Institution are limited as it is unlikely that such a trust will be carrying on business for customers.

A charitable trust that will qualify as a Financial Institution will likely be confined to circumstances where a charitable trust is a managed Investment Entity.

A charitable trust, or other not for profit association, may fall within the definition of an Investment Entity where it is managed by a Financial Institution and more than fifty percent (50%) of its income comes from investing in Financial Assets. Such a charitable entity will be a Financial Institution, which will require that it reports in respect of any payments it makes to beneficiaries of the charity.

If a charitable trust or other not for profit association receives more than 50 percent (50%) of its income by way of gifts, donations, grants or legacies, the charitable entity will fall within the definition of Active NFE under the CRS and it will not be a Financial Institution. Hence, it will not be required to report on payments to its beneficiaries or otherwise required to provide its Financial Account information.

A charitable trust that is not a Financial Institution will (by default) generally be an active NFE and therefore not reportable for CRS purposes (and there is no need to “look through” to Controlling Persons compared to passive NFEs).

A charitable trust shall be considered an Active NFE if it also meet the following requirements to—

*i)* it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organization operated exclusively for the promotion of social welfare;

*ii)* it is exempt from income tax in its jurisdiction of residence;

*iii)* it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

*iv)* the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or noncharitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and

*v)* the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision 10% thereof.

## **VIII. ANTI-AVOIDANCE & ENFORCEMENT**

The CRS Act provide that if a Financial Institution enters into any arrangement, the main purpose or one of the main purposes of which is to avoid any obligations imposed by The Act, the arrangement is deemed not to have been entered into by the person and the

CRS Regulations are to have effect as if the arrangement had never been in existence. The situations in which the anti-avoidance rule may apply are wide and varied. You may refer to the Commentaries on the CAA and CRS, specifically the commentary on Section IX, which provides a few examples.

The CRS Act sets out offences which Financial Institutions may be liable for where the provisions of the Act or Regulations are contravened.