Automatic Exchange of Information ("AEOI") for the Common Reporting Standard

Supplementary Guernsey Guidance Notes

Version 1 published 24 December 2016

Users should read the section 'purpose and status of this guidance' before proceeding to the guidance material

1 Purpose and Status of the Guidance

1.1 OECD Commentary

As the OECD guides provide comprehensive commentary and examples for the CRS and Due Diligence Standards, this guidance is only to be considered supplementary to the OECD commentary and covering those aspects where is necessary to assist with the practical aspects of the CRS that are specific to implementation by Guernsey Financial Institutions.

This manual includes references and quotations from the following OECD publications:

- Standard for Automatic Exchange of Financial Information in Tax Matters © OECD 2014 ('the Purple Book')
- Standard for Automatic Exchange of Financial Account Information in Tax Matters: Implementation Handbook

The text of the Common Reporting Standard has been incorporated into Schedule 2 of the domestic regulations, titled "The Income Tax (Approved International Agreements) (Common Reporting Standard) Regulations, 2015" ("the Regulations"), as copy of which can be found using the following link:

http://theoldsite.gov.gg/CHttpHandler.ashx?id=99500&p=0

These guidance notes must be read as supplementary to the core guidance provided in the OECD publication.

Financial Institutions are encouraged to take independent professional advice if they are at all unsure with any of their obligations under the CRS or any other AEOI agreement.

2 Background- Automatic Exchange of Financial Account Information

2.1 Introduction

In April 2013 the UK, France, Germany, Italy and Spain (the G5) set up a pilot to explore the possibility of developing a common global approach to automatic exchange of information of financial account information (AEOI). This was subsequently adopted by the G20, and, in February 2014, the OECD delivered the Common Reporting Standard (the CRS) which was subsequently approved by the G20 as the global standard for Automatic Exchange of Financial Account Information.

Guernsey was party to a joint statement issued on 28 November 2013 by 36 countries, and a further statement issued in March 2014 by 44 countries, committing to the early adoption of the CRS. On 6 May 2014, the OECD issued a Declaration signed by 48[1] jurisdictions welcoming the OECD Standard for Automatic Exchange of Financial Account Information. In total (as of 16 December 2015), 77 jurisdictions have now formally committed to implementing the CRS, by signing the Multilateral Competent Authority Agreement ("MCAA"). These jurisdictions have specified the date on which they will commence to exchange information under the standard (being either 2017, in respect of 2016 data or 2018, in respect of 2017 data). The list of these jurisdictions can be found using the following link:

http://www.oecd.org/ctp/exchange-of-tax-information/MCAA-Signatories.pdf

In addition, more than 20 other jurisdictions have committed to implement the global standard in 2017 or 2018 (but have not, as yet, signed the MCAA). It follows, therefore, that, as of 1 December 2015, there are already almost 100 jurisdictions which have committed to the Standard.

The Standard for Automatic Exchange of Financial Information in Tax Matters was published by the OECD on 15 July 2014 (commonly referred to as "the purple book").

- Part I gives an overview of the Standard
- Part II contains the text of the Model Competent Authority Agreement and the Common Reporting and Due Diligence Standard (CRS)[2]
- Part III contains the Commentaries on the Model CAA and the CRS as well as a number of Annexes.

There are three Model Competent Authority Agreements. One is for use as a multilateral instrument, referred to as the Multilateral Competent Authority Agreement ("MCAA") enabling a number of jurisdictions to jointly agree to exchange information automatically, one is a bilateral reciprocal agreement for use between two single jurisdictions and the third is a bilateral non-reciprocal agreement under which one jurisdiction will receive information from another jurisdiction, but will not be obliged to report information in return (these latter agreements being referred to as Bilateral Competent Authority Agreements ("BCAAs")).

[1] Declaration on Automatic Exchange of Information in Tax Matters (adopted on 6 May 2014)

[2] The "Wider Approach" text slightly amends the Due Diligence Standard of the CRS and the relevant text is that in Appendix V to the Standard.

Guernsey is a signatory to the existing MCAA; the legal basis of this agreement being Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters ("the MAC"), which Guernsey's participation under the MAC came into force on 1 August 2014. For technical constitutional reasons it has been considered not possible for Guernsey, the UK, the other Crown Dependencies and the Overseas Territories to enter into Exchange of Information Agreements under the MAC, any such equivalent arrangements with these territories will require a relevant BCAA. To date Guernsey has signed reciprocal BCAAs with the Isle of Man and Jersey and non-reciprocal BCAAs with the British Virgin Islands and Cayman Islands (under which the British Virgin Islands and Cayman Islands Competent Authorities will annually exchange information in respect of Financial Accounts held by Guernsey residents). Guernsey is also continuing the process of discussing several more reciprocal and non-reciprocal BCAAs with other relevant territories. Where Guernsey signs any non-reciprocal agreements it will be in order to receive information, not to supply information and therefore these agreements will not impact on Guernsey Financial Institutions ('GFIs'). See section 3.5

The MCAA signed by Guernsey and the BCAAs signed to date can be found using the following link to the Income Tax Office webpage:

http://www.gov.gg/crs

The model reciprocal BCAA is contained in Part I of the purple book (pp. 21-27). The MCAA and non reciprocal BCAA are published in Annexes 1 and 2 of the purple book respectively (pp. 215-229).

3 Legislative Implementation

3.1 Domestic Legislation

The relevant reciprocal MCAA and BCAA jurisdictions that will impact on GFIs by imposing reporting obligations through The Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015 ("the Regulations").

Subject to final approval by the States of Deliberation, the Regulations have an operative date of 1 December 2015.

3.2 Optional Approaches Adopted in Guernsey Regulations

The Common Reporting Standard offered a number of various "optional approaches" available to jurisdictions to implement into their local legislation where it was considered to be more appropriate, or of greater assistance to GFIs in implementing the CRS regime and/or conducting their due diligence requirements.

Further to feedback received from the Director's consultation on the CRS in February 2015, the following options have been adopted into the Regulations. The table below summarises those adoptions and gives the cross reference in both the domestic Regulation and the OECD Commentary and/or where there is additional information within these guidance notes, the appropriate reference.

Option	**Regulation reference** (CRS commentary reference)
The "Wider Approach"	CRS guidance (Sections 3.2.1 & 6.2) Annex V of the CRS, the text of which was included in Schedule 2, Sections I to VII, of the Regulations
Filing of Nil Returns	CRS guidance Section 7.2.2 Regulation 4(2)
Permitting Third Party Service Providers to fulfil an Reporting Financial Institution's ("RFIs") due diligence and reporting obligations	Schedule 2;II.D (p. 108 of CRS commentary)
Allowing due diligence procedures for New Accounts to be used for Preexisting Accounts	Schedule 2;II.E (p. 108)
Allowing due diligence procedures for High Value Accounts to be used for Low Value Accounts	Schedule 2;II.E (p. 108)
Residence address test for Lower Value Accounts	Schedule 2;III.B.1 (pp.111-116)
Optional exclusion from Due Diligence for Preexisting Entity Accounts with a balance of less than US$250,000	Schedule 2; V.B (p. 135)

Excluded Account (less than US$1,000)	Schedule 2: Section VIII (p185)
Alternative documentation procedure for certain employer sponsored group insurance contracts or annuity contracts	Schedule 2; VII.B (p. 152-153)
Allowing Financial Institutions to make greater use of existing standardised industry coding systems for due diligence	Schedule 2;VIII "Pre-Existing Account" definition (p.203)
Permitting Currency translation to use USD or equivalent amounts	Schedule 2; VII.C.4 (p. 156-157)
Expanded definition of Preexisting Account	Schedule 2;VIII. "Pre-existing Account definition" (p. 181-183)
Expanded definition of Related Entity	Schedule 2;VIII "Entity" definition (p. 183)

3.2.1 The Wider Approach

The 'wider approach' was an option presented when implementing the CRS that Guernsey has chosen to adopt, in light of the responses to the CRS consultation carried out in February 2015.

By adopting the "wider approach" option in Schedule 2 to the Regulations replacing the relevant text with that from Annex 5 of the Standard (p. 284-300), the domestic regulations require Reporting Financial Instructions to capture and maintain information on the tax residence of Account Holders, and where applicable Controlling Persons, irrespective of whether or not that Account Holder is a Reportable Person for any given Reportable Period.

As the number of the jurisdictions with which Guernsey will be entering in to automatic exchange agreements is not yet finalised and indeed is expected to grow in time as more jurisdictions sign up to the MCAA, this option enables an RFI to record the territory in which a person is tax resident irrespective of whether that territory is a Reportable Jurisdiction at the time that the Regulations come into force, or when the account is opened. This will negate the need to RFIs to revisit due diligence procedures for all accounts each time a new jurisdiction commits to the automatic exchange of financial account information with Guernsey.

RFIs are required to identify the territory in which an Account Holder or a Controlling Person is resident for income tax or corporation tax purposes, or for the purposes of any other tax of a similar character that has been imposed by that territory, and to continue to maintain this information for a period of 6 years from the end of the period in which the due diligence process is carried out. This effectively enables the Financial Institution to 'future-proof' their processes such that when a new jurisdiction is added to Guernsey's list of Reportable Jurisdictions the work of identifying where existing customers are resident will already have been carried out. This will negate the need for RFIs to revisit the due diligence processes for all un-reviewed accounts and should therefore result in lower costs for the financial Institutions in complying with their obligations. Financial Intuitions will only need to revisit the determination of tax residence in those cases where there has been a change of circumstance.

The Regulations impose an obligation on all Reporting Financial Institutions to identify ALL Account Holder's jurisdiction of tax residence and to maintain that information for 6 years from the end of the year in which the due diligence arrangements have been applied.

Please refer to Schedule 2 of the Regulations for a Financial Institution's specific due diligence obligations.

3.3 Interaction with the US IGA (FATCA)

The requirements for CRS are broadly similar to the IGAs, however the OECD have provided a comparison between the two highlighting where there are differences in working between the FATCA (US) IGA and the CRS. This is summarised in table 3.3(b), below. The full comparison text is available in p87 of the CRS Implementation Handbook (link provided in Section 1, above).

3.3.1 The IGA (FATCA) guidance notes

These CRS guidance notes are to be read as supplemental to the OECD guidance notes and implementation handbook, as referenced above in Section 1.1.

For the avoidance of doubt, the separately published existing IGA Guidance Notes (covering the US IGA and UK IGA) are NOT to be used for the purposes of fulfilling the requirements of the Regulations and the Common Reporting Standard.

3.3.2 Balance Review Dates (Pre-existing Entity Accounts)

Additional to the differences in wording between the respective Agreements, the deadlines for completing account reviews for pre-existing entity accounts, for FATCA, is 30 June following the account balance review date, but for the CRS, is 31 December following the account balance review date.

	Date $250,000 de minimis election applies from	First account balance review date	Subsequent account balance review dates	Threshold at which account balances becomes reviewable
IGAs (FATCA)	30/6/2014	31/12/2015	31 December, annually	$1,000,000
CRS	31/12/2015	31/12/2017	31 December, annually	$250,000

TABLE 3.3(A)

In practice financial institutions may apply the 31 December 2015 deadline for the US IGA (FATCA) and the equivalent IGA between the UK and Guernsey as there is no difference in applying that or 30 June in terms of the first year from when an account may be identified as exceeding the threshold and potentially becoming reportable.

Example

RFI, "Bank A" applied the thresholds for pre-existing entity account for all three regimes. The bank holds Depository Accounts for Entity X, which has a balance at the relevant dates as follows:

30 June 2014 $187,000

31 December 2015 $208,000

31 December 2016 $312,000

31 December 2017 $623,000

At 31 December 2015 (the first account balance review date for the US and UK IGAS) the balance does not exceed $1,000,000 and so would not be reviewable for the IGAs.

At 31 December 2016, the balance exceeds $250,000 but is still below $1,000,000 so is not reviewable for the IGAs.

At 31 December 2017, the deadline for first review under the CRS, the balance exceeds $250,000. As a result, all accounts with a balance of $250, 0000, including this one, will be subject to the due diligence procedures in the Regulations. As a result Entity X may be identified as a US Specified Person and the account, having been so identified, would be reportable for the US IGA in respect of the 2017 Reportable Year.

3.3.3 Differences between US IGA (FATCA) and CRS

AEOI element	Variation in CRS from IGAs
Nexus for Reporting Financial institutions	The CRS only uses residence of the Financial Institution ("FI") as the reporting jurisdiction, as opposed to the IGAs (residence and/or organisation of the FI. See Section 4.1 for residency definitions Section
Definition of Investment Entity	The wording of the definition of Investment Entity differs but the CRS has been designed to achieve an equivalent outcome. FIs are, therefore, permitted to use the CRS definition for the purposes of both the Standard and the FATCA IGA (as permitted also in the Guernsey IGA (FATCA) guidance notes. **FOR THE AVOIDANCE OF DOUBT; ONLY THE CRS DEFINITION MAY BE USED FOR CRS REPORTING**
Categorisation of Financial Institutions	Under the CRS, FIs will only be Reporting Financial Institutions ("RFIs") or Non-Reporting Financial Institutions ("NRFIs"). There are no subcategories of Exempt Beneficial Owner, Deemed Compliant FFI, although these subcategories are largely consistent with the NRFIs in the Standard.
Collective Investment Vehicle ("CIV") Definition	The conditions for qualifying as an exempt CIV have been slightly amended to account for multilateral context, remove US specifics and resulting change in definition of Reportable Person.
Other low-risk Non-Reporting Financial Institutions	The Standards allows for determining additional Low Risk NRFIs in domestic law. See Section 5.3
Categories of Non-Reporting Financial Institutions	The following Categories are not included in the CRS (although may be incorporated within the CRS elsewhere) • FIs with only Low Value Accounts • Treaty Qualified Retirement Funds, Local Banks and FIs with a Local Client Base • Investment Entity Wholly Owned by Exempt

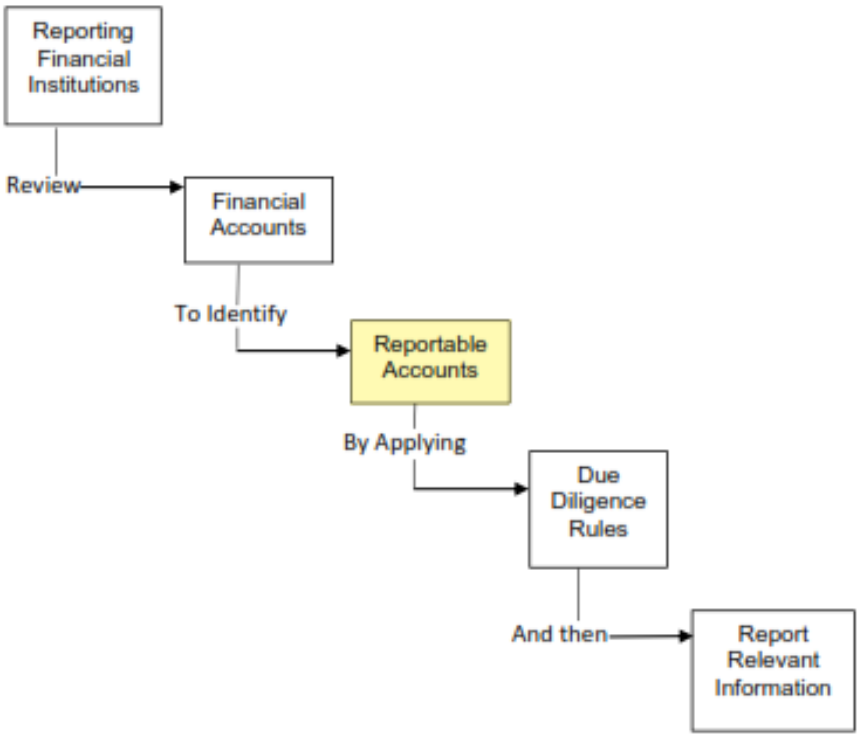
	Beneficial Owner (but incorporated under NRFIs for CRS) • Sponsored Investment Entity and Controlled Foreign Corporation; Sponsored Closely Held Investment Vehicle • Investment Advisors and Investment Managers (where not 'maintaining' accounts there is no reporting responsibilities under CRS)
Financial Asset definition	Definition is consistent with the US Regulations although non-debt direct investments have been specifically EXCLUDED from the CRS as a clarification. FIs may use the CRS definition for the IGA.
Debts or Equity Interest in an Investment Entity ("IE")	The CRS does not exclude equity or debts interest in an IE from Financial Account definition where the interests are regularly traded on an established securities market. The CRS DOES exclude a FI from the definition of Reportable Person and thus if the equity or debt interest in an IE is held by a Custodial Institution, the interest is not subject to reporting by the IE.
Cash Value Insurance Contract ("CVIC")	No Threshold excluding CVICs with a value of <US$50,000 in the CRS
Cash Value definition	The CRS definition incorporates a more detailed definition, but is narrower in respect of the amounts excluded from the definition of Cash Value than the US Regulations definition. [FIs may use the CRS definition for the IGA
Certain excluded retirement savings accounts	CRS provides that contributions to certain Excluded Accounts where they are made from other Excluded Accounts will not cause an otherwise Excluded Account to fail to satisfy the contribution limit requirement. This is not an option in the IGA criteria (other than for certain retirement funds)
Preexisting Account	CRS allows FIs to treat New Account opened by Account Holder of Pre-existing Account as Preexisting Account
Depository Accounts due to non-returned overpayments	Exact definition not included in IGA definition, but single approach to exclude certain Depository Accounts of <$50,000 from due diligence and reporting where CRS and IGA criteria are met is possible.
Excluded Accounts Low-Risk Excluded Accounts Dormant Accounts	CRS includes additional category of Low-risk Excluded Accounts which subject to meeting certain criteria, the account may be excluded even if not specifically listed. Significant overlap between IGA and CRS expected. Dormant Accounts are excluded from reporting under the CRS.
Reportable Jurisdiction Persons	Residence of a Reportable Person is limited to tax residence for CRS, not citizenship. Where an entity does not have residence for tax purposes, the effective place of management of the Entity is used

Non- Reportable Persons	CRS has a shorter list on Non-Reportable Persons with non-jurisdiction specific descriptions. Although broadly consistent, two separate approaches will be required
Passive Non-Financial Entities ("NFEs") and Controlling Persons	Under CRS Controlling Persons of Passive NFEs are reportable regardless of whether they are resident in the same jurisdiction as the Passive NFE, requiring a different approach to the IGA where only US Controlling Person of passive Non-Financial Foreign Entity ("NFFE") is reportable.
Passive NFE definition	CRS definition includes Investment Entities not resident in Participating Jurisdictions. This will require reporting the Controlling Persons under the Standard.
Related Entity	Under the CRS definition the Entities are related where either entity control the other OR the two entities are under common control. Common control includes direct or indirect ownership of more than 50% vote AND value of such entity. (In the US IGA this is 50% of vote OR value). This is however consistent with US Regulations approach and this definition can be used for the IGA definition.
Controlling Persons	The definition provided for in the FATF recommendations may be used for both
Application of due diligence procedures	Under CRS FIs may choose to apply due diligence procedures for New Accounts to Pre-existing Accounts and High Value Account procedures to Low Value Accounts. Adopting the New Account and High Value Accounts for Pre-existing and Low Value Accounts respectively under the IGA will satisfy the due diligence requirements of the IGA
New Accounts	In the CRS, the indicia search is not available for New Accounts as Account Holder self-certification documentation is required. Adopting the similar IGA requirement (which also require self-certification) over the US Regulations will result in consistency of approach.
Pre-existing Accounts Thresholds for Pre-existing Individual Accounts	Under the CRS there is no $50,000 threshold for pre-existing Individual Accounts or $250,000 threshold for Cash Value Insurance Contracts of Annuity Contracts. FIs may chose not to elect to apply the thresholds and effectively adopt the CRS approach for the IGA.
Pre-existing Account becomes High Value Account	When account exceeds $1,000,000 enhanced review to be performed within calendar year following year it becomes an HVA.
Indicia for Pre-existing Individual Accounts	Differences from the IGA for CRS • Tax residency only (not citizenship) • Only telephone number in a Reportable Jurisdiction where the FI does not hold a contact phone number in Guernsey. • Standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction in addition to Standing Orders to a Depository Account

Self-Certification Unreliable or Incorrect Self Certifications after Change in Circumstances. Verbal self-certification	Date of Birth is reportable for New Accounts and must be obtained in the self-certification process. New valid self-certifications must be obtained after a change in circumstances. In the absence of a valid self-certification the CRS requires ALL potential residency jurisdictions of the Account Holder to be reported. CRS also allows for verbal self-certification on the condition that it provides all the required information and the self-certification is signed or positively affirmed by the customer. Unambiguous acknowledgement that they agree with the representations made through self-certification must be made and this must be capable of being evidenced by the FI (voice recording, digital footprint etc.)
Double or multiple residency	The multilateral nature of the CRS means that information will be exchanged with all jurisdictions in which the Account Holder is found to be resident for tax purposes. This was not relevant for the US IGA.
Account Closure	On closure, the account balance or value of the account immediately before closure does not need to be reported. Under the CRS only the fact the account has been closed needs to be reported.

TABLE 3.3(B)

Whether the obligations are for the purposes of the IGAs or the CRS, the basic process is the same:



3.4 Transition to the CRS from the UK IGA

Both Guernsey and UK have made a commitment to begin exchange under the CRS in 2017 however, it was recognised that there were issues to consider to ensure a smooth transition from the IGA to the CRS.

After consultation with Guernsey Financial Institutions, it has been agreed with the UK that in order to facilitate a transition, without any loss of reportable data, the CRS reporting requirements should be supplemented by the provision of information on pre-existing individual low value accounts and pre-existing entity accounts in respect of UK residents. This means that the UK can receive 2016 calendar year information in 2017 solely under the CRS, thus avoiding any need for Guernsey Financial Institutions having to make separate (and possibly duplicate) returns under both the UK IGA and the CRS. Due diligence already undertaken on UK reportable accounts for the purposes of the UK IGA will not need to be repeated for the CRS.

In practical terms Guernsey Financial Institutions will be required to:-

- Operate the CRS new account opening procedures from 1 January 2016.
- Continue due diligence procedures, to identify UK reportable accounts to the timetable outlined in the UK IGA, meaning that the review of pre-existing entity and lower value individual accounts **must** still be completed by **30 June 2016**, and
- Treat any account identified as UK reportable using the IGA due diligence procedures as a UK reportable account for the purpose of the CRS from **1 January 2016.**

In terms of the report itself:-

- Accounts identified as UK reportable for 2014 and 2015 must be reported to the Director no later than **30 June 2016** in the US IRS XML schema format, and
- Accounts identified as UK reportable for 2016 must be reported to the Director no later than **30 June 2017** in the OECD's CRS XML schema format, along with any other CRS reportable jurisdiction accounts.

The CRS does not provide for any special arrangements, such as the Alternative Reporting Regime ("the ARR", for "Non-Doms") which exists under the UK IGA. As a result of the adoption of the CRS from 1 January 2016, reporting of 2016 data for all relevant UK accounts will be required in 2017 including all UK non-domiciled account holders. The ARR will therefore be available only under the UK IGA, and for 2014 and 2015 only.

Further guidance will be issued in due course.

3.5 Partner Jurisdictions for Exchange

Guernsey Financial Institutions will only need to provide information to the Director for Reportable Persons where Partner Jurisdictions have, in the opinion of the Director, adequate data safeguards in place to protect the confidentiality of the information provided.

A list of the jurisdictions that satisfy all of the required conditions shall be published by the Director in respect of each calendar year.

4 Financial Institutions and Residency

4.1 Residency of Guernsey Financial Institutions

A Guernsey Financial Institution is an FI resident in Guernsey, as well as any branch of a non-resident FI located in Guernsey.

In most cases whether or not an FI is resident or located in Guernsey will be clear, but there may be certain classes of FI where this is less obvious. Where such an entity has no residence for tax purposes it shall be treated as resident in the jurisdiction in which its place of effective management is situated or, in the case of a trust, the jurisdiction(s) in which the trustee(s) is/are resident.

4.1.1 Companies

If the company is resident in Guernsey under Guernsey Income Tax Law or a published Statement of Practice.

4.1.2 Trusts

Where the Trustees are resident in Guernsey.

4.1.3 Partnerships

Where the business of the partnership is managed and controlled in Guernsey.

4.1.4 Funds

Where the fund is effectively managed in Guernsey.

4.1.5 Foundations

Where registered as a Guernsey Foundation and the council established to administer the foundations assets and carry out its objects, is situated in Guernsey.

If an entity is dual resident, such that it is resident in Guernsey and also another country, it will still need to apply the Guernsey legislation in respect of any Reportable Accounts maintained in Guernsey. Dual resident Entities may rely on the tiebreaker rules contained in tax conventions (if applicable) to solve cases of double residence for determining their residence for tax purposes.

Entry Classification Elections (known as ‘check the box elections’), made to the IRS, do not determine the residence of an entity. The above tests must be applied to determine residence of the entities making such elections.

Subsidiaries and branches of Guernsey (tax) resident financial institutions that are located outside of the Guernsey are not Guernsey financial institutions. However, where such subsidiaries and branches act as introducers of business to a Guernsey financial institution resulting in the financial accounts being held and maintained by the Guernsey financial institution then the Guernsey financial institution will be required to undertake the appropriate due diligence procedures and report the details of the accounts to the Director of Income Tax.

4.2 Investment Entities

Please refer to the Commentary on Section VIII for information and examples on Investment Entities, including the two sets of criteria by which an entity meets the description of Investment Entity, specifically whether this relates to:

a) an Investment Entity conducting business on behalf of customers or;

b) a Managed Investment Entity

Note though that a professionally managed investment entity resident in a non-Participating Jurisdiction is always treated as a Passive NFE, notwithstanding that it would be treated as a financial institution if it were resident in a Participating Jurisdiction (this ensures that it is not possible for Controlling Persons to avoid reporting by setting up such entities in non-Participating Jurisdictions).

Due to slight differences in the definition of "Investment Entity" between the CRS and IGAs, Financial Institutions must be aware that they may have some accounts that were previously "self-certified" as Financial Institutions for the purposes of the IGAs (therefore, would have been required to submit reports to the Director of Income Tax in respect of all Reportable Accounts), but will now be Passive NFEs that will instead be reported on by the Financial Institution maintaining those accounts.

This will require some entities being required to re-examine their activities in accordance with the provisions of the CRS in order to determine the appropriate self-certification and ensuring it is correct for CRS reporting purposes. This will need to be in place for the review deadline dates for accounts as set out in section 6.1.

4.2.1 Trusts

Trusts are treated as entities by all of the agreements for automatic exchange of information. A trust can be either a Financial Institution or a NFE. Where a trust meets one of the definitions for being a Financial Institution it is most likely to be an Investment Entity but it may, alternatively, meet the requirements to be a Custodial Institution.

A trust is unlikely to be regarded as an Investment Entity by virtue of investing as a business because trusts generally do not carry on businesses for or on behalf of customers unless they are collective investment schemes. A trust may be an Investment Entity however where its gross income is primarily derived from investing, reinvesting or trading in Financial Assets and it is managed by a Financial Institution.

The test of being managed by a Financial Institution will be met where the trust or its activities are being managed by a Financial Institution. A trust is managed by a Financial Institution where either one or more of the trustees is a Financial Institution or the trustees have appointed a discretionary fund manager who is a Financial Institution to manage the trust's assets. For a more detailed description of what constitutes management by a Financial Institution please see the guidance in the Commentary on Section VIII (p162 et seq).

If the trust is not managed by a Financial Institution in this way, and does not meet any of the other definitions of Financial Institution, it will be a Non-Financial Entity. For example, where the trustees of a trust are individuals (and therefore not Financial Institutions) and the trust holds only a Depository Account or other investments with a Financial Institution, and that Financial Institution does not have discretion to manage the account or the assets in the account, then the trust will not be an Investment Entity.

4.2.2 Trusts Managed by a Financial Institution

A trust is typically regarded as being managed by a Financial Institution where either one or more of the trustees is a Financial Institution or the trustees have appointed a Financial

Institution, such as a discretionary fund manager, to manage the trust's assets or to manage the trust.

Does a Financial Institution Manage the Trust?

A Financial Institution will manage the trust where it has been appointed by the trustees to carry out the day to day functions of the trust on behalf of the trustees. This goes beyond managing the investment of the trust's assets and includes other management functions that the trustees have to perform but which are contracted to the Financial Institution.

4.2.3 Discretionary Beneficiaries

Financial Institutions may align the scope of the beneficiaries of a trust treated as Controlling Persons with the scope of the beneficiaries of a trust treated a Reportable Persons of a trust that is an FI.

This will allow a Financial Institution to treat a Reportable Person as a beneficiary of the trust if such Reportable Person has the right to receive, directly or indirectly (for example through a nominee) a mandatory distribution or may receive directly or indirectly, a discretionary distribution from the trust.

For these purposes, a beneficiary who may receive only a discretionary distribution from the trust will be treated as a beneficiary of a trust if such person received a distribution in the calendar year or other appropriate reporting period (i.e. either the distribution has been paid or made payable). The same is applicable with respect to the treatment of a Reportable Person as a beneficiary of a legal arrangement that is equivalent or similar to a trust or foundation.

Does a Financial Institution Manage the Financial Assets of the Trust?

A Financial Institution manages the Financial Assets of the trust where it has discretion to manage the investments or investment strategy for the assets. This will usually be where the trust has appointed a discretionary fund manager to manage their portfolio or a part thereof. The appointment of a discretionary fund manager will be evidenced by an agreement between the parties that provides for discretionary management.

Where the trustees of a trust invest in retail investments the arrangement will not amount to discretionary management where the trustees make the decision on what investments to make, even though advice may be taken on investing and third party brokers used to buy, hold or sell the investments.

Family Trust Managed by an Individual – If an individual, running an investment advice business managed the assets of a family trust, the trust would not be an Investment Entity as it is neither primarily conducting as a business one or more of the relevant activities or operations for or on behalf of a customer, and although its gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets, it is not an entity that is managed by a Financial Institution (because the Trust is being managed by an individual the Trust cannot be a Financial Institution). (Note: in practice, a trust holding assets on behalf of a family arrangement will typically appoint a company or partnership to manage its assets but some family trusts may instead appoint a suitably qualified individual).

Family Trust with a Corporate Trustee – The ABC family trust's gross income is primarily attributable to investing, reinvesting or trading in Financial Assets. The trust was set up on the advice of a law firm and that firm's own corporate trustee is the trustee of the trust. The corporate trustee acts for the law firm's clients without itself charging any fees to the clients. Even though the corporate trustee does not charge, it is a Financial Institution as its related entity (the law firm) is charging the clients for these services, it therefore primarily conducts as a business for or on behalf of a customer the prescribed activities. This in turn means that the ABC family trust is also an Investment Entity.

5 Exemptions and Exclusions

5.1 Permitted exceptions to the "look-through rule" in respect of Controlling Persons

1) Where a Pre-existing Entity Account, with an aggregate account balance or value that does not exceed USD $1,000,000 (after aggregation) the RFI may rely on information collected and maintained for regulatory or customer relationship purposes included AML/KYC procedures to determine whether a Controlling Person is a Reportable Person.
   Where the RFI does not have AND is not required to have any such information on file that indicates the Controlling Persons may be a Reportable Person it cannot document the residence of the Controlling Persons, and does not need to report that persons as a Controlling Persons

2) The CRS Implementation Handbook (para 107) acknowledges the FATF Recommendations which do not require determination of beneficial ownership where;

(a) an Entity is (or is a majority owned subsidiary of) a company that is listed on a stock exchange and is subject to market regulation and to disclosure requirements to ensure adequate transparency of beneficial ownership, nor

(b) Beneficial ownership of a controlling interest that is held by an Entity described in a) above.

In such cases, it is generally accepted that a RFI will not be able to determine the Controlling Persons for CRS purposes. See also section 5.2, below.

5.2 Guernsey Resident Reportable Jurisdiction Persons

Reporting Financial Institutions are only required to report Reportable Jurisdiction Persons (as set out in Schedule 2 of the Regulations). Therefore it does not include persons resident solely in Guernsey and where a Passive NFE has a Guernsey Resident RFI or Non-Reporting FI as a Controlling Peron, there is no need to report this information.

The Exception to the above, being the requirement for Depository Institutions to report to the Director of Income Tax details of all Depository Accounts held by Guernsey resident individuals, under the CRS regime in accordance with the provisions of the Interest Paid, Interest Received provisions contained in section 75KA of the Income Tax (Guernsey) Law, 1975, as amended. Separate guidance is in the process of being published in respect of this separate reporting requirement.

5.3 Non Reporting Financial Institutions

Non-reporting Financial Institutions are defined in Section VIII.B of the CRS and further elaborated on in pages 166 to 174 of the Commentary

An "Owner Documented Financial Institution" ("ODFI") is an IGA (FATCA) concept and is not a Non-reporting Financial Institution category in the CRS regime. However, a similar outcome can be obtained where the ODFI for FATCA purposes employs the Financial

Institution undertaking the ODFI's reporting obligations under FATCA as a third party service provider. This service provider can carry out the ODFI's reporting obligations under the CRS.

5.4 Excluded Account

These accounts are excluded because they have been identified as carrying a low risk of use for tax evasion, generally because of the regulatory regimes under which they function.

5.4.1 Specified Excluded Accounts

A list of excluded accounts under the CRS are defined in the Regulations (Section VIII: Defined Terms) and must meet the criteria of the following Financial Accounts;

- Broad Participation Retirement Fund,
- Narrow Participation Retirement Fund
- Pension Fund of a Government Entity
- International Organisation
- Central Bank

5.4.2 Other Excluded Accounts

An account that otherwise meets all the conditions of the following sections of "Excluded Account" under Section VIII;
(a) Certain Retirement and Pension accounts
(b) Certain Investment Vehicle accounts
(c) Certain Life Insurance Contracts
(d) Account held solely by an Estate
(e) Accounts established for court orders & judgements; accounts related to sale, exchange or lease of real or personal property, an FIs account to service a secured loan, an Account for an FI to facilitate payment of taxes at a late time
(f) Certain Depository Accounts
(g) Dormant Accounts [requires election] (see Section 6.3)

TO QUALIFY AS AN "EXCLUDED ACCOUNT" THE ACCOUNT MUST MEET ALL OF THE REQUIREMENTS IN THE DEFINITION.

Where an account, not otherwise specifically listed as an Excluded Account under the CRS has substantially similar criteria to named Excluded Accounts, it may be considered to be an Excluded Account under the CRS.

5.4.3 Exempt Guernsey Retirement Funds

Further to the Exclusions specified in section 5.4.2 above, where they meet the above criteria, the following Guernsey Retirement Funds will be considered "Excluded Accounts"

- Pensions approved Section 150 of the Income Tax (Guernsey) Law, 1975, as amended ("the Income Tax Law")
- Retirement Annuity Trust Schemes (RATS) approved under section 157A of the Income Tax Law and open to Guernsey residents only [See Section 5.2]
- An employer's sponsored RATS approved under section 157A of the Income Tax Law with no more than 5% of the assets held for any one member [Broad Participation Retirement Fund]

- An employer sponsored RATS approved under section 157A of the Income Tax Law with no more than 50 members and where contributions are limited relative to pay [Narrow Participation Retirement Fund]
- A RATS approved under section 157A of the Income Tax Law where annual contributions are limited to no more than $50,000 per annum, per member, or where lifetime contributions cannot exceed $1,000,000 is a Retirement and Pension Account under definition of Excluded Account (a)

For the avoidance of doubt, where a Retirement Fund is approved under Section 157A of the Income Tax Law, has contributions limited to $50,000 per annum but, for example allows withdrawal at an age of 50 (therefore prior to becoming 55 years of age) then it does NOT meet all the criteria and will not, under this category be considered an Exempt Account.

6 Due Diligence

Timetable: Key Dates for Due Diligence

New Accounts - Those opened after 31/12/2015

Pre-existing Individual High Value Accounts- Review by 31 December 2016

Pre-existing Individual Low Value Accounts*- Review by 31 December 2017**

Pre-existing Entity Account- Review by 31 December 2017**

*As all accounts (including pre-existing Entity Accounts which have a balance exceeding the $250,000 review threshold) are subject to due diligence, the benefit of the $1 million threshold for review under the IGAs (FATCA) is effectively lost as when a review under the CRS identifies US (or UK) Specified Persons for the US IGA, the accounts will be reportable once identified as such.

**and 31 December annually to check balance has not exceeded $250,000.

6.1 Effect of the Wider Approach

As a result of the 'Wider Approach' and the absence of de minimis thresholds for individuals applicable to CRS, the benefit of the $1,000,000 higher threshold at which IGA pre-existing individual accounts that have been subject to elections become reviewable is lost from 31 December 2015. That is because from that date pre-existing individual accounts need to be identified for CRS purposes. This means that all individual accounts in existence on that date will need to be reviewed. This includes accounts that have been subject to an election but that now have a balance over $50,000 but not exceeding $1,000,000 and that would not, absent the CRS, be reviewable for the IGA regimes.

Once a pre-existing individual account is identified, the account will become reportable irrespective of the previous $1,000,000 IGA review threshold.

6.2 Elections

Under CRS, there is only one optional threshold exemption available to RFIs, and it may be applied to pre-existing entity accounts where the balance or value does not exceed an amount equivalent to $250,000. If a financial institution chooses not to make an election to apply the threshold exemption it will need to review all pre-existing entity accounts in order to identify Reportable Accounts.

As with elections made under the IGAs, at this time, the Reporting Guernsey Financial Institution electing to apply the threshold should document this decision by making a written election, and retaining a copy of this. This is an internal document for the financial Institution and the Director does not require submission of the election.

The exact format of the written elections can be determined by the Reporting Guernsey Financial Institution, but must be retained.

Where an election has been made to apply the de minimis threshold to an account, the financial institution must review the account balance at 31 December each year to determine if the balance has exceeded the relevant threshold (subject to the review dates for each

regime). Where the threshold is exceeded for an account it becomes reviewable (that is, the due diligence procedures for pre-existing entity accounts must be applied). Where the account is identified as a Reportable Account, it is reportable from the year in which it was so identified.

6.3 Investment Entity with Regularly Traded Securities

As with the IGAs, under CRS the equity and debt interests in certain listed Investment Entities, i.e. Investment Companies are in scope in the CRS.

Where interests are held in uncertified form through CREST, the CREST members and sponsors will be Reporting Financial Institution's and will be carrying out due diligence and reporting for the CRS. In these circumstances, the issuing fund would not need to report in respect of its uncertified shareholders as that would otherwise lead to duplicated reporting.

Where new accounts arise as a result of interests acquired on the secondary market, a periodic check for new shareholders will be required.

Where new accounts arise as a result of interests acquired on the secondary market, a periodic check for new shareholders will be required. The frequency of such checks will depend on the systems and processes that are in place. An annual check may be considered adequate if performed at the year-end if the systems in place are sufficiently robust. However, for operational reasons the registrar may perform the checks at six monthly or more frequent intervals.

For new primary market issues the share application form can be amended to include the self- certification required on new account opening. Any incomplete applications would need to be returned to the applicant. In accordance with existing AML practise, incomplete applications could be accepted and the missing information be requested but if the missing information was not received the shares could be reallocated or sold to a third party and/or the register of members rectified, provided that the terms and conditions of the offer allowed this.

6.4 Distributors in the Chain of Legal Ownership

Distributors that hold legal title to assets on behalf of customers and are part of the legal chain of ownership of interests in Collective Investment Schemes are financial institutions. In most cases they will be Custodial Institutions because they will be holding assets on behalf of others.

Fund nominees, fund intermediaries and fund platforms will nevertheless still be Financial Institutions because they would otherwise be within the definition of Investment Entity. In this case the financial accounts will be those maintained by the distributor, and the distributor will be responsible for ensuring it meets its obligations in respect of those accounts.

Fund nominees, fund intermediaries and fund platforms should be treated as Custodial Institutions unless specific factors indicate that their businesses are better characterised as falling within the definition of an Investment Entity. Normally, the primary business of a fund nominee, fund intermediary or fund platform will be to hold Financial Assets for the account of others.

For the purpose of aggregating accounts to determine whether any pre-existing Custodial Accounts are High Value Accounts, a Custodial Institution will need to consider all the

financial accounts held with them by each customer even though the underlying interests are in different Collective Investment schemes.

6.5 Tax /identification Numbers (TINs)

TINs must be obtained and reported for all new accounts. For pre-existing accounts the TIN is reportable to the extent that it is already held in records maintained by the reporting financial institution or the reporting financial institution is otherwise obliged to collect it. Where the TIN is not held in respect of pre-existing accounts the reporting financial institution must use reasonable efforts to obtain it by the end of the second calendar year following the year in which the accounts are identified as Reportable Accounts. As Reportable Persons may be resident in more than one jurisdiction they may have two or more TINs that the financial institution must report.

It is understood that the form and layout of each jurisdictions-existing TINs, (including where the jurisdiction does not issue TINs), will be compiled into a central list which will be made available to all Reporting Financial Institutions via a web based portal maintained by the OECD, available at the following address;

http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/

6.6 Place of Birth

Subject to the approval of the proposed suspension of collecting data under EUSD for 2016, there will be no requirement for a Guernsey Financial Institution to report the Account Holders place of birth for the purpose of CRS Reporting. This section will be updated accordingly in due course.

6.7 Self-certification forms

Suggested self-certification forms will be available from 31 December 2015, from the OECD AEOI Portal, http://www.oecd.org/tax/automatic-exchange/. The forms cover self certification for Individuals, Entities and Controlling Persons.

These forms have been drafted by the Business and Industry Advisory Committee to the OECD (BIAC) to assist with CRS implementation. The forms have not been approved by the OECD and are not regarded as mandatory or best practise, however, Financial Institutions may consider them a useful reference when planning their self-certifications process.

6.8 Timing of Self-Certifications

It is expected that financial institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening, whether that process is done face-to-face, online or by telephone. There may be circumstances, however, where it is not possible or practical to obtain a self-certification on ‘day one’ of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market.

In such circumstances, it is expected that the self-certification should be obtained within a period of 90 days or such reasonable time as the circumstances dictate. Financial institutions must make proper endeavours to obtain the self-certification in these circumstances, including issuing follow up letters on at least an annual basis. If an Account Holder fails to respond then there is no need to close the account but it should be reported as undocumented. Enquiries may be made by the Director of Income Tax where particular financial institutions appear to have a disproportionate number of undocumented accounts.

7 Reporting Obligations

7.1 Reporting Dates

First reporting, for New Accounts, High Value Accounts and Lower Value Accounts where identified before 31 December 2016 will be by 30 June 2017.

All subsequent reporting period ending on 31 December each year are reportable to the Director by the 30 June the following year (with the exception of Depository Institutions, who will be required to report all Depository Accounts by 31 March in each following year – as this links to the domestic reporting requirements 'IRIP' relating to income arising on depository accounts). Where 30 June falls on a weekend, then the deadline for submitting reportable information to the Director is the next working day. Data must be sent to the Director by this date to enable it to be processed for exchange with relevant partner jurisdictions by 30 September.

The information to be reported is that required by the Regulations. The Commentary on Section I (p94 et seq. of the Purple Book) provides more detail on each of these fields.

The exception is that for Pre-existing Accounts, TIN(s) or dates of birth are not required to be reported if such TIN(s) or date of birth is not in the records of RFIs and is not otherwise required to be collect by the RFIs. A RFI must use reasonable efforts to obtain the TINs) and DoB with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts. Also the TIN is not required to be reported if a TIN is not issued by the jurisdiction of residence, see Section 6.6)

7.2 Reporting Currency

For an Account Report a single currency should be used. In the case of accounts of payments denominated in multiple currencies, the RFI may elect to report the account balance or value or payments in a currency in which the account payments are denominated. The currency must be identified in the report using the 3-figure currency code.

i.e., Dividends are paid to a custodial account in GBP, EUR and USD. The RFI choses to report in GBP and so to report the aggregate value of the payments made, the RFI should use the spot rate to obtain the equivalent values at 31 December of the relevant year for the GBP equivalents of the payments made in EUR and USD.

7.3 Requirement to notify Account Holders

Regulation 6 of the Regulations provides the requirement for reporting Financial Institutions to notify each Individual Reportable Person that information relating to them which is required to be reported under the Regulations will be reported to The Director of Income Tax and may be transferred to the government of another territory in accordance with the relevant agreement. The notification must be made 30 days prior to the report being made to the Director (for the first year that the account has been identified as being a reportable account), i.e. for CRS reportable Accounts, by 30 May 2015. This notification will satisfy the notification obligation for all future years.

The Notification may be made either in a direct communication to the Account Holder, such as a monthly or annual account statement, or by way of general communications such as updates to terms and conditions, and in either case may be made electronically or by paper communication. It may also be included in the self-certification or account opening documentation

7.4 Information Gateway Online Reporter ('IGOR')

7.4.1 Schema

Financial Institutions will be required to submit their CRS report using the approved CRS XML Schema via bespoke software known as IGOR. The CRS XML Schema format will be mandatory and returns in any other format will not be accepted by IGOR for the purposes of the CRS.

The CRS Schema (CRS XML Schema v. 1.0) is largely similar to the schema used for reporting under the US IGA (FATCA XML schema v1.1). Further amendments may be made to the CRS Schema by the OECD ahead of the first reporting date. FIs will be notified in due course if this is the case.

Each Reporting Financial Institution will need only to submit a single report to the Director in the format of the CRS schema. After submission to IGOR, the information will be sorted by jurisdiction of tax residence. The precise behaviour of the sorting will be defined in due course. The information applicable to a Reportable Person will then be sent to the relevant Competent Authority. See page 236 in the CRS commentary for more information.

Where there is dual residence or other issues attached to multiple reporting, then the information, including all residence country codes that have been identified as applicable to the Reportable Person may be sent to the Competent Authority of each relevant jurisdiction of residence for resolution.

7.4.2 Nil Returns

Reporting Guernsey Financial Institutions with no CRS Reportable Accounts will be required to make a nil return to the Director on an annual basis but ONLY where it has registered for CRS reporting under IGOR. In practise, this will be a simple 'tick box' exercise using IGOR.

7.4.3 Amending or Corrections Submitted Reports

Where an error is identified by the (or on its behalf of the) Reporting Financial Institution, the Organisation may either;

1) Retract the existing report and resubmit; or
2) Submit a new corrected report.

The options available will depend upon when the error is identified, as detailed below.

A RFI may also delete an AccountReport in IGOR and submit a replacement via XML upload i.e. where an account has been reported incorrectly a new corrective report could be made to remove the unwanted AccountReport for each incorrect ReportingFIs. The code 'OECD3' may be used for voiding data. More information on how corrections are processed for FATCA reporting is available under "Doc Spec elements" here; https://igor.gov.gg/about/schemaguide , and will be updated for CRS in due course.

After the 1 July following a 30 June deadline, reports will be 'locked-down' and not available to amend/correct. However, an Organization may amend an already submitted return using the "Replace Return" function. This allows a locked-down return to be retracted provided that a complete replacement is supplied at the same time. The replacement return must contain the same ReportingFIs as the original return.

7.5 Companies in Liquidation

Strictly in cases where the Financial Institution has ceased maintaining accounts prior to the end of the Reportable Period, and where required for administration reasons to fulfil its reporting obligations in order to complete the winding up process, IGOR will now accept 'early' reports (before the end of the Reportable Period). The 'early' reporting will open on, or shortly after 1 July 2017, following the deadline for submission of the prior year's reports.

RFIs should only submit an 'early' report in the above circumstances and where they are sure that accounts are no longer maintained and there will be no further reporting for the Relevant Reportable Period, or subsequent years

7.6 Other Resources and Queries

Technical queries relating to IGOR reporting, including use of the Schemas can be made via the IGOR forum:

https://igorforum.digimap.gg/

An updated IGOR XML Reporting guide will be made available at:

https://igor.gov.gg/About/SchemaGuide

Further information relating to IGOR, together with any updates, will be published on the Intergovernmental Agreements sections of the States of Guernsey website, www.gov.gg

If a registration has already been made with IGOR, updates will also be conveyed utilising the messaging system of IGOR.