



**GRA**

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

## Table of Contents

Overview .....	5
General .....	5
Relevant Documents.....	5
Domestic Law.....	6
Purpose of these Guidance Notes .....	7
The Competent Authority.....	7
Reporting to the Tax Information Authority.....	7
Key Dates under the CRS .....	8
Operation of the CRS .....	9
Steps to be followed by Financial Institutions.....	9
Timeline for Reporting.....	10
Financial institutions with reporting obligations in Ghana.....	11
Is the entity a financial institution? .....	11
Depository institution .....	11
Custodial institution.....	12
Investment Entity.....	13
Specified Insurance Company.....	15
Is the financial institution a Ghanaian Financial Institution? .....	16
Is the Ghanaian financial institution a reporting financial institution? .....	17
Related Entities .....	17
Non-Financial Entity (NFE) .....	18
Active NFE .....	18
Passive Income.....	19
Passive NFE .....	20
Determination of CRS Status of Entities .....	20
Financial Accounts .....	20
Depository Account.....	21
Custodial account.....	22
Equity and debt interests.....	22
Cash value insurance contract .....	22
Annuity Contracts .....	23
Excluded accounts.....	24

Retirement & Pension Accounts .....	24
Estate Accounts.....	24
Escrow Accounts .....	25
Low Value Dormant Accounts.....	26
Reportable accounts .....	26
Reportable Persons.....	27
Participating Jurisdictions.....	27
Reportable Jurisdictions .....	27
Due diligence Procedures .....	28
Service providers .....	29
Record keeping .....	30
Date for determining balance or value.....	31
Date for determining the balance or value for thresholds.....	31
Preexisting individual accounts .....	32
Lower Value Accounts.....	34
Residence Address Test .....	34
Dormant Account.....	35
Residence Address Based on Documentary Evidence .....	36
Electronic Record Search .....	36
Curing Indicia .....	38
High Value Accounts .....	39
Electronic Record Search .....	39
Paper Record Search .....	39
Paper Record Search: Relationship Manager Inquiry .....	40
Change in Circumstance.....	41
Lower Value Account becomes High Value .....	42
Effect of Finding Indicia.....	43
Due Diligence: New Individual Accounts .....	43
Self-certification.....	44
Validity of self-certification.....	47
Standards of knowledge applicable to self-certifications and Documentary Evidence.....	48
Due Diligence: Preexisting Entity Accounts .....	50
Threshold exemptions applying to Pre-existing Entity Accounts .....	51
Reportable Accounts.....	52

Review procedure for Account Holders.....	52
Available Information .....	53
Self-certification.....	54
Self-certification as a Financial Institution.....	54
Self-certification as a Non- Financial Entity .....	55
Review procedure for controlling persons .....	55
Is the Account Holder a passive NFE?.....	55
Identifying Controlling Persons.....	55
Are any of the Controlling Persons a Reportable Person?.....	55
Due Diligence: New Entity Accounts .....	56
Determining whether the entity is a reportable person.....	57
Self-certification.....	57
Timing of self-certification .....	58
Information in the financial institution’s possession or that is publicly available.....	58
Determining whether the entity is a Reportable Person: Jurisdiction of Residence .....	59
Identification of an Entity as a Passive Non-Financial Entity .....	60
Is the Account Holder a passive NFE?.....	60
Identifying Controlling Persons.....	60
Determining whether a Controlling Person is a Reportable Person.....	60
Change in Circumstances .....	61
Guidance on Technical Issues .....	62
Currency Translation.....	64
Controlling Persons of a Trust .....	64
Confidentiality .....	65

## Overview

### General

Advancements in technology and ease of travel have resulted in the globalisation of financial markets and a growth of cross-border trade, business and capital movements. Presently, it is relatively easy for individuals and entities to hold investments outside their home jurisdiction. Whilst the majority of them are tax compliant, some may avail themselves of the opportunities inherent in globalisation with a view to evade taxes in their home jurisdiction, necessitating an increase in international tax transparency, cooperation and mutual assistance.

A key aspect of that co-operation between tax administrations is exchange of information.

In April, 2013 the G5 consisting of the UK, France, Germany, Italy and Spain 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. In February 2014, the OECD delivered the Common Reporting Standard (the “CRS”), which was subsequently approved by the G20 as the global standard for AEOI.

Over 100 jurisdictions<sup>1</sup> have now formally committed to implementing the CRS. Most of these jurisdictions have specified the date on which they will commence to exchange information under the standard. The list of these jurisdictions can be found using the following link:

<https://www.oecd.org/tax/transparency/AEOI-commitments.pdf>

The CRS is the global standard for the automatic exchange of financial account information for tax purposes. It builds on the intergovernmental approach adopted by many jurisdictions for the implementation of the United States Foreign Account Tax Compliance Act (FATCA) and it is designed to maximise efficiency and minimise costs to tax administrations and Financial Institutions.

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

### Relevant Documents

The Standard for Automatic Exchange of Financial Information in Tax Matters (commonly referred to as “the purple book”) was published by the OECD in 2014 and updated in 2017. The standard consists of the following core elements:

- Part I gives an overview of the Standard

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<sup>1</sup> As at October 2018

- Part II contains the text of the Model Competent Authority Agreement and the Common Reporting Standard (CRS). There are three Model Competent Authority Agreements. These are as follows:
  - (1) a multilateral instrument, referred to as the Multilateral Competent Authority Agreement (“MCAA”), which enables a number of jurisdictions to jointly agree to exchange information automatically;
  - (2) a bilateral reciprocal agreement for use between two single jurisdictions; and
  - (3) a bilateral nonreciprocal 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”)).
- Part III contains the Commentaries on the Model CAA and the CRS as well as a number of Annexes. The Commentaries are binding and form integral part of the CRS and illustrates or interpret the provisions.

The OECD has developed a comprehensive [Automatic Exchange Portal](#) that is the principal source for CRS materials and resources. In particular, Financial Institutions may consult the following resources, which have been issued by the OECD as aids to applying the CRS:

- [CRS Implementation Handbook](#)
- [CRS-related FAQs](#)

The legal basis for jurisdictions to exchange information under the CRS is contained in Multilateral or Bilateral Competent Authority Agreements (CAA). The most common instrument is the [Multilateral Competent Authority Agreement](#) , to which Ghana is a signatory. The MCAA contains the rules on the modalities of the exchange between Ghana’s Competent Authority and the Competent Authorities of partner jurisdictions. It also contains representations on confidentiality, data safeguards and the existence of the necessary infrastructure for an effective exchange relationship.

## Domestic Law

The CRS is implemented in Ghana through the *Standard for Automatic Exchange of Financial Account Information Act, 2018 (Act 967)* (herein referred to as the “Act”) which was passed on 4<sup>th</sup> May, 2018. The text of the CRS together with the Commentary have been incorporated into the Ghana’s domestic law as a Schedule.

A copy of the law can be found [www.gra.gov.gh](http://www.gra.gov.gh)

## **Purpose of these Guidance Notes**

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

Financial Institutions are encouraged to seek independent professional advice if they are unsure of their obligations under the CRS or any other AEOI agreement. These guidance notes must be read as supplementary to the core guidance provided in the OECD publication. These Guidance Notes are also a notice to all stakeholders that fall within the scope of the CRS to comply with the requirements laid down under the Act.

## **The Competent Authority**

Ghana's Competent Authority is the Ghana Revenue Authority (GRA). To ensure the effectiveness of the implementation of the CRS, a dedicated unit has been created at the GRA Head Office.

Financial Institutions will report the information required under the CRS to the GRA via .... The Competent Authority will then exchange information with partner jurisdictions that have satisfied the requisite confidentiality and data safeguards standards, and have the appropriate legal instruments and legislative frameworks in place. For any further information on the CRS, the GRA may be contacted at the following address: [eio.international@gra.gov.gh](mailto:eio.international@gra.gov.gh).

## **Reporting to the Tax Information Authority**

Section 4(1) of the Act requires a Reporting Financial Institution to submit annually to the GRA a report pursuant to its obligations under the CRS. This must be done in respect of the first reporting year and each subsequent calendar year. Section 4(2) requires the return to be made on or before the 30<sup>th</sup> June of the year following the calendar year to which the return relates.

This means that the first reporting must be made on or before 30<sup>th</sup> June, 2019. This reporting must be done **ANNUALLY**.

The Ghanaian reporting schema for the 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 the CRS reporting process.

The GRA will issue further updates in due course on the logistics for reporting under the CRS.

### **Key Dates under the CRS**

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

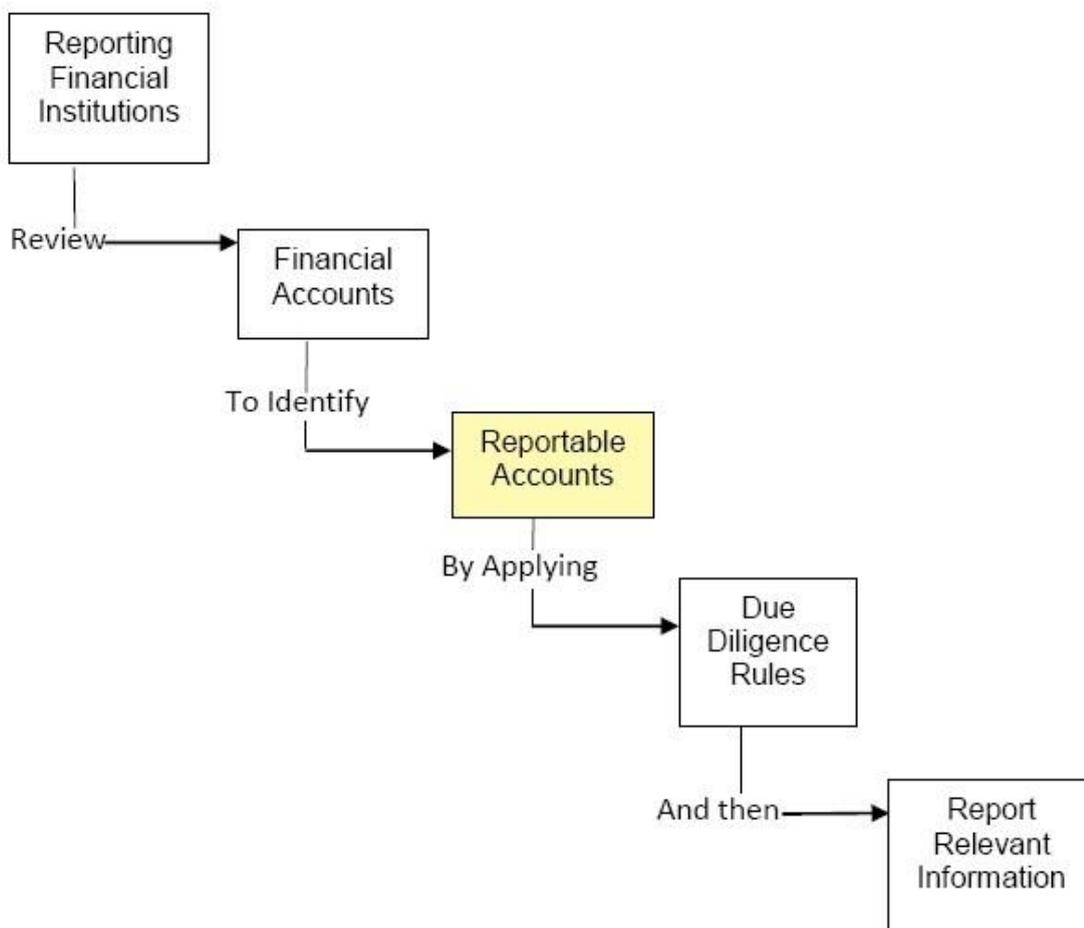
- Pre-existing Accounts to be subjected to due diligence procedures are those in existence as at 31 December 2017
- New Accounts requiring self-certification by the customer are those opened on or after 1 January 2018
- The review of Pre-existing High Value Individual Accounts at 31 December 2017 must be completed by 31 December 2018
- The first CRS reporting period ends on 31 December 2018
- Financial Institutions must complete their reporting to the GRA by 30<sup>th</sup> June 2019 for the 2018 reporting year for CRS
- First exchanges of information by the GRA to partner jurisdictions will occur on or before 30 September 2019
- The review of Pre-existing Lower Value Individual Accounts at 31 December 2017 must be completed by 31 December 2019

## Operation of the CRS

Under the CRS, the GRA will receive from the relevant Ghanaian Financial Institutions (FIs), the information required to be disclosed and will transmit that information to the relevant tax authorities. The GRA acts as the intermediary between the FI and the Revenue Authority of the Participating Jurisdictions.

## Steps to be followed by Financial Institutions

The following figure depicts the different steps for reporting of information by FIs under the CRS to their relevant tax authorities:



## Timeline for Reporting

Reporting Year	In respect of	Information to be reported	Reporting date to the GRA
2018	Each Reportable Person either <ul style="list-style-type: none"> <li>• holding a Reportable Account, or</li> <li>• as a 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.</li> </ul>	30 June 2019
	<input type="checkbox"/> Custodial Accounts	<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 property paid or credited to the account.</li> </ul>	
	<input type="checkbox"/> Depository Accounts	The total amount of gross interest paid or credited to the account in the calendar year.	

	<input type="checkbox"/> Other Accounts	The total gross amount paid or credited to the account including the aggregate amount of redemption payments made to the Account Holder during the calendar year.	30 June 2019
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### Financial institutions with reporting obligations in Ghana

The reporting obligation in the Act and by reference the CRS, applies only to a person or legal arrangement, such as a company, a trust, or a partnership (hereinafter referred to as "entity" or "entities").

It is a three-step process to determine whether an entity has a potential reporting obligation in Ghana under the CRS. You must first determine whether the entity is a financial institution for the purposes of the CRS. If an entity is a financial institution, you must then determine whether it is a Ghanaian financial institution. If that is the case, you must finally determine whether it is a reporting financial institution.

### Is the entity a financial institution?

Under the CRS, an entity is a financial institution if it is:

- a depository institution;
- a custodial institution;
- an investment entity; or
- a specified insurance company.

An entity can be more than one type of financial institution.

### Depository institution

A depository institution is an entity that accepts deposits in the ordinary course of banking or similar business.

## Custodial institution

A custodial institution is an entity that holds, as a **substantial portion** of its business, financial assets for the account of others. A substantial portion means the entity's gross income attributable to the holding of Financial Assets on behalf of others and related financial services equals or exceeds 20% of the entity's gross income during the shorter of

- a) its last three fiscal periods that ends on 31 December prior to the year in which the determination is being made, or
- b) the period since the entity has been in existence.

Entities that maintain financial assets for the account of others, such as investment dealers, custodian banks, brokerages, trust companies and central securities depositories, would generally be considered custodial institutions. Entities that do not hold financial assets for the account of others, such as insurance brokers, will not be custodial institutions.

**"Related financial services"** are any ancillary services that are directly related to the holding of assets by an institution on behalf of others, such as fees for custody, account maintenance or providing financial advice. Income from such services can include:

- custody, account maintenance, and transfer fees;
- commissions and fees earned from executing and pricing securities transactions with respect to financial assets held in custody;
- income earned from extending credit to customers with respect to financial assets held in custody (or acquired through such extension of credit);
- income earned on the bid-ask spread of financial assets held in custody;
- fees for providing financial advice with respect to financial assets held in (or potentially to be held in) custody by the entity; and
- fees for clearance and settlement services.

Where an entity has no operating history at the time its status as a custodial institution is being assessed, it will be regarded as a custodial institution if it expects to meet the gross income threshold based on its business plans (such as the anticipated deployment of its assets and the functions of its employees). Consideration must be given to any purpose or function for which the entity is licensed or regulated (including those of any predecessor).

There can be circumstances where an entity holds financial assets for a customer where the income attributable to holding the financial assets or providing related financial services belongs to (or is otherwise paid to) a related entity. For example, the entity could hold assets for a customer of a related entity, or consideration is paid to a related entity, either as an

identifiable payment or as one element of a consolidated payment. In such a case, the income should be taken into account when applying the 20% test.

## Investment Entity

The term “Investment Entity” includes two types of entities:

- a) entities that primarily conduct as a business, investment activities or operations on behalf of other persons, and
- b) entities that are managed by those Entities or other FIs.

An Investment Entity conducting business on behalf of customers is any entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

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

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

An entity will be regarded as primarily conducting the above mentioned activities as a business if its gross income from conducting those activities is at least 50% of its total gross income during the shorter of:

- The three-year period ending on 31 December in the year preceding that in which its status as an investment entity is to be determined; or
- The period in which the entity has been in existence.

A Managed Investment Entity is any entity, the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the entity is managed by a financial institution **and** meets the Financial Asset test as described below.

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 above on behalf of the managed entity.

However, an entity does not manage another entity if it does not have discretionary authority to manage the entity’s assets (in whole or part).

Where an entity is managed by a mix of Financial Institutions, Non-Financial Entities (NFEs) or individuals, the entity is considered to be managed by another entity if one of the entities so involved in the management of the entity is an FI as defined by the CRS.

An entity meets the Financial Assets test if its gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets. This test is similar to the one described above and requires that at least 50% of its income is attributable to investing, reinvesting, or trading in Financial Assets in the shorter of:

- the three-year period ending on 31 December of the year preceding the year in which the determination is made; or
- the period during which the entity has been in existence.

An entity would generally be considered as an Investment Entity if it functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buy-out fund or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in Financial Assets.

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

An entity could fit the description of being both an “Investment Entity conducting business on behalf of customers” and a “Managed Investment Entity”. The distinction may be significant for CRS purposes in the case of an Investment Entity that is not a Participating Jurisdiction Financial Institution. If it is solely a “Managed Investment Entity”, it must be treated as a Passive NFE.

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).

The term “Investment Entity” shall be interpreted in a manner consistent with similar language set forth in the definition of “Financial Institution” in the Financial Action Task Force (FATF) Recommendations.

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 and/or VAT returns
- Provision of bookkeeping services including budgeting and cash-flow forecasts.

Please refer to the Commentary on Section VIII for information and examples on Investment Entities.

### **Specified Insurance Company**

A Specified Insurance Company is any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

An “insurance company” is an Entity:

- I. that is regulated as an insurance business under the laws of Ghana;
- II. the gross income of which (for example, gross premiums and gross investment income) arising from insurance, reinsurance, and Annuity Contracts for the immediately preceding calendar year exceeds 50% of total gross income for such year; or
- III. the aggregate value of the assets of which associated with insurance, reinsurance, and Annuity Contracts at any time during the immediately preceding calendar year exceeds 50% of total assets at any time during such year.

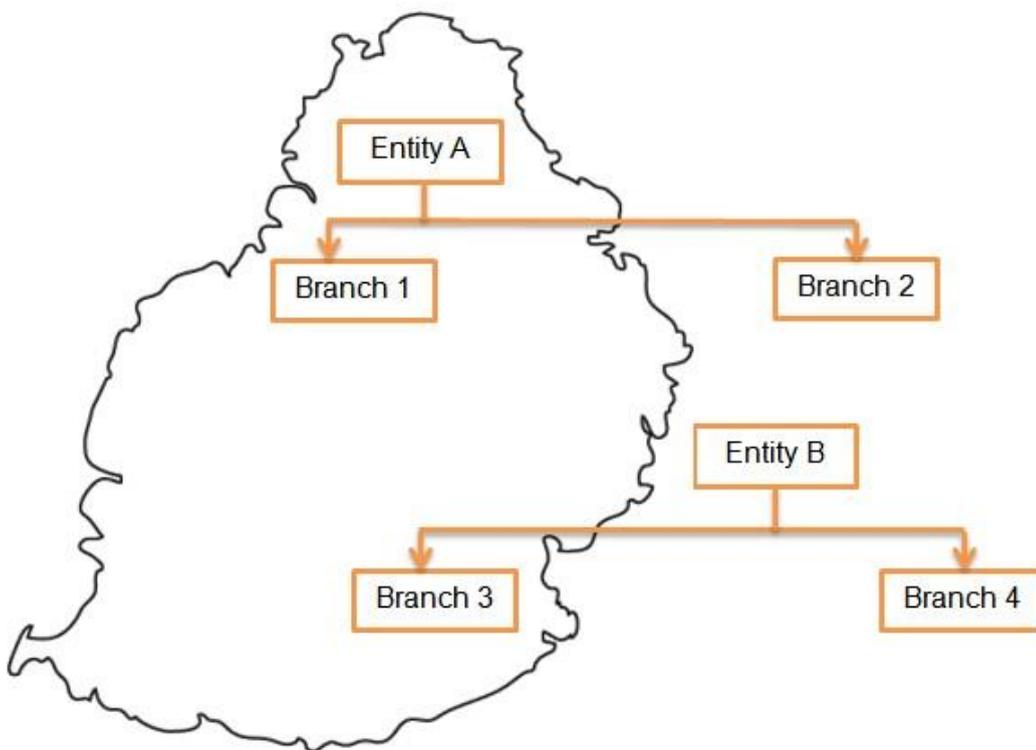
Most life insurance companies would generally be considered Specified Insurance Companies. Entities that do not issue Cash Value Insurance Contracts or Annuity Contracts nor are obligated to make payments with respect to them, such as most non-life insurance companies, most holding companies of insurance companies, and insurance brokers, will not be Specified Insurance Companies.

The reserving activities of an insurance company will not cause the company to be a Custodial Institution, a Depository Institution, or an Investment Entity.

### Is the financial institution a Ghanaian Financial Institution?

A Ghanaian Financial Institution is:

- a) any FI that is resident in Ghana, but excludes any branch of that FI that is located outside Ghana, and
- b) any branch of an FI that is not resident in Ghana, if that branch is located in Ghana, as illustrated below:



A financial institution that resides in Ghana for tax purposes is considered resident in Ghana for the purposes of the CRS.

The definition of residence varies depending on the type of entity. Residence is defined in Section 101(2), (3) and (4) of the Income Tax Act, 2015 as follows:

*“(2) For purposes of this Act, a **partnership** is resident in the country for a year of assessment if any of the partners resided in the country at any time during that year.*

*(3) A **trust** is resident in the country for a year of assessment if*

- a) that trust is established in the country;*

- b) *a trustee of the trust is resident in the country at any time during that year; or*
- c) *a person resident in the country directs or may direct senior managerial decisions of the trust at any time during the year, whether the directive is given*
  - I. *alone or jointly with other persons; or*
  - II. *directly or through one or more interposed entities.*

**(4) A company** is resident in the country for a year of assessment if

- a) *that company is incorporated under the Companies Act, 1963 (Act 179); or*
- b) *the management and control of the affairs of that company are exercised in the country at any time during that year.”*

Where an entity is resident in two or more Participating Jurisdictions, it is required to report the Financial Account it maintains to the tax authorities in each of the Jurisdictions in which it maintains them. Thus if an FI is resident in Ghana as well as in any other jurisdiction, it will still have to apply the CRS in respect of any Reportable Account maintained in Ghana.

### **Is the Ghanaian financial institution a reporting financial institution?**

A Ghanaian financial institution can be classified either as a Reporting Financial Institution or a Non- Reporting Financial Institution. Any Ghanaian financial institution that is **not a non-reporting financial institution** is a reporting financial institution under the Act and the CRS. **The list of non-reporting financial institutions** that do not have reporting obligations in Ghana shall be published in accordance with section 16 of the Act.

### **Related Entities**

An entity is a “Related Entity” of another entity if:

- a) either an entity controls the other entity;
- b) the two entities are under common control; or
- c) the two entities are Investment Entities described in Section VIII A (6) of the CRS, are under common management, and such management fulfils the due diligence obligations of such Investment Entities.

For this purpose, control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

## Non-Financial Entity (NFE)

The term “NFE” means any entity that is not an FI. There are two categories of NFEs:

- Active NFE
- Passive NFE

### Active NFE

The term “Active NFE” means any NFE that meets any of the following criteria:

- a) less than 50% of the NFE’s gross income for the preceding calendar year is passive income and less than 50% of the assets held by the NFE during the preceding calendar year are assets that produce or are held for the production of passive income;
- b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an entity the stock of which is regularly traded on an established securities market;
- c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an entity wholly owned by one or more of the foregoing;
- d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of an FI, except that an entity does not qualify for this status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of an FI, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- f) the NFE was not an FI in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of an FI;
- g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not FIs, and does not provide financing or hedging services to any entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of an FI; or

h) the NFE meets all of the following requirements:

- (i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
- (ii) it is exempt from income tax in its jurisdiction of residence;
- (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets; the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
- (iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof.

## Passive Income

Passive income would generally be considered to include the portion of gross income that consists of:

- a) dividends;
- b) interest;
- c) income equivalent to interest;
- d) rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE;
- e) annuities;
- f) the excess of gains over losses from the sale or exchange of Financial Assets that gives rise to the passive income described previously;

- g) the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets;
- h) the excess of foreign currency gains over foreign currency losses;
- i) net income from swaps; or
- j) amounts received under Cash Value Insurance Contracts.

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

## **Passive NFE**

The term "Passive NFE" means any:

- a) NFE that is not an Active NFE; or
- b) an Investment Entity described in Section VIII A (6) of the CRS, that is not a Participating Jurisdiction Financial Institution.

## **Determination of CRS Status of Entities**

The CRS commentaries provide that an Entity's status as a financial institution or non-financial entity 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. Therefore, when determining an entity's status as an active or passive NFE, the rules of the jurisdiction in which the account is maintained determine the entity's status.

## **Financial Accounts**

A Financial Account is defined as an account maintained by a Financial Institution. Reporting FIs are required to review the Financial Accounts they maintain to identify whether any of them need to be reported to the GRA. Determining whether a financial account is a depository account, a custodial account or another type of account will assist in understanding whether it is maintained by a financial institution and will allow the financial institution to distinguish account types for reporting purposes.

The term “Financial Account” includes the following categories of Financial Accounts:

<b>Categories of Financial Accounts</b>	<b>Financial Institution that is generally considered to maintain them</b>
Depository Accounts	The FI that is obligated to make payments with respect to the account (excluding an agent of the FI).
Custodial Accounts	The FI that holds custody over the assets in the account.
Equity and Debt Interest in an Investment Entity	The issuer of the equity or debt interest maintained by the investment entity.
Cash Value Insurance Contracts	The FI that issues or, if different, is obligated to make payments with respect to the contract.
Annuity Contracts	The FI that issues or, if different, is obligated to make payments with respect to the contract.

The list of accounts in the definition of financial account is illustrative rather than exhaustive.

A financial account does not include an account that is an excluded account.

### **Depository Account**

A Depository Account includes any commercial, current, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by an FI in the ordinary course of a banking or similar business.

A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon. An account that is evidenced by a passbook would generally be considered a Depository Account. However, negotiable debt instruments that are traded on a regulated market or over-the-counter market and distributed and held through FIs would not generally be

considered Depository Accounts, but Financial Assets. A Depository Account does not have to be an interest bearing account.

### **Custodial account**

A custodial account is an account (other than an insurance contract or an annuity contract) that holds one or more financial assets for the benefit of another person.

Cash value insurance contracts and annuity contracts are not considered to be custodial accounts. However, such contracts could be assets that are held in a custodial account. When they are assets in a custodial account, the insurer will need to provide the custodian with the cash value/surrender value of the contracts for any reporting required under the Act.

A custodial account does not exist just because a financial institution holds shares in a corporation in connection with the administration of the corporation's (or related corporation's) employee stock purchase plan.

### **Equity and debt interests**

Equity and debt interests are Financial Accounts if they are interests in an Investment Entity. Where an entity is an Investment Entity solely because it acts on behalf of a customer by investing, managing or administering Financial Assets in the name of the customer, the debt and equity interest in the Investment Entity are not Financial Assets provided it renders only investment advice to, or manages portfolios for, the customer.

An equity interest may vary depending on the nature of the Investment Entity. In the case of an Investment Entity that is a partnership, an equity interest is either a capital or profits interest in the partnership.

In the case of a trust, an equity interest is any interest held by a person who is treated as a settlor, protector or beneficiary of all or any part of the trust, or any other natural person exercising ultimate effective control over the trust.

### **Cash value insurance contract**

An insurance contract is a contract, other than an annuity contract, under which the issuer agrees to make payments upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk. A cash value insurance contract is an insurance contract (other than an indemnity reinsurance contract between two insurance companies) that has a cash value.

The cash value of a cash value insurance contract means the greater of the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan) and the amount the policyholder can borrow under or with regard to the contract. However, it does not include an amount payable under an insurance contract:

- a. solely by reason of the death of an individual insured under a life insurance contract;
- b. as a personal injury or sickness benefit, or other benefit, providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- c. as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an insurance contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
- d. as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in paragraph b); or
- e. as a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

For greater certainty regarding the application of paragraph c), an insurance contract that provides critical illness insurance, disability insurance, long term care insurance or other health related accident or sickness benefits, and which would not otherwise be a cash value insurance contract, is not considered to have a "cash value" merely because it includes a return of premium benefit under which all or part of the premiums paid by the policy owner may be refunded, provided that the amount refunded does not exceed the total cumulative premiums paid under the policy.

## **Annuity Contracts**

An Annuity Contract is a contract under which the issuer agrees to make payments for a period, determined in whole or in part by reference to the life expectancy of one or more

individuals. The following are not considered to be reportable Annuity Contracts for CRS purposes:

- Pension annuities – these are excluded products; and
- Periodic payment orders.

Reinsurance of Annuity Contracts between insurance companies are not annuities.

### **Excluded accounts**

The definition of financial account does not include any account, product, or arrangement that falls within the definition of excluded account in section 19 of the Act.

### **Retirement & Pension Accounts**

A retirement or pension account can be an Excluded Account, provided that it satisfies all the requirements listed in Section VIII subparagraph C(17)(a) of the CRS.

Those requirements must be satisfied under the laws of the jurisdiction where the account is maintained. In summary, it is required that:

- a) the account is subject to regulation;
- b) the account is tax-favoured;
- c) information reporting is required to the tax authorities with respect to the account;
- d) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and either:
  - i. annual contributions are limited to USD 50 000 or less, or
  - ii. there is a maximum lifetime contribution limit to the account of USD1,000000 or less, excluding rollovers.

### **Estate Accounts**

An account that is held solely by the estate of a deceased person will not be a Financial Account where the FI that maintains the account is in possession of a formal notification of the Account Holder's death. The formal notification would include a copy of the deceased's death certificate or a copy of the deceased's will. The account must be treated as having the same status as prior to the Account Holder's death until such documentation has been provided.

Once the documentation has been provided, the account is not reportable in the year of the Account Holder's death or any subsequent year.

## Escrow Accounts

An escrow account is an account held by a third party on behalf of the beneficial owner of the money in the account. Such accounts are Excluded Accounts where they are established in connection with any of the following:

- a) a court order, judgement or other legal matter on which the third party is acting on behalf of the underlying beneficial owner, for example, an account held by an individual or an entity appointed by a Court to look after the affairs of a vulnerable person.
- b) a sale, exchange, or lease of real or personal property where it also meets the following conditions:
  - I. The account holds only the monies appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a Financial Asset that is deposited in the account in connection with the transaction.
  - II. The account is established and used solely to secure the obligation of the parties to the transaction.
  - III. The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the parties when the transaction is completed.
  - IV. The account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and
  - V. The account is not associated with a credit card account.
- c) An obligation of an FI servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
- d) An obligation of an FI solely to facilitate the payment of taxes at a later time.

Accounts provided by a non-financial intermediary acting in that capacity (such as non-legal escrow type accounts) that meet the conditions above will also be Excluded Accounts.

Periodic payment orders in connection with an escrow account are not considered to be reportable Annuity Contracts.

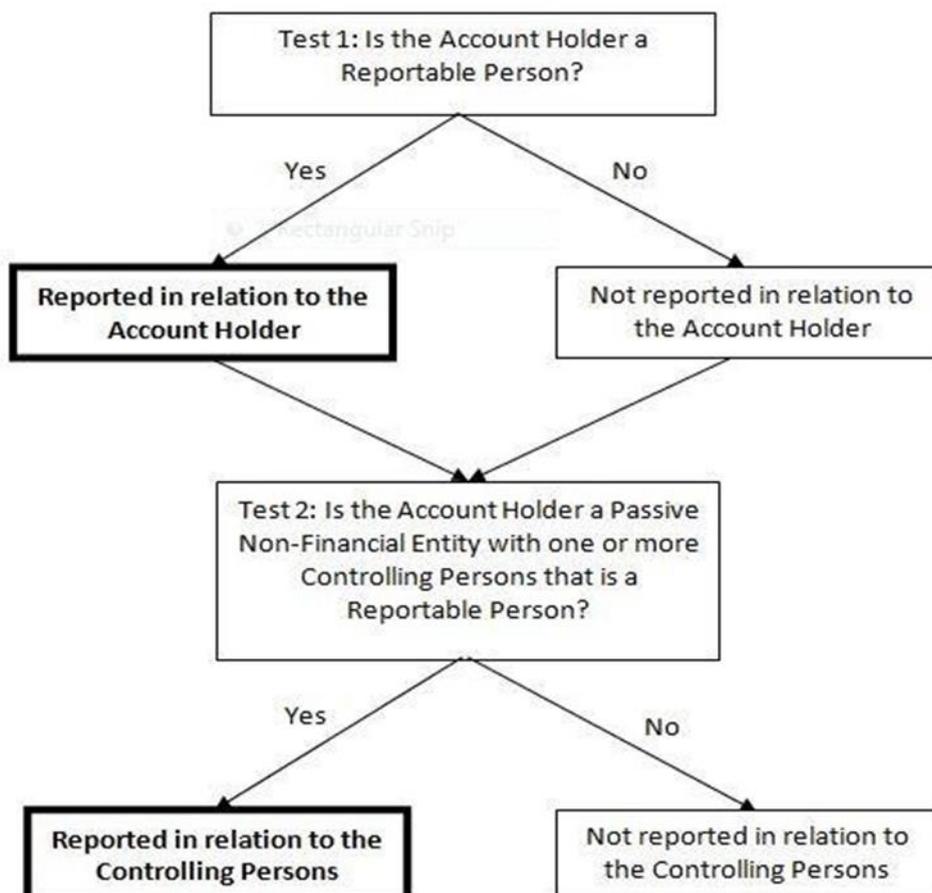
## Low Value Dormant Accounts

Excluded Accounts also include dormant accounts with less than an amount equivalent to USD1,000. They do not need to be subjected to any due diligence procedures until they are reactivated.

Dormant Accounts are those where there has been no activity on the account for three years and no contact from the customer for six years.

## Reportable accounts

A financial account is a reportable account if it is identified as being held by one or more reportable persons or by a passive NFE with one or more controlling persons who are reportable persons. To establish whether an account is a Reportable Account, two tests are required, as set out below:



## Reportable Persons

A reportable person means an individual or an entity resident in a reportable jurisdiction other than:

- a corporation the stock of which is regularly traded on one or more established securities markets;
- any corporation that is a related entity of a corporation described above;
- a governmental entity;
- an international organization;
- a central bank; or
- a financial institution.

In the case of a transparent entity that has no residence for tax purposes such as a partnership, the entity is to be treated as a resident in the jurisdiction in which it has its place of effective management. In the case of an estate, the deceased individual is to be treated as a resident in the jurisdiction immediately before death.

## Participating Jurisdictions

“Participating Jurisdiction” is defined in the CRS. For the purposes of identifying Participating Jurisdictions, the OECD has provided guidance in the CRS Handbook. In line with the approach proposed by the Handbook at paragraphs 31-36, Ghana will specify all committed jurisdictions as Participating Jurisdictions.

Ghana will publish a list of Participating Jurisdictions by Gazette Notice in accordance with section 15 of the Act. In the event of changes to jurisdictions committed to implementation of the CRS, the list of Participating Jurisdictions will be amended accordingly by the GRA. The Authority will update the CRS Participating Jurisdiction List via a publication in the Gazette from time to time.

## Reportable Jurisdictions

Ghana applies the wider approach, which requires Financial Institutions to retain data on the jurisdiction of residence of Account Holders as long as the person is identified as having a jurisdiction of residence other than Ghana. This essentially means that Financial Institutions

when performing the due diligence obligations under the CRS will define a Reportable Jurisdiction as **any jurisdiction apart from Ghana**.

However when submitting the report to the GRA, Financial Institutions would only submit information on persons identified as having a jurisdiction of residence which is part of the list published in accordance with Section 15(1b) of the Act. Where a Reportable Person is identified as having more than one Reportable Jurisdiction of residence, the Financial Institution is required to report all of the identified Reportable Jurisdictions to the GRA.

The jurisdictions of residence identified because of carrying out the due diligence procedures are without prejudice to any residence determination made by the Financial Institutions for any other tax purpose.

Following the completion of formalities by jurisdictions which are party to the MCAA, or a bilateral CAA, and upon the satisfaction of confidentiality and legal requirements stipulated in the CRS and the relevant Competent Authority Agreements, a list of Reportable Jurisdictions will be issued by the GRA prior to exchanges taking place.

Financial Institutions are required to adopt the wider approach to review their procedures for existing and new clients once and for all. The rationale behind this approach is to reduce customer contact and implementation costs for Financial Institutions.

The wider approach is intended to enable Financial Institutions to capture and maintain information on the tax residence of Account Holders irrespective of whether or not that Account Holder is a Reportable Person for any given reportable period.

This would spare the Financial Institutions from carrying out additional review and on-boarding changes each time a new country is added to the list of Reportable Countries. The latter will only have to review change of circumstance, if any, relating to the Account Holder or Controlling Person's tax residence.

## **Due diligence Procedures**

Reporting financial institutions must comply with verification and due diligence procedures outlined in the CRS in connection with the accounts they maintain. This is the case regardless of whether the financial institution is subject to other regulatory requirements, such as having to complete due diligence related to AML/KYC. The required procedures are, in many respects, determined by whether a particular account is:

- an individual or an entity account;
- a pre-existing or a new account; or
- a lower value or a high value account.

Due diligence is required to identify reportable accounts. Reporting financial institutions are required to take certain actions, such as collecting information and/or reviewing information in their possession to determine whether to treat an account as a reportable account. These requirements result in a financial institution having to:

- search for certain indicia linked to an account holder; and/or
- request that account holders self-certify their residence status.

An account is treated as a reportable account from the date it is identified as such pursuant to the due diligence procedures. Once an account has been identified as a reportable account, it remains of that classification until there is a change that makes the account no longer a reportable account.

An account would no longer be a reportable account when:

- the account holder ceases to be a reportable person;
- the account is closed or transferred to another financial institution in its entirety;
- the account becomes an excluded account; or
- the reporting financial institution becomes a non-reporting financial institution.

A financial institution can be asked to clarify the rules for determining the residence status of a reportable person. Depending on the situation, these rules can be complex, and financial institutions are not expected to provide information on all aspects of tax residency. If an account holder asks for such a clarification, a financial institution can refer the account holder to seek professional tax advice or to review information available at the GRA and the OECD. It is the responsibility of account holders to determine where they are resident for tax purposes.

### **Service providers**

A reporting financial institution can rely on one or more service providers to meet its obligations under the Act, however, the due diligence and information reporting obligations remain the responsibility of the financial institution. The mere provision of service by a third party does not cause it to maintain a financial account for the purposes of the Act, even if it is a financial institution in its own right.

## Record keeping

Every reporting financial institution must keep records that were obtained or created in connection with its CRS obligations, such as self-certifications and documentary evidence. A reporting financial institution must also keep records of its policies and procedures that establish its governance and due diligence processes, including procedures for regular relationship manager enquiries. Documentation can be shared and used in relation to more than one financial account.

A reporting financial institution must establish, maintain, and document the due diligence procedures it uses to identify reportable accounts. Rules in respect of keeping records, including its forms and the retention periods are discussed in the next paragraphs.

A reporting financial institution must retain records used to support an account holder's status for at least six years after the end of the year in which the status was established. A self-certification must be retained for a minimum of six years from the date that the last financial account to which it relates was closed. All other records must be retained to the end of the last calendar year in respect of which the record is relevant.

The records can be retained as originals or photocopies and can exist in paper or electronic format. Records that are retained electronically must be retained in an electronically readable format. Records are to be retained at the financial institution's place of business, or at any other place they are equally accessible and as secure as they would be if they were maintained at the financial institution's place of business.

A reporting financial institution can receive documentary evidence in the following manner:

- a form or document scanned and received electronically, for example, an image embedded in an e-mail;
- a portable document format (.pdf) attached to an e-mail;
- a facsimile; or
- an electronic signature;

unless it knows the document was transmitted by a person not authorized to do so or has reason to believe it is not a true copy.

A financial institution can accept an electronic signature of the account holder (or person formally authorized to sign). It can also accept a voice recording or digital footprint as long as

it is captured (by the financial institution) in a manner that can credibly demonstrate that the self-certification was positively acknowledged.

When for the purposes of AML/KYC procedures in Ghana a reporting financial institution can rely on notations of records or documents reviewed, it will be treated as having retained a record of such documentation if it retains in its files:

- the date the documentation was reviewed;
- the type of document and jurisdiction of issue (for example, a foreign passport, a foreign driver's licence); and
- the document's identification number where present (for example, passport number).

A notation in the record that a self-certification has been reviewed cannot be relied upon.

### **Date for determining balance or value**

The balance or value of a Reportable Account is part of the reportable information that is to be automatically exchanged. It is also relevant for other purposes such as the due diligence procedures for pre-existing entity accounts and the account aggregation rules. The balance or value of the Reportable Account is to be determined as at the last day of the calendar year. If the balance or value of the account is negative it should be reported as a zero balance or value.

### **Date for determining the balance or value for thresholds**

Thresholds may apply in a number of circumstances. For example, it is necessary to determine whether the aggregate value of accounts held by an individual exceeds an amount equivalent to US\$1 million or the value of accounts held by a preexisting entity exceeds US\$250,000. The threshold is applied on the last day of the calendar year that is the subject of the report. The balance or value on the account that is to be used for determining if the threshold has been exceeded is that on the last day of the appropriate calendar year

Where an FI values Financial Accounts at regular points during the year, the balance or value on the last such valuation in the appropriate reporting period may be used for this purpose.

## Preexisting individual accounts

Preexisting Individual Accounts are accounts held by a Reportable Person who is an individual as at 31 December 2017. These are split between High Value Accounts and Lower Value Accounts and there are different due diligence procedures for each type.

High Value Preexisting Individual Accounts are accounts with an aggregate balance or value that exceeds an amount equivalent to US\$1 million as at the end of the calendar year that is the subject of the report. Thus, for reporting in 2019 under the CRS, the accounts in scope are those Reportable Accounts in existence as at 31 December 2017.

Lower Value Preexisting Individual Accounts are those with an account balance or value that does not exceed an amount equivalent to US\$1 million at the end of the calendar year. Financial Institutions (FIs) have up to 31 December 2019 to review Lower value pre-existing individual accounts while for High Value Preexisting Individual Accounts they have up to 31 December 2018 to review those accounts.

Lower Value Accounts that are identified as Reportable Accounts in a calendar year, are reportable for that calendar year. Under the CRS, FIs have until 31 December 2019 to carry out due diligence on Lower Value Accounts in existence at 31 December 2017. Thus, all such accounts must be reported no later than 2020 but if any Reportable Accounts are identified on or before 31 December 2018 they must be reported in 2019.

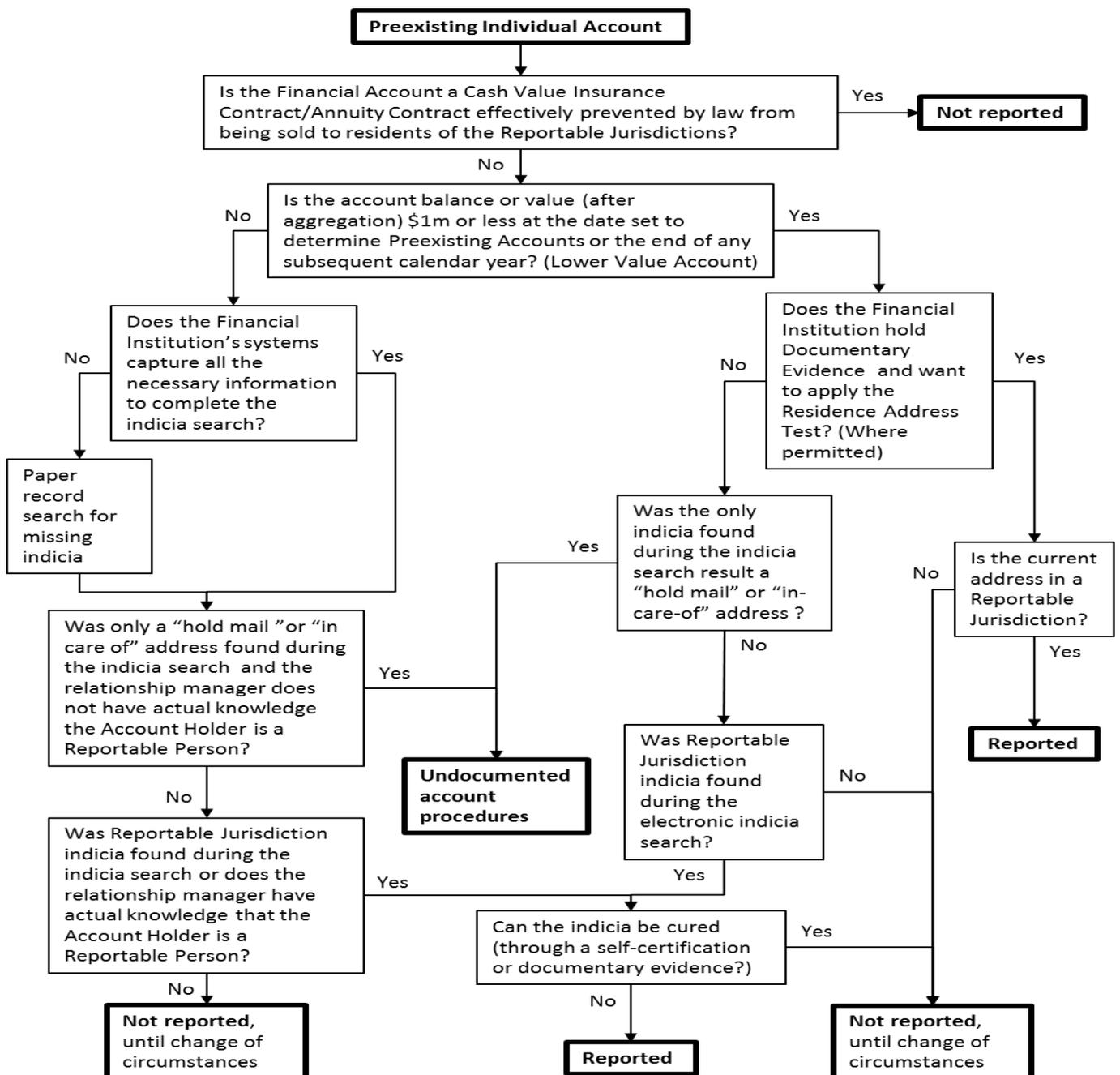
### **Example 1:**

The due diligence procedures are carried out on a Lower Value Account in April 2018 and the account is determined as reportable. The FI is required to report on the account information for the year ending 31 December 2018 onwards. The first reporting will be done in 2019.

### **Example 2:**

The due diligence procedures are carried out on a Lower Value Account in April 2018 and the account is determined as reportable. The FI is required to report on the account information for the year ending 31 December 2019 onwards. The first reporting will be done in 2020.

The figure below from the OECD CRS Handbook depicts the due diligence rules for Preexisting Individual Accounts from the perspective of the FI:



## Lower Value Accounts

Lower Value Preexisting Individual Accounts are those with an account balance or value that does not exceed an amount equivalent to US\$1 million at the end of the calendar year. The following due diligence procedures apply with respect to Lower Value Accounts:

Residence address test, or Electronic record search.

In the event that the FI applies the residence address test and this does not determine the residence of the individual Account Holder, then it must also apply the electronic record search.

FIs can apply the residence address test to all Lower Value Accounts or, separately, to any clearly identified group of such accounts. A group of accounts may, for example, be those maintained by a particular line of business or those maintained in a particular location.

FIs may also opt to go straight to an electronic record search for indicia of tax residence without first applying the residence address test.

## Residence Address Test

If the Reporting FI has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting FI may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.

The Residence Address Test is an alternative to the Electronic Indicia Search for establishing residence. FIs can use either of these two tests.

The residence address held by an FI must be sufficiently detailed to identify where the Account Holder resides and will generally be in a form that identifies the street and the town, city or area where the individual lives in sufficient detail for the FI to determine the jurisdiction in which the residence is located.

In general, an “in-care-of” address or a post office box is not a residence address. However, a post office box can be part of a residence address where the address also contains a street, an apartment or suite number, or a rural route and thus clearly identifies the actual residence of the Account Holder.

An “in-care-of” address is unlikely to provide sufficient detail to identify the residence of the Account Holder as the address is that of the person receiving mail on behalf of the Account Holder. Additionally, an “in-care-of” address may be relied on where the address relates to a care or residential home.

The residence address held by a Reporting FI must be current. A residence address is considered to be current where it is the most recent address that the FI has recorded for the Account Holder. Such an address will not be regarded as current if it has been used for mailing purposes and mail has been returned undeliverable-as addressed other than due to an error and the account has a flag on it to that effect.

If mail has been returned and the account (other than an Annuity Contract) is dormant then the residence address may continue to be regarded as current in certain circumstances.

### **Dormant Account**

A residence address associated with an account (other than an Annuity Contract) may be considered current even though mail has been returned undeliverable-as addressed and the account is regarded as dormant. An account is considered to be dormant for this purpose if:

- I. The Account Holder has not initiated a transaction in the past three years on that account or any other account he or she holds with the FI;
- II. The Account Holder has not communicated in the past six years with the FI that maintains the account regarding that account or any other account he or she holds with the FI; and
- III. The account is considered to be dormant under the normal operating procedures of the FI that are applied for all accounts maintained by it provided these procedures are substantially similar to the requirements in i. and ii. above.

There is an additional requirement for Cash Value Insurance Contracts to be regarded as dormant. As well as the tests above, the FI has not communicated with the Account Holder in the past six years regarding the account or any other account he or she holds with the FI.

An account ceases to be dormant on the earliest of any of the following events occurring:

- I. The Account Holder initiates a transaction on the dormant account or any other account he or she holds with the FI;
- II. The Account Holder communicates with the FI about the dormant account or any other account he or she holds with it; or

- III. The account ceases to be a dormant account under the normal operating procedures of the FI.

### **Residence Address Based on Documentary Evidence**

FIs are generally required to carry out due diligence checks, often referred to as AML/KYC procedures. FIs are required to verify the customer's identity based on documents, data or information obtained from a reliable and independent source. The types of document that meet this requirement are those included in the definition of Documentary Evidence in the CRS (refer to page 202 of the CRS).

Consequently, where an FI has identified the residence address of an Account Holder by following the policies and procedures it has in place for AML/KYC procedures the FI may rely on that address when applying the residence address test.

Alternatively, in the case of a Cash Value Insurance Contract the FI may rely on the current residence address in its records until:

- I. There is a change in circumstances that causes the FI to know or have reason to know that the address held is incorrect or unreliable, or
- II. The time of pay-out, whether full or partial, or maturity of the contract. The pay-out or maturity of the contract will trigger a change of circumstances requiring the FI to update its records.

In the event that an FI has been notified of a change of address by the Account Holder, supported by documentation from the Account Holder, and this does not result in any further AML/KYC processes, the FI may still rely on the address that has been the subject of AML/KYC provided the new address is in the same jurisdiction.

### **Electronic Record Search**

If the Reporting FI does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth above, the Reporting FI must review electronically searchable data maintained by the Reporting FI for any of the following indicia:

- a) identification of the Account Holder as a resident of a Reportable Jurisdiction;
- b) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;

- c) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting FI;
- d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;
- e) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
- f) a “hold mail” instruction or “in-care-of” address in a Reportable Jurisdiction if the Reporting FI does not have any other address on file for the Account Holder.

If none of the above indicia are discovered through an electronic search, no further action is required in respect of Lower Value Accounts unless and until there is a subsequent change of circumstance that results in one or more of the above indicia being associated with the account or the Account Holder. Where such indicia arise, the account becomes a Reportable Account unless the FI takes steps to cure or repair the indicia. Only where the indicia remain in place after the cure or repair is completed will the account become a Reportable Account.

In addition, where a number of the above indicia are present but provide contradictory evidence the FI may take steps to cure or repair the indicia. For example, if the indicia, with the exception of a current telephone number in Country A, all point to the individual being resident in the Country B, the FI can seek information from the individual to confirm where he or she is resident for tax purposes before treating the account as belonging to a Country B Reportable Person.

An FI will not be treated as having reason to know that that Account Holder’s status is incorrect because it retains information or documentation that may conflict with its review of the Account Holder’s status if it was not necessary to review them under the procedures for the electronic record search.

Where the indicia found during the electronic search indicates that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the account will be a Reportable Account subject to applying the curing procedure for this indicator.

Where the FI has recorded two or more mailing or residence addresses in different Reportable Jurisdictions, the Account Holder and details of the account are potentially reportable to multiple jurisdictions. However, where one or more of those addresses is for a service provider of the Account Holder, for example, an asset manager, investment advisor

or lawyer, the FI is not required to treat the service provider's address as an indication of residence.

Where the indicia found during the electronic search indicates a current mailing or residence address (including a post office box) in a Reportable Jurisdiction, the account will be a Reportable Account subject to applying the curing procedure for this indicium.

A mailing or residence address is considered to be current for this purpose where it is the most recent address recorded by the FI with respect to the Account Holder. Where the account is a dormant account, the mailing or residence address attached to the account can be considered as "current" during the period of dormancy.

## Curing Indicia

There may be occasions when the electronic record search gives indications of residence in a Reportable Jurisdiction that the FI considers may be incorrect. In such circumstances, the FI may take steps to "cure" the information before treating the Account Holder as a Reportable Person. Where the FI holds information about the Account Holder that includes any of:

- a) a current mailing address in a Reportable Jurisdiction;
- b) one or more telephone numbers in a Reportable Jurisdiction;
- c) standing instructions, to transfer funds to an account maintained in a Reportable Jurisdiction (other than a Depository Account); or
- d) a currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction, then

the FI must obtain a self-certification from the Account Holder to establish the jurisdiction of residence. The FI can also rely on self-certifications it has previously reviewed and maintained a record of, but in either case the self-certification must be supported by documentary evidence. If the self-certification supported by documentary evidence establishes that the Account Holder is not a Reportable Person then the FI is not required to treat the Account Holder as resident in a Reportable Jurisdiction.

The self-certification obtained as part of the curing procedure does not need to contain an express confirmation that an Account Holder is not resident in a particular jurisdiction.

Provided the self-certification positively identifies the jurisdictions where the Account Holder is resident it can be taken that the Account Holder is not resident in any other jurisdiction.

Where an FI has contacted an Account Holder for a self-certificate but the Account Holder has not responded, the account should be treated as undocumented 90 days after initiating contact. The 90-day period is to allow the Account Holder sufficient time to respond to the request for information. In such circumstances, the FI must contact the Account Holder at least annually until the account ceases to be undocumented.

The information in (d) above may arise in circumstances where the Account Holder cannot provide a self-certification. In such a case, the FI may rely on documentary evidence that establishes the Account Holder's non-reportable status.

### **High Value Accounts**

High Value Preexisting Accounts are accounts with an aggregated balance or value that exceeds \$1million at the date that the pre-existing accounts first need to be reviewed or at any 31 December following the initial review date. The aggregated amount is that across all accounts held by the individual with the FI and includes accounts held by related entities of the FI.

When an account is identified as a High Value Account the residence address test may not be used to establish the residence jurisdiction of the Account Holder. The FI must start with the electronic record search and then continue, where appropriate, with a paper record search and a relationship manager inquiry.

The FI has the option to apply the new account due diligence procedures and seek self-certifications from Account Holders rather than carry out the due diligence for Pre-existing High Value Accounts.

### **Electronic Record Search**

For High Value Accounts, an FI must review its electronically searchable data for indicia of the individual's residence. The due diligence procedures for High Value Accounts are the same as those for Low Value Accounts as described above.

### **Paper Record Search**

An FI must carry out a paper record search to the extent that the information on residence of an Account Holder is not captured by the electronic search.

For example, where the electronically searchable databases contain all the required information except for details of standing instructions to transfer funds, the paper record search will only be required to look for that information.

The paper record search should include a review of the current master file and, to the extent that they are not contained in the current master file, the following documents associated with the account and obtained by the FI within the last 5 years:

- The most recent Documentary Evidence collected with respect to the account;
- The most recent account opening contract or documentation;
- The most recent documentation obtained by the FI for AML/KYC procedures or other regulatory purposes;
- Any power of attorney or signatory authority currently in effect; and
- Any standing instructions to transfer funds currently in effect (other than for a Depository Account).

These should be reviewed for any of the indicia of residence.

An FI can rely on the review of High Value Accounts by third party service providers where there is a contract obliging the service provider to perform the review.

### **Paper Record Search: Relationship Manager Inquiry**

The relationship manager inquiry is required for high value individual accounts in addition to the electronic search and the paper record search. The FI must consider whether any relationship manager associated with an account, which includes any accounts aggregated with such an account, has actual knowledge that would identify the Account Holder as a Reportable Person.

A relationship manager is an employee or officer of the FI who has been assigned responsibility for specific Account Holders on an ongoing basis. A relationship manager will provide advice to Account Holders regarding their accounts as well as recommending and arranging for the provision of financial products, services and other related assistance.

Relationship management must be more than ancillary or incidental to a person's job role. Thus a person with some contact with Account Holders, but whose functions are administrative or clerical nature, is not considered to be a relationship manager.

The relationship manager also has an important role in identifying any change of circumstance in relation to a High Value Individual Account. An FI must ensure that it has

procedures in place to capture changes that are made known to the relationship manager in respect of the Account Holder's reportable status.

The following examples illustrate when an employee of an FI would be regarded as a relationship manager:

### **Example 1**

An individual holds a Custodial Account with an FI. The value of the account at the end of the appropriate reporting period is an amount equivalent to US\$1,350,000. An employee of the FI has a role that requires them to manage the account on an ongoing basis and maintain the FI's relationship with the individual Account Holder. As the account has a value in excess of US\$1million, the employee will be a relationship manager with respect to this account.

### **Example 2**

An individual holds a Custodial Account with an FI with a value at the end of the appropriate reporting period of an amount equivalent to US\$780,000. In addition, the individual also has a Depository Account with the FI with a balance at the same date of an amount equivalent to US\$427,000. The FI's internal systems link the accounts to the same Account Holder thus the accounts must be aggregated. The aggregate balances exceed US\$1million and so belong to a High Value Account Holder. The relationship with the Account Holder is managed in a similar way to that in example 1 above. The employee with that role will be a relationship manager in respect of the accounts held by this Account Holder.

### **Example 3**

The facts are the same as in example 2 except that the employee has no direct contact with the Account Holder simply performing an administrative role in relation to the accounts. Here the employee is not a relationship manager.

### **Change in Circumstance**

Once the due diligence procedures have been completed, the Account Holder will be identified as either a non-Reportable Person or Reportable to one or more jurisdictions with which Ghana has agreements to exchange information. That status will not change until such time as a change of circumstance is identified by the FI.

A change of circumstance includes any change to, or addition of, information in relation to an Account Holder's status and includes details of any addition, substitution or other change of an Account Holder as well as information in respect of any accounts associated with the Account Holder, that is, accounts associated through the aggregation rules or where a New Account has been treated as a preexisting obligation for due diligence purposes.

A change of circumstance is only relevant if the new information affects the status of the Account Holder for the purposes of the exchange of information agreements, whether that is based on the due diligence procedures or from a self-certification. For example, a person who has been identified as reportable to UK provides the FI with details of a change of residential address to a property in France. That is evidence that there has been a change of circumstance affecting the reportable status of the Account Holder. If, however, the new address had also been in UK, the reportable status established earlier would not be affected and no further action would be required on the part of the FI.

Once a change of circumstance has been identified the FI must request a self-certification or other documentation from the Account Holder to establish whether the individual is a Reportable Person and, if so, to which jurisdiction the reportable information should be sent. If the Account Holder fails to respond to the request, the FI should treat the Account Holder as reportable to each jurisdiction for which it holds indicia unless it can apply the curing procedure.

### **Lower Value Account becomes High Value**

If a Preexisting Individual Account is a Lower Value Account as at 31 December 2017, it will need to be monitored at the end of each subsequent reporting period to see if it has become a High Value Account.

If the balance or value of the account on the last day of the appropriate reporting period, after taking account of any aggregation, exceeds an amount equivalent to US\$1million, the FI must complete the enhanced review for High Value Accounts within the calendar year following the year that the account becomes a High Value Account. If, as a result of the enhanced review, the account is identified as a Reportable Account, following this review it is reportable with respect to the year in which it is so identified and remains reportable in all subsequent years, unless and until the Account Holder ceases to be a Reportable Person.

## Effect of Finding Indicia

Where the enhanced due diligence procedures for High Value Individual Accounts have been carried out and any of the indicators are found, the account must be treated as a Reportable Account. The account will be a Reportable Account for each Reportable Jurisdiction identified from the due diligence procedure.

Where the information arising from the due diligence procedures contains potentially conflicting information, for example, the electronic search identifies a residential address in Germany but the relationship manager has knowledge of an address in the UK, the FI may attempt to cure the information by seeking a self-certification from the Account Holder.

If no indicators of residence in a Reportable Jurisdiction are found in any of the enhanced due diligence procedures, then no further action is required unless and until there is a change in circumstances.

## Due Diligence: New Individual Accounts

New accounts are those opened on or after 1 January 2018. New Individual Accounts are accounts where the Reportable Person is an individual. The due diligence procedures for New Individual Accounts require that a self-certification be obtained from the Account Holder. If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, then the Reporting FI must treat the account as a Reportable Account.

The wider approach requires FIs to identify the territory in which a person is tax resident, irrespective of whether or not that territory is a Reportable Jurisdiction. It applies to New Accounts as well as Preexisting Accounts. The self-certification process can be used for this purpose. This information must be maintained by the Reporting FI for a period of 5 years from the end of the period in which the territory is identified.

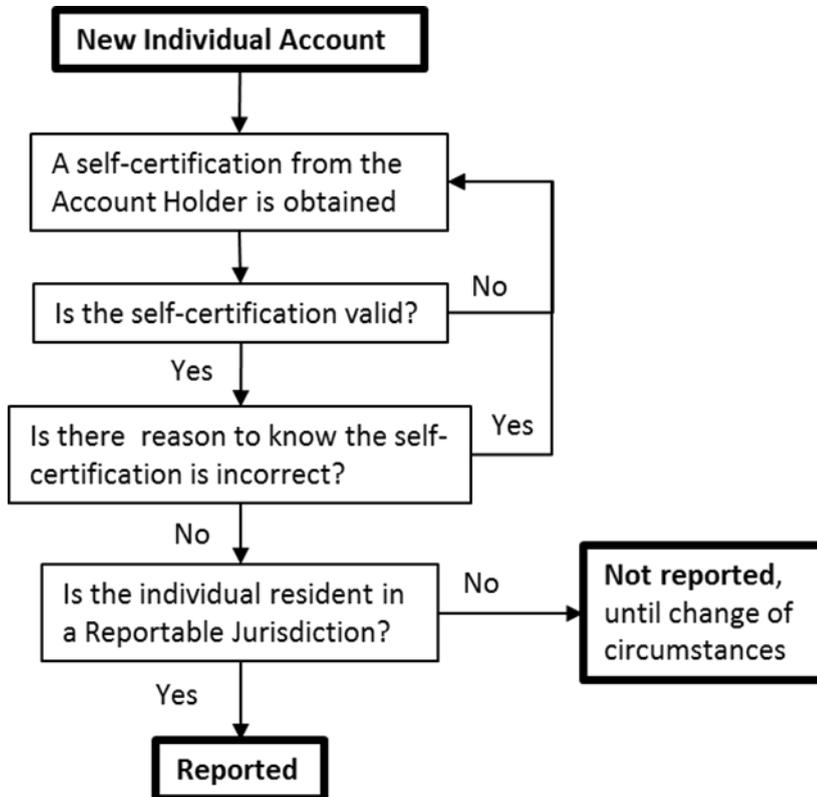
The procedures applying for the purposes of identifying Reportable Accounts among New Individual Accounts are described hereunder.

Upon account opening, the Reporting FI must:

- obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting FI to determine the Account Holder's residence(s) for tax purposes; and

- confirm the reasonableness of such self-certification based on the information obtained by the Reporting FI in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

The figure below sets out the Due Diligence process for New Individual Accounts:



### Self-certification

It is expected that FIs 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 where, exceptionally, 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. FIs must make proper endeavours to obtain the self-certification in these circumstances, including issuing follow up letters on at least an annual basis.

If a self-certification is not provided by the account holder within 90 days from the account opening, the financial institution must treat the account holder as a resident of each reportable jurisdiction for which an indicium as described in above is identified unless a self-certification is received before the reporting due date, to determine the reportable status of the account holder.

There is no prescribed format for a self-certification but it may, for example, form part of the account opening documentation. Whatever form it takes, it must allow the

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

The self-certification must also include the Account Holder's TIN and date of birth.

A self-certification must be signed by the Account Holder (or a person authorised to do so for her/him under domestic law), or in the case of an account opened by telephone or the internet, the self-certification must be positively affirmed – that is, the Account Holder must confirm the information provided. The self-certification must be dated no earlier than the date the Account Holder received the form; updated self-certifications may be date stamped by the receiving FI on receipt and that date will be taken as the date of signature.

Self-certifications may take a two stage process so that, if it is established that an Account Holder is a Ghanaian tax resident and not tax resident elsewhere, then it will not be necessary to gather further information beyond the first three bullet points below.

Otherwise, self-certifications must include all of the following information for the Account Holder–

- a) name;
- b) residence address;
- c) jurisdiction(s) of residence for tax purposes;
- d) TIN with respect to each Reportable Jurisdiction (see above); and
- e) date of birth.

A reportable person may not be eligible to obtain a foreign TIN or is otherwise unable to secure a TIN. For example, certain jurisdictions do not issue TINs. A self certification is not

invalid by reason alone of the account holder not providing a foreign TIN if a reasonable explanation is provided.

Residence for an individual is defined in Section 101(1) of the Income Tax Act as follows:

***“An individual is resident in the country for a year of assessment if that individual is***

- a) a citizen, other than a citizen who has a permanent home outside of the country and lives in that home for the whole of that year;***
- b) present in the country during that year for an aggregate period of one hundred and eighty-three days or more in any twelve month period that commences or ends during that year;***
- c) an employee or an official of the Government of Ghana posted abroad during that year; or***
- d) a citizen who is temporarily absent from the country for a period of not more than three hundred and sixty-five continuous days, where that citizen has a permanent home in Ghana.”***

The self-certification may be provided in any manner and in any form, for example, it can be in paper or electronic format. If the self-certification is provided electronically, the FI must have systems in place to ensure that the information provided is that of the Account Holder and it must be able to provide a hard copy of all such self-certifications to the GRA on request.

Where an Account Holder provides a paper self-certification, an FI may retain an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the self-certification. Any documentation that is stored electronically must be made available by the FI in hard copy form to the GRA upon request.

The following examples illustrate how a self-certification may be provided:

#### **Example 1**

Individual A completes an online application to open an account with Reporting FI K. All the information required for self-certification is entered by A on an electronic application (including a confirmation of A's jurisdiction of residence for tax purposes). A positively confirms the information provided as part of the application.

A's information, as provided in the electronic self-certification, is confirmed by K's service provider to be reasonable based on the information it has collected pursuant to AML/KYC procedures. A's self-certification is valid.

### **Example 2**

Individual B makes an application in person to open an account with bank L. B produces his driving licence as proof of identification and provides all the information required for self-certification to an employee of L who enters the information into L's systems.

The application is subsequently signed by B. B's self-certification is valid.

### **Validity of self-certification**

A self-certification remains valid unless the Reporting FI knows, or has reason to know, that the original self-certification is incorrect or unreliable. This might be the case either at the time a new account is opened by an existing customer, or as a result of a change of circumstances reported by the Account Holder, for example, a change of address.

Whatever the cause, where the Reporting FI cannot rely on the original self-certification it must obtain either –

- (i) a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder, or
- (ii) a reasonable explanation and documentation (as appropriate) supporting the validity of the original self-certification (and retain a copy or a notation of such explanation and documentation).

A Reporting FI may have reason to know that a self-certification or Documentary Evidence is unreliable or incorrect. It may have information in its possession that suggest different facts pertaining to the Account Holder than those on the self-certification. This will include the knowledge of the relevant relationship managers. A reasonably prudent person in the position of the Reporting FI would question the information provided he/she has reason to know that the information may be incorrect or unreliable.

A Reporting FI may also have reason to know that a self-certification or Documentary Evidence is unreliable or incorrect if there is information in the documentation or in the Reporting FI's account files that conflicts with the person's claim regarding its status.

A financial institution can treat a self-certification as valid, notwithstanding that the self-certification contains an inconsequential error, if the financial institution has sufficient documentation on file to supplement the information missing from the self-certification due to the error. In such case, the documentation relied upon to cure the inconsequential error must be conclusive.

### **Example**

A self-certification in which the individual submitting the form abbreviated the jurisdiction of tax residence can be treated as valid, notwithstanding the abbreviation, if the financial institution has government issued identification for the person from a jurisdiction that reasonably matches the abbreviation. On the other hand, an abbreviation for the jurisdiction of tax residence that does not reasonably match the jurisdiction of residence shown on the person's passport brings the validity of the self-certification into question.

A failure to declare a jurisdiction of tax residence on a self-certification is not inconsequential. In addition, information on a self-certification that contradicts other information contained in the self-certification or in the customer master file is not an inconsequential error.

## **Standards of knowledge applicable to self-certifications and Documentary Evidence**

A self-certification provided by a person is considered unreliable or incorrect if:

- the self-certification is incomplete with respect to any item on the self-certification that is relevant to the claims made by the person;
- the self-certification contains any information that is inconsistent with the person's claim; or
- the Reporting FI has other account information that is inconsistent with the person's claim.

A Reporting FI that relies on a service provider to review and maintain a self-certification is considered to know or have reason to know the facts within the knowledge of the service provider.

A Reporting FI may not rely on documentary evidence provided by a person if:

- I. the documentary evidence does not reasonably establish the identity of the person presenting it.
- II. the documentary evidence contains information that is inconsistent with the person's claim as to its status,
- III. the Reporting FI has other account information that is inconsistent with the person's status, or
- IV. the documentary evidence lacks information necessary to establish the person's status.

An FI may choose to treat a person as having the same status that it had prior to the change in circumstances until the earlier of 90 calendar days from the date that the self-certification became invalid due to the change in circumstances, the date that the validity of the self-certification is confirmed, or the date that a new self-certification is obtained. An FI may rely on a self-certification without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

If the FI cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during such 90-day period, the Reporting FI must treat the Account Holder as resident of the jurisdiction in which the Account Holder claimed to be resident in the original self-certification and the jurisdiction in which they may be resident as a result of the change in circumstances.

A self-certification can become invalid as a result of a change of the Account Holder's circumstances. Reporting FIs need to have procedures to ensure that any change that constitutes a change in circumstances is identified.

Financial institutions are expected to notify a person providing a self-certification of the person's obligation to notify the financial institution of a change in circumstances.

A change in circumstances affecting the self-certification provided to the Reporting FI will invalidate the self-certification with respect to the information that is no longer reliable until the information is updated.

A self-certification becomes invalid as soon as the Reporting FI knows or has reason to know that circumstances affecting the correctness of the self-certification have changed. However, a Reporting FI may treat the status of the Account Holder as unchanged until the earlier of –

- 90 calendar days from the date that the self-certification became invalid due to the change in circumstances;
- the date that the validity of the self-certification is confirmed (where appropriate); or
- the date that a new self-certification is obtained.

A Reporting FI may rely on a self-certification without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

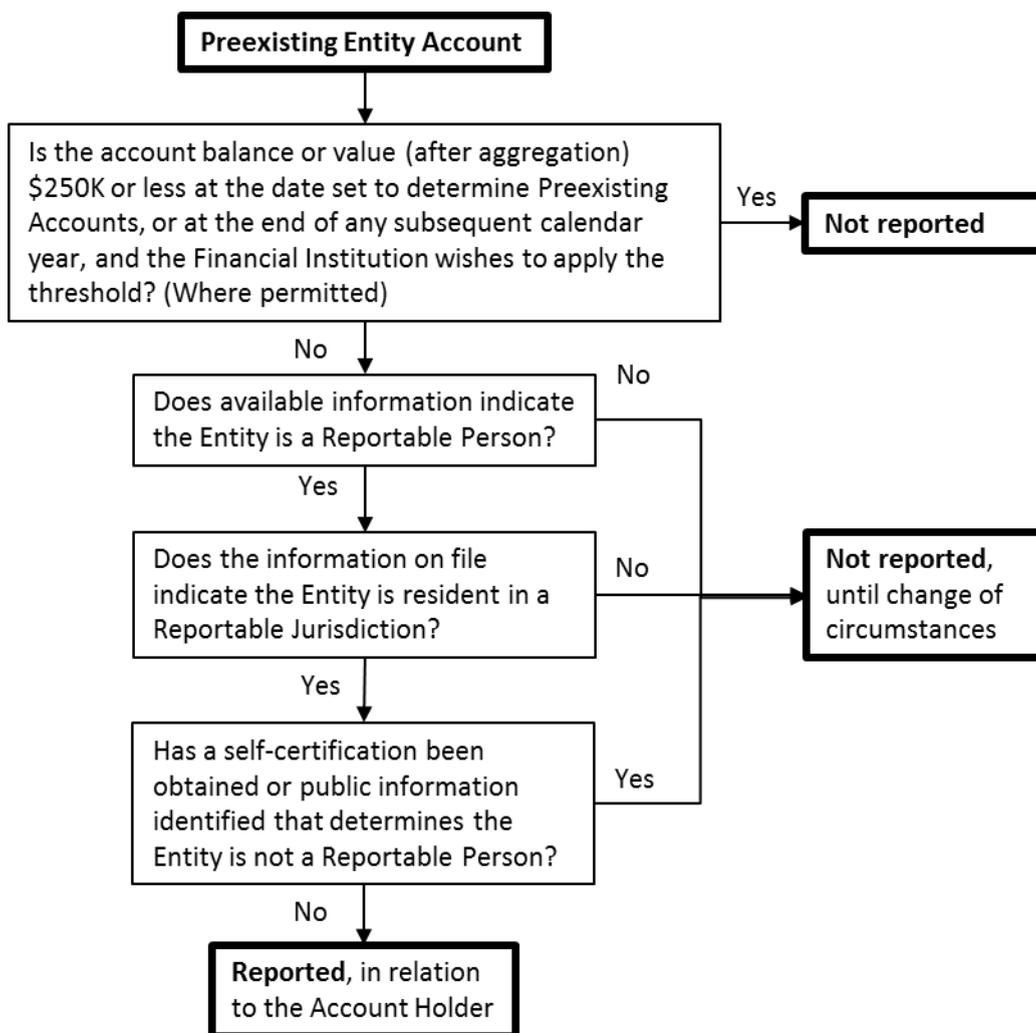
If the Reporting FI cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during the 90-day period, the FI must continue to treat the Account Holder as resident in the jurisdiction identified in the original self-certification and must also treat the Account Holder as resident in the jurisdiction indicated by the change of circumstance.

### **Due Diligence: Preexisting Entity Accounts**

A Preexisting Entity Account is a Financial Account maintained by an FI as at 31 December 2017. An entity for the purposes of the CRS is a legal person or legal arrangement. It covers any person other than an individual and includes legal arrangements such as partnerships and trusts. For reporting purposes, an entity will be either an FI or an NFE.

FIs have up to 31 December 2019 to review preexisting entity accounts. Preexisting entity accounts that are identified as Reportable Accounts in a calendar year, are reportable for that calendar year. Under CRS, FIs have until 31 December 2019 to carry out due diligence on entity accounts in existence as at 31 December 2017. Thus, all such accounts must be reported no later than 2020, but if any reportable accounts are identified on or before 31 December 2018 they must be reported in 2019.

The diagram below summarises the process to establish whether the Entity Account Holder is a Reportable Person and therefore whether the account is a Reportable Account by virtue of its Account Holder:



### Threshold exemptions applying to Pre-existing Entity Accounts

For CRS, FIs have the option to exclude from their due diligence procedures preexisting entity accounts with an aggregate account balance or value of \$250,000 or less as at 31 December 2017. The effect of choosing this option is that the FIs are not required to review any of its pre-existing entity accounts within the de minimis threshold. The de minimis threshold can be applied either to all pre-existing entity accounts or to a clearly identifiable group of such accounts (for example, accounts held by a particular line of business).

If an FI 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. Where an election has been made to apply the de minimis threshold to an account, the FI must review the account balance at 31 December each year to determine if the balance has exceeded the relevant threshold. Where the threshold is exceeded for an account it becomes reviewable (that is, the due diligence procedures for preexisting 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.

For CRS, accounts become reviewable once the balance has been established as exceeding \$250,000 at a review date. The deadline for completing account balance review is every 31 December.

A similar exception exists for FATCA. However, FATCA allows the review to be delayed until the aggregate account balance or value exceeds \$1million.

## **Reportable Accounts**

A pre-existing entity account is a Reportable Account where the review procedures identify the account as held by one or more entities that are Reportable Persons or which are passive NFEs with one or more Controlling Persons that are Reportable Persons.

For example, the XYZ Partnership is a passive NFE resident in Ghana. It has three individuals who are identified as Controlling Persons of the partnership. Two of these are Ghanaian tax resident but the third is tax resident in France, which is a Reportable Jurisdiction. As a result, any accounts held by the partnership with a Ghanaian FI will be Reportable Accounts by virtue of the entity having a Controlling Person that is a Reportable Person.

## **Review procedure for Account Holders**

FIs are required to determine whether a pre-existing account is held by one or more entities that are Reportable Persons or which are passive NFEs with one or more Controlling Persons that are Reportable Persons. Such entity accounts will be Reportable Accounts.

The FI must review information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) to determine where the entity is tax resident, unless residence can be reasonably determined through the use of publicly available information. The entity will be reportable if the information indicates that the entity is tax resident in a Reportable Jurisdiction. Such information will include, but is not limited to:

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

As the definition of entity goes beyond corporate structures to include fiscally transparent vehicles such as trusts and partnerships, the address of the entity should be interpreted widely so as to include the registered office, principal office and/or the place of effective management.

The existence of a permanent establishment (including a branch) in a Reportable Jurisdiction is not, in isolation, an indication of residence for this purpose.

Although there is no exemption from a paper record search for pre-existing entity accounts, such a search is not required in areas where all the information is electronically searchable (for example, information held for AML/KYC purposes).

If the information indicates that the Account Holder is tax resident in a Reportable Jurisdiction, then the account is a Reportable Account unless the FI obtains a self-certification from the Account Holder, or determines, based on information in its possession or which is publicly available, that the Account Holder is not a Reportable Person.

### **Available Information**

Where the FI has carried out the review of regulatory and customer relationship information and has indications that the Account Holder is resident in a Reportable Jurisdiction, it may take into account information in its possession, or which is publicly available, which reasonably determines that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

Such information will include the following:

- information published by an authorised government body of a jurisdiction. For example, the list of Foreign Financial Institutions published by the US tax administration;
- information in a publicly accessible register maintained or authorised by an authorised government body of a jurisdiction;
- information disclosed on an established securities market;
- information previously recorded in the files of the FI.

Where the FI relies on such information, it must retain a notation of the type of information reviewed and the date the review was carried out.

## Self-certification

Where the FI has carried out the review of regulatory and customer relationship information and has indications that the Account Holder is resident in a Reportable Jurisdiction, it may obtain a self-certification from the Account Holder which reasonably determines that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

A self-certification for an entity must be signed (or otherwise positively affirmed) by the person with authority to sign on behalf of the entity. This will include:

- an officer or director of a corporate entity;
- a partner of a partnership;
- a trustee of a trust;
- any person holding an equivalent title to any of the above; and
- any other person with written authorisation from the entity to sign documentation on behalf of the entity.

The self-certification must also be dated at the latest at the date of receipt by the FI and must contain the following information in respect of the entity:

- the name;
- the address;
- the jurisdiction(s) of residence for tax purposes; and
- the TIN with respect to each Reportable Jurisdiction.

The FI may also request the Account Holder to include its status in the self-certification as either an FI or an NFE. When requesting this information from an Account Holder, the FI is expected to provide the Account Holder with sufficient information to enable the Account Holder determine its status. FIs may produce their own guidance for this purpose or they may reference the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters.

## Self-certification as a Financial Institution

If the Account Holder falls within the definition of an FI, then where it is an FI, wherever resident, no further review, identification or reporting will normally be required. The exception to this under the CRS regime is where the FI is a managed investment entity resident in a jurisdiction that is not a Participating Jurisdiction. In that case, the entity is deemed to be a passive NFE for reporting purposes.

## **Self-certification as a Non- Financial Entity**

If the Account Holder falls within the definition of an NFE, then the information to be reported will depend on whether the entity is an active NFE or a passive NFE.

## **Review procedure for controlling persons**

When an FI has determined that an Account Holder is an NFE, it must carry out review procedures to determine:

- a) Whether the Account Holder is a passive NFE;
- b) If so, the Controlling Persons of that passive NFE; and
- c) Whether any of the Controlling Persons is a Reportable Person.

## **Is the Account Holder a passive NFE?**

The FI must obtain a self-certification from the Account Holder unless it has information in its possession, or that is publicly available, based on which it can reasonably determine the status of the Account Holder as an active NFE or an FI (other than a managed investment entity resident in a non-Participating Jurisdiction). If the FI cannot determine the status of the Account Holder as an active NFE or an FI, then the FI must presume the Account Holder to be a passive NFE.

## **Identifying Controlling Persons.**

To identify the Controlling Persons, the FI may rely on information collected and maintained pursuant to AML/KYC procedures.

## **Are any of the Controlling Persons a Reportable Person?**

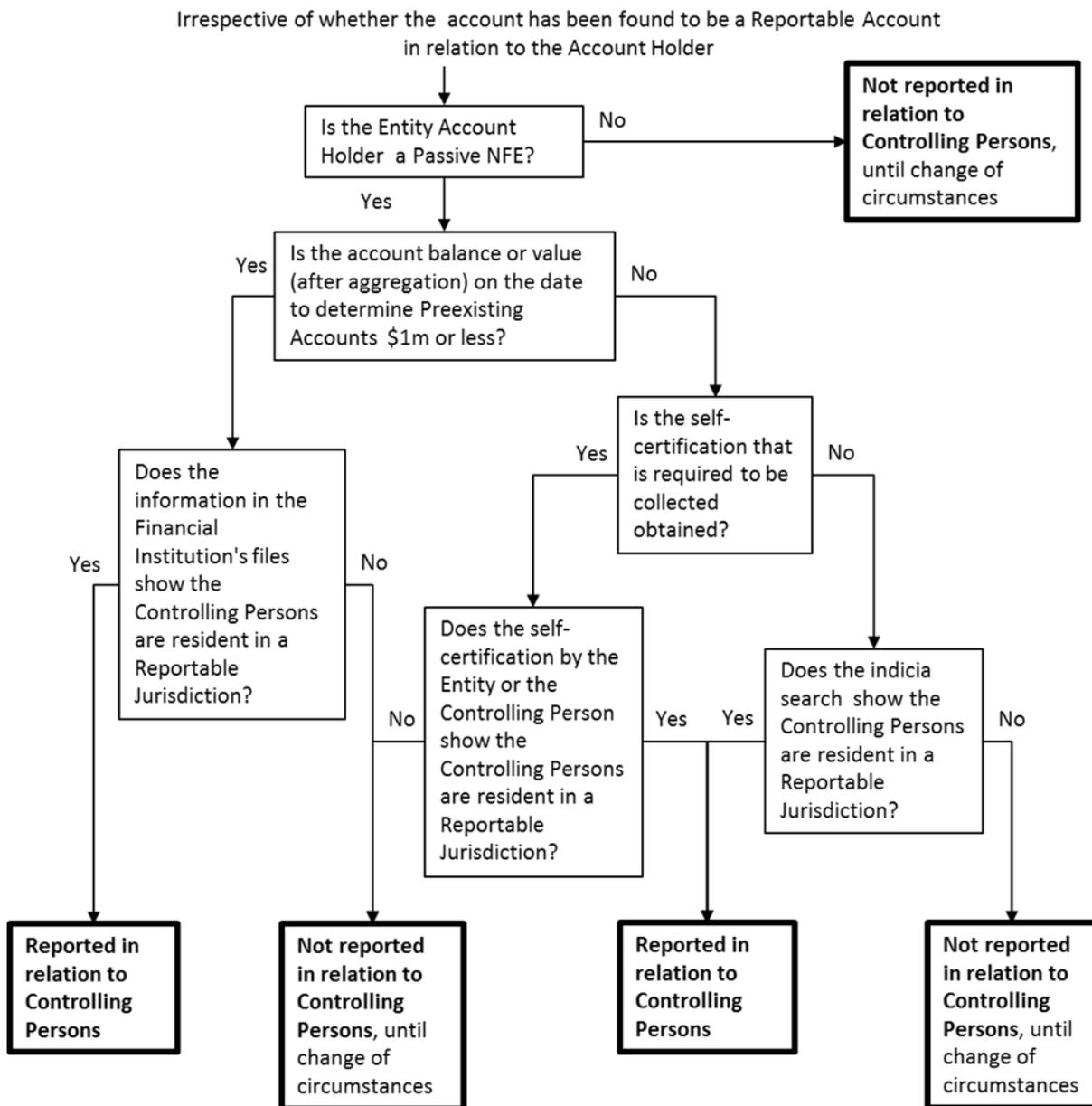
If the account balance or value does not exceed an amount equivalent to US\$1million, the FI may rely on information collected and maintained pursuant to AML/KYC procedures to determine whether the Controlling Person is a Reportable Person or it may choose to obtain a self-certification from the Account Holder or the Controlling Person.

If the account balance exceeds an amount equivalent to US\$1million the FI must obtain a self-certification from either the Account Holder or the Controlling Person. This may be provided in the same self-certification as the one provided by the Account Holder to determine its own status. The self-certification requirements are the same as for New Individual Accounts.

If a self-certification is required, but it is not obtained, the FI must rely on the electronic record search for pre-existing individual accounts to determine if there are indicia present that can

be used to determine the reportable status of the Controlling Person. If none is present in its records, the FI need take no further action unless and until there is a change of circumstance with respect to the Controlling Person.

This can be summarised in the following diagram:



### Due Diligence: New Entity Accounts

A New Entity Account is an account that is not held by an individual and that is opened on or after 1 January 2018.

The due diligence procedures for New Entity Accounts require that a self-certification be obtained from the Account Holder. If the self-certification establishes that the Account Holder

is resident for tax purposes in a Reportable Jurisdiction, then the Reporting FI must treat the account as a Reportable Account.

The wider approach requires FIs to identify the territory in which an entity is tax resident, irrespective of whether or not that territory is a Reportable Jurisdiction. It applies to New Accounts as well as Pre-existing Accounts. The self-certification process can be used for this purpose. This information must be maintained by the Reporting FI for a period of 5 years from the end of the period in which the territory is identified.

Where a New Account is opened by an entity Account Holder who already has a Pre-existing Account, the FI may treat both accounts as one account for the purposes of applying AML/KYC due diligence. In these circumstances, the FI may choose to apply the identification and documentation procedures for either Pre-existing or New Accounts to derive the CRS classification for any New Account opened on or after 1 January 2018 by the same entity.

There is no de minimis threshold for New Entity Accounts as compared to Pre-existing Accounts.

### **Determining whether the entity is a reportable person**

Where a New Entity Account is held by one or more Entities that are Reportable Persons, then the account must be treated as a Reportable Account.

### **Self-certification**

To determine this, FIs must obtain a self-certification as part of the account opening procedure and 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. In practice, this means the FI must not know or have reason to know that the self-certification is incorrect or unreliable - if the self-certification fails the reasonableness test, a new valid self-certification must be obtained. FIs are however not, expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification. Paragraph 14 of the Commentary on Section VI of the CRS contains examples illustrating the application of the “reasonableness” test.

The self-certification must allow determining the Account Holder’s residence(s) for tax purposes.

With respect to New Entity Accounts, a self-certification is valid only if it complies with the requirements for the validity of self-certifications for Pre-existing Entity Accounts.

## **Timing of self-certification**

It is expected that FIs 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.

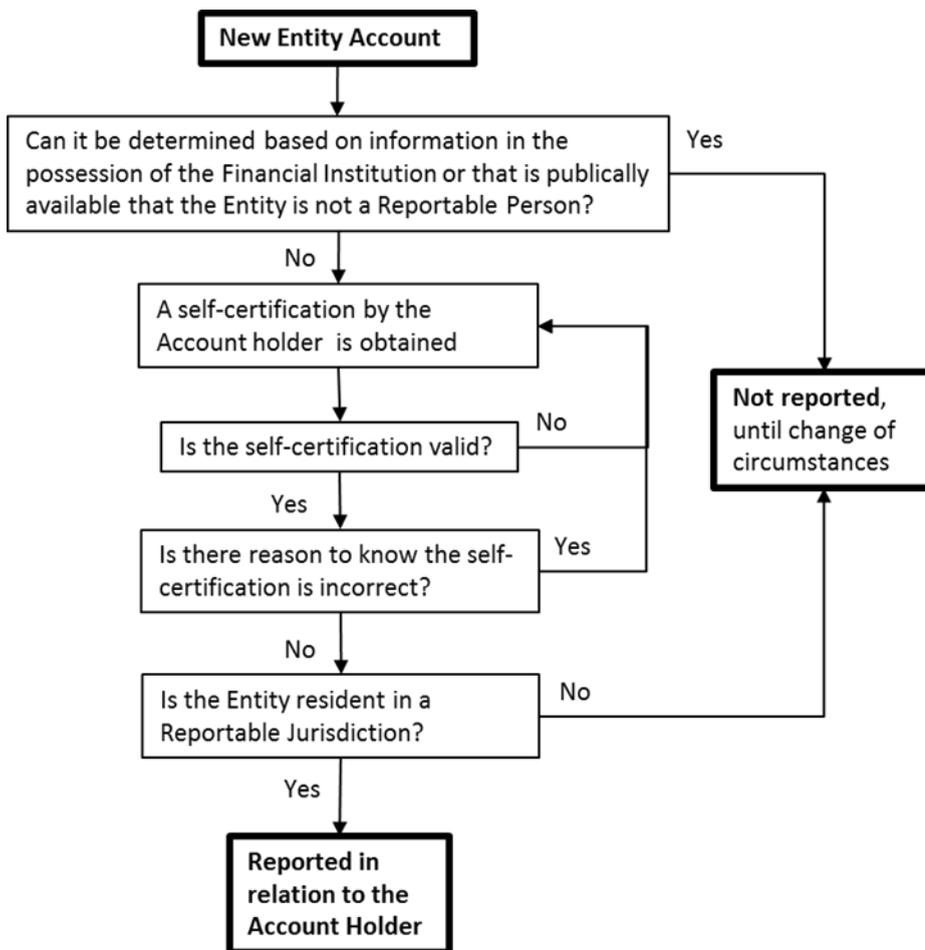
In such circumstances, it is expected that the self-certification should be obtained within a period of 90 days or such reasonable time as the circumstances dictate. FIs must make proper endeavours to obtain the self-certification in these circumstances, including issuing follow up letters on at least an annual basis.

## **Information in the financial institution’s possession or that is publicly available**

The due diligence procedures provide an exception to the requirement to obtain a self-certification where the FI can reasonably determine, based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person. For example, such information may show that the entity is in fact a corporation that is publicly traded or a Governmental Entity.

Where a self-certification is obtained and it indicates that the Account Holder is resident in a Reportable Jurisdiction, the FI must treat the account as a Reportable Account. Additionally, an exception applies where the FI can reasonably determine, based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction. Note that FIs are not obliged to rely on these exceptions and they may insist on self-certifications being provided.

This can be summarised in the following diagram:



## Determining whether the entity is a Reportable Person: Jurisdiction of Residence

The domestic laws of the various jurisdictions lay down the conditions under which an entity is to be treated as fiscally resident.

Generally, an entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction, it is liable to tax by reason of its domicile, residence, place of management or incorporation, or any other criterion of a similar nature. An entity will only be tax resident in one jurisdiction, although that may not always be the case. 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.

Where an entity such as a partnership, limited liability partnership or similar legal arrangement 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.

## **Identification of an Entity as a Passive Non-Financial Entity**

Under the CRS the definition of a Passive NFE includes Investment Entities not resident in a Participating Jurisdiction. Passive NFEs are reportable, regardless of whether they are resident in the same jurisdiction as their Controlling Persons.

### **Is the Account Holder a passive NFE?**

The FI must obtain a self-certification from the Account Holder unless it has information in its possession, or that is publicly available, based on which it can reasonably determine the status of the Account Holder as an active NFE or an FI (other than a managed investment entity resident in a non-Participating Jurisdiction). If the FI cannot determine the status of the Account Holder as an active NFE or an FI then the FI must presume the Account Holder to be a passive NFE.

### **Identifying Controlling Persons**

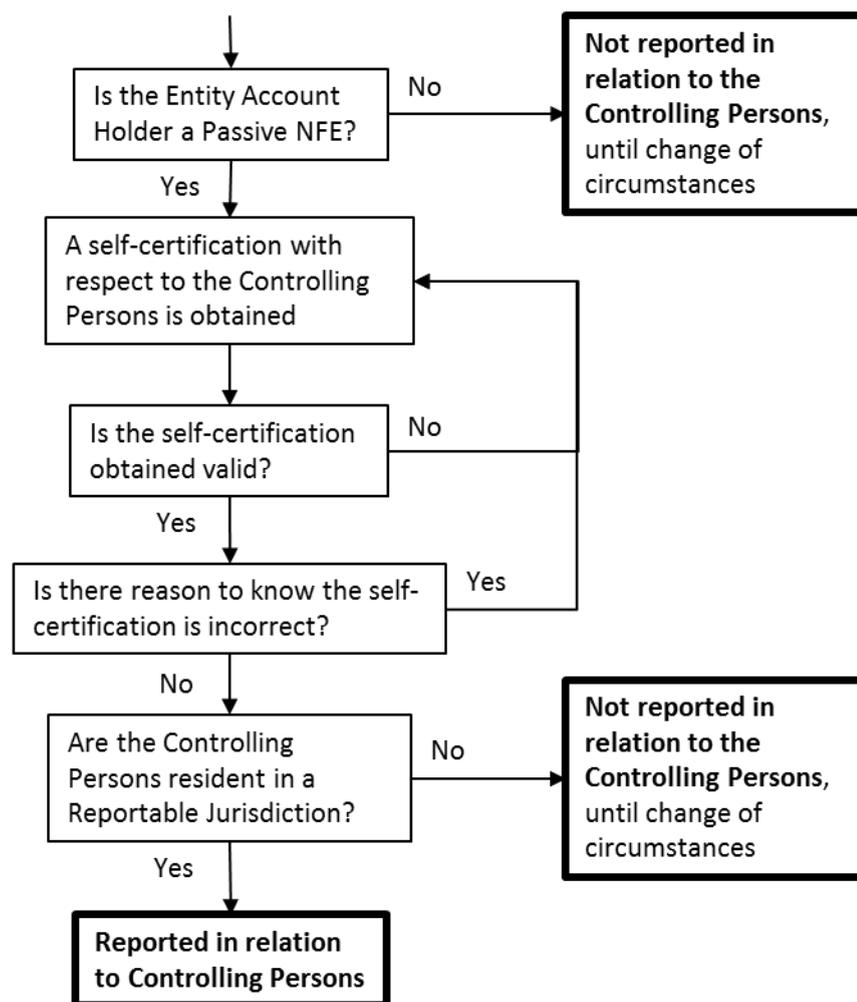
To identify the Controlling Persons, the FI may rely on information collected and maintained pursuant to AML/KYC procedures.

### **Determining whether a Controlling Person is a Reportable Person**

For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, an FI may only rely on a self-certification from either the entity Account Holder or the Controlling Person.

This can be summarised in the following diagram:

Irrespective of whether the account has been found to be a Reportable Account in relation to the Account Holder



### Change in Circumstances

A “change in circumstances” includes any change that results in the addition of information relevant to a person’s status or otherwise conflicts with such person’s status. In addition, a change in circumstances includes any change or addition of information to the Account Holder’s account (including the addition, substitution, or other change of an Account Holder) or any change or addition of information to any account associated with such account if such change or addition of information affects the status of the Account Holder.

A self-certification can become invalid as a result of a change of the Account Holder’s circumstances. Reporting FIs need to have procedures to ensure that any change that constitutes a change in circumstances is identified.

A Reporting FI is expected to notify any person providing a self-certification of the person’s obligation to notify the reporting FI of a change in circumstances.

A change in circumstances affecting the self-certification provided to the Reporting FI will invalidate the self-certification with respect to the information that is no longer reliable until

the information is updated. A self-certification becomes invalid as soon as the Reporting FI knows or has reason to know that circumstances affecting the correctness of the self-certification have changed. However, a Reporting FI may treat the status of the Account Holder as unchanged until the earlier of:

- a) 90 calendar days from the date that the self-certification became invalid due to the change in circumstances;
- b) the date that the validity of the self-certification is confirmed (where appropriate); or
- c) the date that a new self-certification is obtained.

A Reporting FI may rely on a self-certification without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

If the Reporting FI cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during the 90-day period, the FI must continue to treat the Account Holder as resident in the jurisdiction identified in the original self-certification and must also treat the Account Holder as resident in the jurisdiction indicated by the change of circumstance.

## Guidance on Technical Issues

There are areas where the CRS allows jurisdictions to adopt optional approaches most suited to their circumstances. For further detail on these CRS implementation options, please refer to paragraph 16 of the CRS Implementation Handbook.

The table below outlines these 16 implementation options and how they have been incorporated into Ghana's CRS legislative framework. Some of these implementation options are also further elaborated upon below:

Options under the CRS	Legislative Reference
1. Alternative approach to calculating account balances	Not applicable
2. Use of reporting period other than calendar year	Not applicable
3. Phasing in the requirements to report gross proceeds	Not applicable

4.Filing of nil returns	Section 4(5) of the Act
5. Allowing third party service providers to fulfil obligations for Financial Institutions	Section 10 of the Act
6.Allowing due diligence procedures for New Accounts to be used for pre-existing Accounts	Section 6(2) of the Act
7. Allowing the due diligence procedures for High-Value Accounts to be used for Low-Value Accounts	Section 6(1b) of the Act
8.Residence address test for Lower Value Accounts	Section 6(1a) of the Act
9. Optional exclusion from Due Diligence for Pre-existing Entity Accounts of less than \$250,000	Section 6(1c) of the Act
10. Alternative documentation procedure for certain employer-sponsored Group Insurance Contracts or Annuity Contracts	Not applicable
11. Allowing Financial Institutions to make greater use of existing standardised industry coding systems for the due diligence process	Section 6(5) of the Act
12.Permitting a single currency translation rule	For the purposes of the Act, currency shall be converted using the Bank of Ghana Exchange Rate
13.Expanded definition of Pre-existing Account	Section 19
14. Expanded Related Entity definition	Section 19
15. Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle	Not applicable
16. Controlling Persons of a trust	Not applicable

## Currency Translation

All amounts in the Act and the CRS are stated in US dollars.

Financial Institutions may convert the threshold limits into the currency in which accounts are denominated before applying a threshold amount under the CRS. This allows a multinational 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 US\$1 million, and this threshold amount may be converted to the relevant currency for the Financial Institution by reference to the spot rate of exchange on the date for which the Reporting Financial Institution is determining that threshold amount.

When converting currency for the purposes of the Act and the CRS, Financial Institutions should use **Bank of Ghana Exchange Rate**.

## Controlling Persons of a Trust

A Controlling Person is defined in the CRS to mean the natural persons who exercise control over an entity. In the case of a trust, such term means –

- the settlor(s);
- the trustee(s);
- the protector(s) (if any);
- the beneficiary(ies) or classes of beneficiary(ies); and
- any other natural person(s) exercising ultimate effective control over the trust.

In accordance with the option available under the CRS with respect to trusts that are Passive NFEs (nonfinancial entities), 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. Therefore, Financial Institutions would only need to report discretionary beneficiaries for the reporting period in which they receive a distribution from the trust.

For a Financial Institution to apply this option, the Financial Institution must ensure that they have appropriate procedures in place to identify whether a distribution is made by the trust to a discretionary beneficiary in the reporting period.

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

### **Confidentiality**

Ghana will not exchange information under the CRS until it is satisfied that a partner jurisdiction has in place adequate measures to ensure the required confidentiality and data safeguards are met. 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 for all CRS jurisdictions (Annex 4 of the CRS) are filed with the OECD Co-ordinating Body Secretariat.