

Abu Dhabi Global Market (ADGM)

Foreign Account Tax Compliance Act
(FATCA) and Common Reporting
Standard (CRS) awareness session



Building a better
working world



Agenda

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Introduction to FATCA and CRS



1.1

High-level overview of FATCA and CRS

What is FATCA?



What is FATCA?

- ▶ FATCA is a reporting and withholding regime adopted as part of the Hiring Incentives to Restore Employment (HIRE) Act on 18 March 2010 by the US.
- ▶ Many countries have entered into intergovernmental agreements (IGAs) with the US, setting forth how FATCA should be implemented in these countries.
- ▶ For those jurisdictions that have not entered into an IGA, Financial Institutions must enter into an FFI agreement with the Internal Revenue Service (IRS) and are governed under the US Treasury Regulations.
- ▶ A cornerstone for FATCA is that FI's identify US persons for whom they maintain accounts either directly or indirectly.

How can FFIs prepare for FATCA compliance?

- ▶ Foreign Financial Institutions (FFIs) must undertake a comprehensive review of their existing account holders to identify account holders that are specified US persons, either directly or indirectly (i.e., through passive entities).
- ▶ FFIs must identify account holders opening new financial accounts that are US-specified persons
- ▶ Compliance with FATCA is required at the group level (expanded affiliated group concept) and entity level.
- ▶ FFIs are required to report certain information on financial accounts held by specified US person account holders to the IRS or the local tax authorities (depending on the type of IGA the country has).

Key dates

1 July 2014	New account opening procedures must be in place; start of pre-existing account holders' review.
30 June 2015	Complete due diligence for pre-existing high-value individual accounts.
30 June 2016	Complete due diligence for other pre-existing entity accounts and non-high value individual accounts.
Mar-Jun 2015*	FFIs submit first report with respect to US accounts for 2014 calendar year.

* The specific reporting date depends on whether the jurisdiction is an IGA country or comply under the US Treasury Regulations.

Who is in scope?

- ▶ Depository institutions
- ▶ Custodial institutions
- ▶ Investment entities
- ▶ Specified insurance companies

Sanctions

- ▶ FFIs not complying with FATCA requirements are subject to a 30% withholding tax on certain US-sourced payments.

FATCA in the UAE

- ▶ The UAE has signed a Model 1 IGA with the US.

Effective start date of FATCA was 1 July 2014, followed by a phased implementation.

Key requirements under FATCA

What it means for FIs?

1. Registration

- ▶ Register all entities identified as Reporting FIs with the IRS and local competent authority
- ▶ Implement processes to identify US persons starting 1 July 2014



2. Customer identification

Individuals

- ▶ Identify possible US persons based on indicia (seven indicia defined for FATCA)
- ▶ For those identified as a US person, request for additional documentation to provide status (and waiver where necessary)

Corporate clients (for entities that are not exempt)

- ▶ Identify any US holders
- ▶ Obtain information about controlling persons



3. Withholding

Requirement to withhold on payments made to

- ▶ Non-Participating Financial Institutions (as applicable)



4. Change in circumstances

Ongoing monitoring for change in circumstances

- ▶ Changes that affect the FATCA status of the person/account holder e.g., presence of US indicia, information conflicting with the determined FATCA status



5. Reporting

- ▶ Annual reporting on all Specified US persons and foreign Passive Non-Foreign Financial Entities (PNFFE)s with US controlling persons may be required.
- ▶ Nil reporting may be required.
- ▶ Annual risk assessment may be required.

What is CRS?



What is CRS?

- ▶ CRS is a standard for automatic exchange of financial account information in tax matters, issued by the OECD and adopted by multiple jurisdictions (currently 123), with various local deviations.
- ▶ CRS imposes customer identification and reporting procedures with respect to accounts held by account holders who are tax residents of the countries that have adopted CRS.
- ▶ CRS is based on FATCA, but with some notable differences.

How can FIs prepare for CRS compliance??

- ▶ FIs must undertake a comprehensive review of their existing account holders to identify those account holders that are tax residents of the CRS participating countries who hold financial accounts, either directly or indirectly
- ▶ Going forward, FIs in CRS-participating countries must identify any new account holders that are tax residents of the CRS participating countries
- ▶ All reportable account holders must be reported to the local tax authority on an annual basis
- ▶ CRS shares a number of similarities with FATCA, allowing, to some extent, leverage of existing FATCA capabilities however there are key differences between the two regimes which may require a FI to amend its processes operationally

Key dates for the UAE

1 July 2017

New account opening procedures to record tax residence to be in place

31 December 2017

Due diligence for High-Value Pre-existing Individual accounts to be completed

31 December 2018

Due diligence for Pre-existing Lower Value Individual and Pre-existing Entity

30 June 2024

Calendar year 2023 reporting deadline

Who is in scope?

- ▶ Depository institutions
- ▶ Custodial institutions
- ▶ Investment entities
- ▶ Specified insurance companies

Sanctions

- ▶ FIs not complying with CRS requirements may be subject to local penalties.

CRS in the UAE

- ▶ CRS has been effective in the UAE from 1 January 2017.

Key requirements under CRS

1. Entity analysis

- ▶ Entities need to determine whether they fall under the definition of a Reporting FI (RFI), a Non-Reporting FI (NRFI) or a Non-Financial Entity (NFE).
- ▶ Only entities that fall within the scope of the RFI definition as provided in CRS are required to comply with CRS provisions.



2. Financial account analysis

- ▶ The RFI needs to determine which of the products and services it offered to its clients are CRS-relevant (i.e., that are treated as financial accounts).



3. Identification of account holders

- ▶ The RFI needs to determine who are account holders pursuant to the CRS definition.
- ▶ The FI needs to determine which account holders are reportable persons by conducting the CRS-specific identification procedures.



4. Reporting

- ▶ The RFI must annually submit a CRS report to the local tax authorities containing CRS-specific information on reportable account holders.
- ▶ Nil reporting may be required.
- ▶ Annual risk assessment may be required.



5. Compliance

- ▶ Local law provides for various sanctions and penalties for noncompliance. Given various risks involved (regulatory, reputational, client relationships, potential remediation), having a robust compliance framework is essential to stay compliant with CRS. A solid compliance framework would help improve customer journey, facilitate proper risk management and enhance operational efficiency.



1.2

Importance of compliance for entities and consequences of noncompliance

Importance of compliance under FATCA and CRS

For FATCA and CRS to be effectively implemented globally, each jurisdiction will need to rely on other jurisdictions in terms of promoting and monitoring the compliance of its domestic financial institutions. In December 2020, the OECD released the Guide on Promoting and Assessing Compliance by Financial Institutions,* which outlined how competent authorities can promote and enforce compliance, focusing primarily on the following areas:

1 Compliance questionnaires

These are risk-based questionnaires that assess FATCA and CRS compliance program of a financial institution by asking several questions on FATCA and CRS compliance.

2 Ad hoc audits

This refers to audits that are conducted on request by the competent authority on an ad-hoc basis.

3 Systematic audit programs

Systematic audits are audits conducted within an agreed timeframe, e.g., this could be performed annually or every three years to test the compliance program of financial institutions.

4 Systematic delegated programs

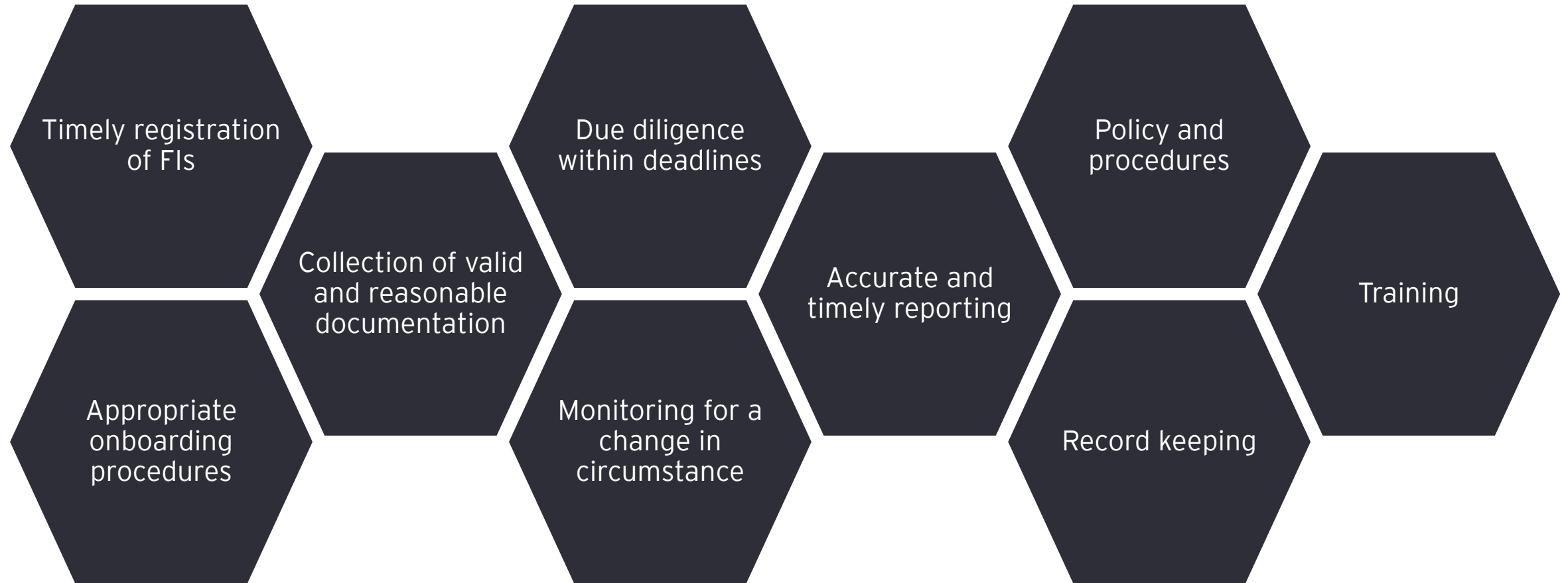
These reflect the systematic audits that competent authorities choose to delegate to either other government bodies or to external, third-party auditors.

*"Guide on Promoting and Assessing Compliance by Financial Institutions," *OECD website*, <http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/guide-on-promoting-and-assessing-compliance-by-Financial-Institutions.pdf>, accessed 14 March 2021.

What to expect from the competent authority

...

The competent authority can facilitate FATCA and CRS compliance of FIs by monitoring the following areas



Consequences of noncompliance of RFIs with FATCA and CRS



FATCA withholding

- ▶ A withholding tax rate of 30% applies to non-participating foreign financial institutions (NPFFIs) on certain US-source income starting 1 July 2014.
- ▶ Gross proceeds from sale or disposal of investments in US securities and interest-bearing assets are subject to a 30% withholding tax starting 1 January 2019.

Audits/compliance reviews

- ▶ The competent authorities may carry out an audit and/or inspection of FIs' compliance with FATCA and CRS requirements, and verify whether procedures have been followed as communicated.
- ▶ In the UAE, RFIs are required to submit FATCA and CRS risk assessments annually.

Reputational risk

- Poor execution may lead to:**
- ▶ Heightened surveillance by Regulatory Authorities (RAs)
 - ▶ High-profile clients attracting media attention
 - ▶ Significant variation in client-facing processes and communications compared with peers – potential to impact client relationships
 - ▶ Relationships with counterparties where there is real or perceived noncompliance

Penalties

- ▶ Defined under local law
- ▶ May be enforced for noncompliance as defined by each competent authority

GIIN cancellation (FATCA only)

- ▶ The IRS may terminate the FATCA agreement and delist the Global Intermediary Identification Number (GIIN) from the IRS FFI list for noncompliance or for failure to complete the required certifications, resulting in application of 30% withholding on US-source income and potential difficulties in dealing with other financial counterparties.





1.3

Regulatory framework in ADGM

Regulatory framework in ADGM

Background

ADGM is an International Financial Center (IFC), established by law in 2013. ADGM, a financial free zone, plays a pivotal role in positioning the Abu Dhabi as a global center for business and finance, connecting the economies of the Middle East, Africa and South Asia.

ADGM's three independent authorities are:

The Registration Authority

The Financial Services Regulatory Authority

ADGM Courts

They ensure ADGM operates in line with international best practice that is recognized by major financial centers across the world. As an international Financial Center and Financial Regulator, ADGM works closely with multiple relevant government authorities as well as local and global stakeholders to strengthen its regulatory framework and legal jurisdiction to maintain an attractive business environment they need for sustainable business growth.

In the FATCA and CRS context, the UAE Ministry of Finance is the UAE Competent Authority ultimately responsible for the implementation and oversight of the regulations in the UAE however, it has delegated responsibility to regulators such as the ADGM to monitor and enforce the compliance of their licensees.

The UAE FATCA and CRS regulatory framework is implemented through the following authorities

- ▶ the UAE Competent Authority, being the Minister of Finance or his delegate;
- ▶ the Regulatory Authorities, appointed pursuant to Article 3 of the FATCA Resolution for the purpose of implementing the FATCA requirements and Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Financial Account Information [Federal Decree No.48 of 2018] with respect to CRS.
- ▶ the Federal Tax Authority, which is delegated certain functions on behalf of the Ministry of Finance in its capacity as a Regulatory Authority pursuant to Article 4 of the FATCA resolution No. (63) of 2022

In July 2017 the ADGM's Financial Services Regulatory Authority (FSRA) enacted Common Reporting Standard Regulations 2017 to comply with the OECD's CRS, which have been further amended in June, 2020.

Implementation and Oversight

ADGM FSRA Role:

- ▶ The FSRA is responsible for the implementation and oversight of the FATCA and CRS frameworks within ADGM.
- ▶ It provides regulatory guidance, conducts compliance reviews, and ensures that financial institutions adhere to international tax reporting standards.

Ministry of Finance (MOF) Collaboration:

- ▶ The ADGM FSRA collaborates with the UAE Ministry of Finance to facilitate the exchange of information under FATCA and CRS.
- ▶ The MOF acts as the competent authority for exchanging information with other jurisdictions.

The FATCA and CRS regulatory framework in ADGM facilitates the compliance of financial institutions with international tax transparency standards. This framework includes comprehensive due diligence and reporting requirements, supported by the FSRA's guidance and oversight. By complying to these regulations, ADGM helps maintain the integrity of the global financial system and supports efforts to combat tax evasion.

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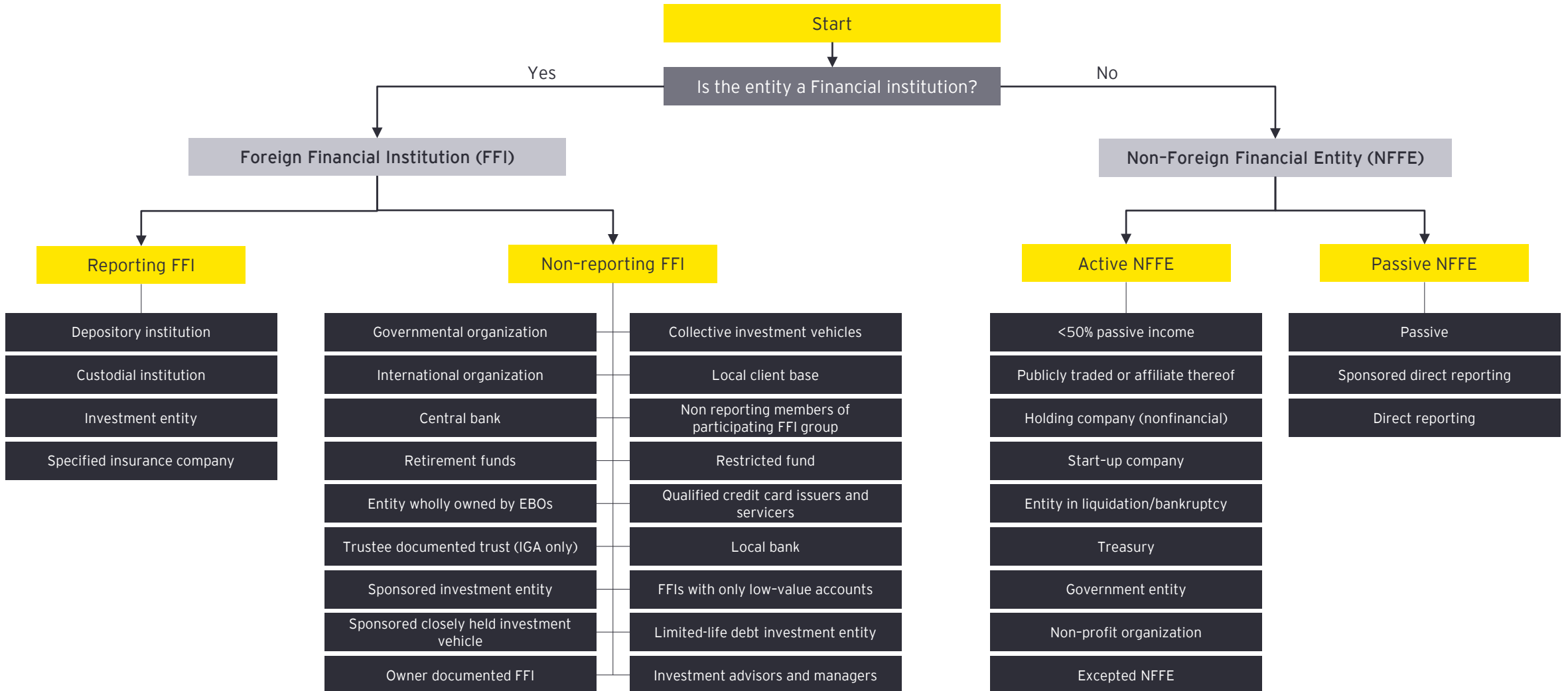
Entity classification and reporting obligations



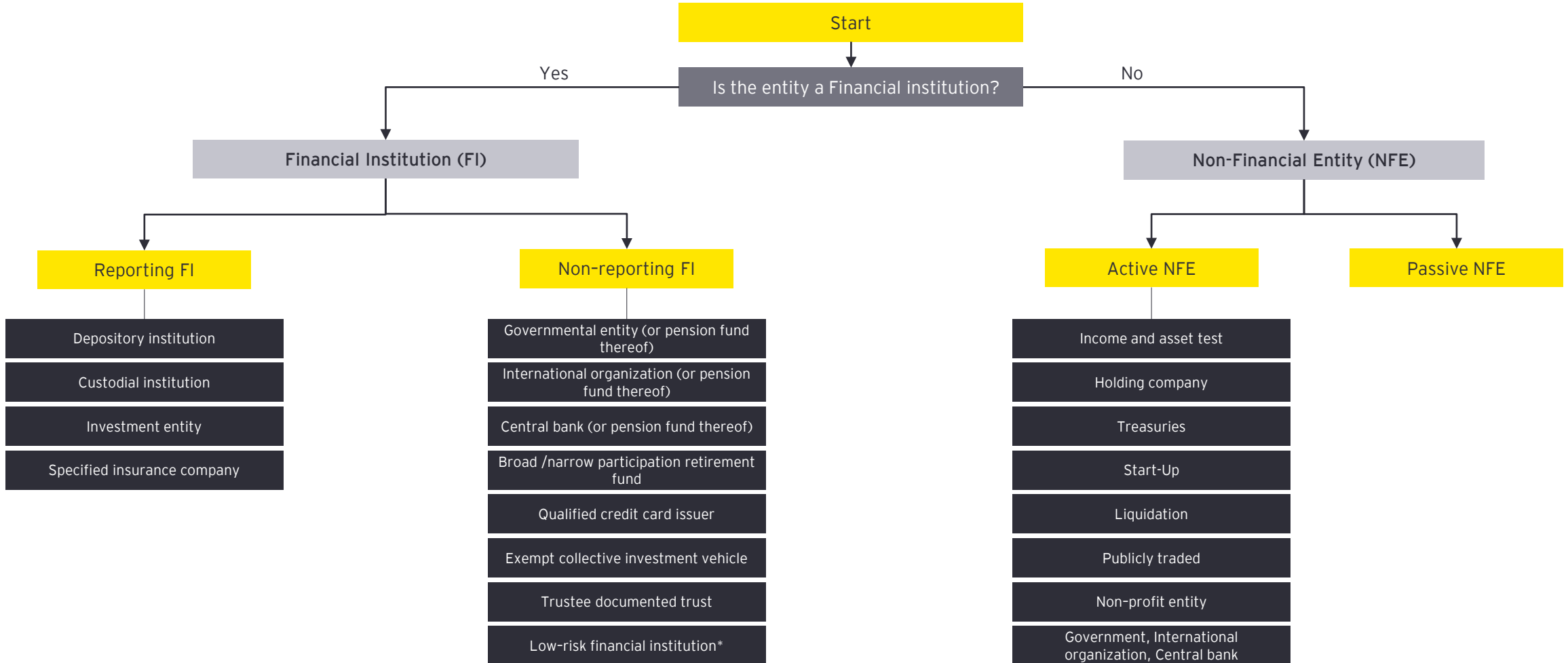
2.1

Understanding entity classification under FATCA and CRS

Entities under FATCA: overview



Entities under CRS: overview



FATCA legal entity classification

RFIs as per FATCA

Under FATCA, RFIs are broadly classified as follows:

Depository institution

Accepts deposits in the ordinary course of a banking or similar business

Custodial institution

Holds financial assets for the benefit of one or more other persons

Investment entity

Any entity that primarily conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

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

Specified insurance company

An insurance company (or holding company of an insurance company) that issues or is obligated to make payments with respect to a "financial account" (financial accounts include cash value insurance or annuity products, e.g., life bonds)

Under the US Treasury Regulations specifically, certain holding companies and treasury companies may also be classified as FIs.

CRS legal entity classification

RFIs as per CRS

Under CRS, RFIs are broadly classified as follows:

Depository institution

Any entity that accepts deposits in the ordinary course of a banking or similar business

Custodial institution

Any entity that holds, as a substantial portion of its business, financial assets for the account of others

Investment entity

Any entity:

Type a) That primarily conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

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

Type b) Whose gross income of which is primarily attributable to investing, reinvesting or trading in financial assets, if managed by another entity that is depository institution, custodial institution, specified insurance company or investment entity described above

Specified insurance company

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 RFI means any Participating Jurisdiction Financial Institution that is not a Non-Reporting FI. The term "Participating Jurisdiction Financial Institution" means any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.

Depository institution under FATCA and CRS

Depository institution

Definition

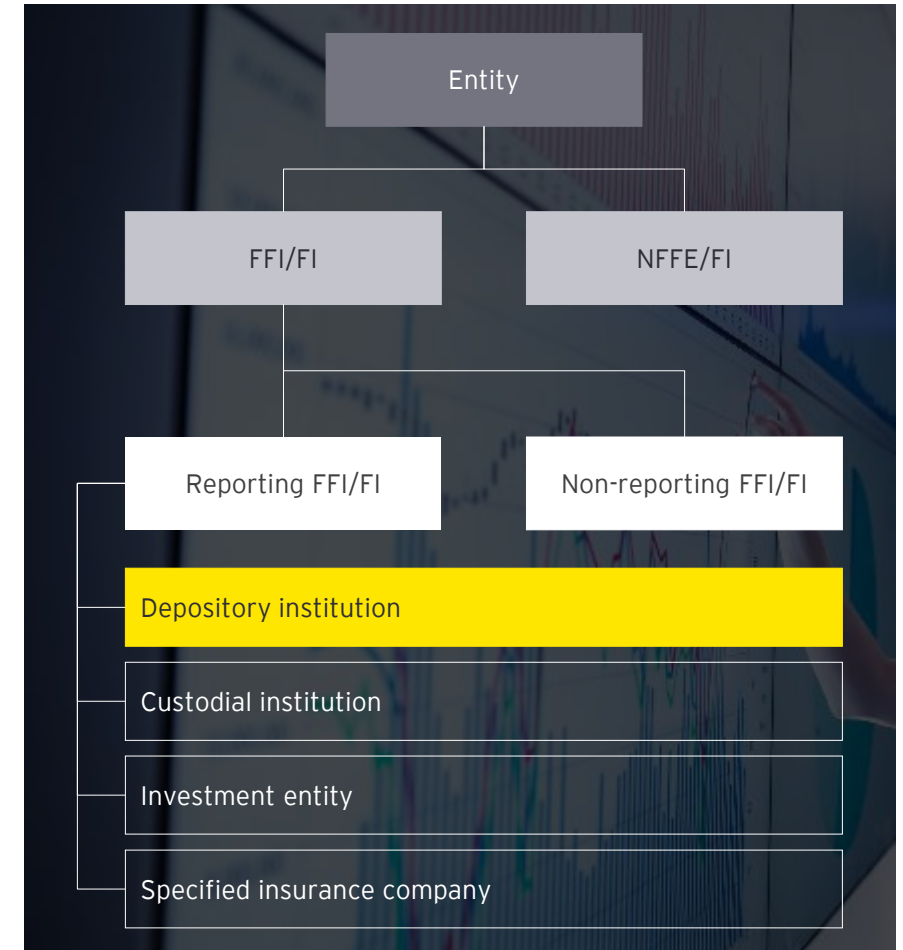
- ▶ The term “Depository Institution” means any entity that accepts deposits in the ordinary course of a banking or similar business. Depository institutions are usually banks or similar institutions. An entity is not considered to be engaged in a banking or similar business if it solely provides asset-based finance services or accepts deposits solely from persons as collateral or security pursuant to a sale or lease of property, a loan secured by property, or pursuant to similar financing arrangements between that entity and the person making the deposit.

Application

- ▶ Most banks would be considered Depository Institutions.
- ▶ These are entities that accept deposits and make loans. They might also provide other services like wealth management, currency exchange and safe deposit boxes.
- ▶ The following would not be expected to fall within the definition of a Depository Institution:
 - ▶ Insurance brokers
 - ▶ Attorneys-at-law
 - ▶ Factoring or invoice discounting businesses
 - ▶ Entities that complete money transfers by instructing agents to transmit funds

Example

- ▶ Banks and savings institutions
- ▶ Credit unions
- ▶ Certain other types of organizations that accept deposits or other similar types of financial assets from customers



Custodial institution under FATCA and CRS

Custodial institution

Definition

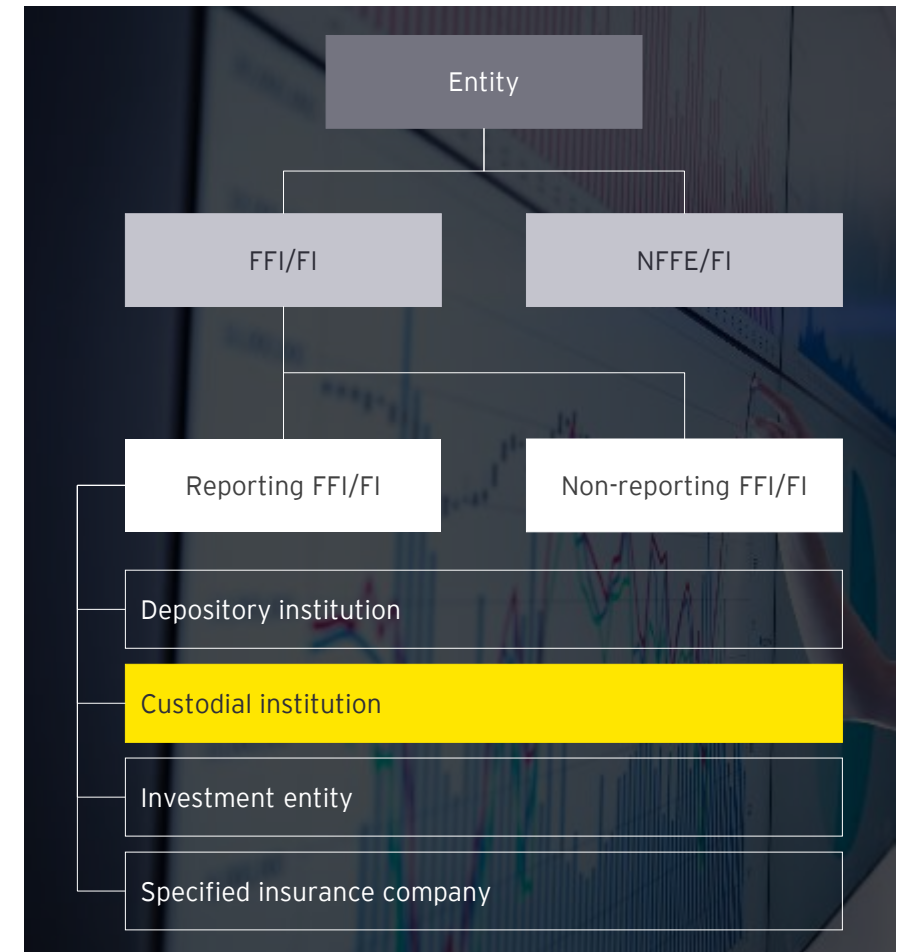
- ▶ The term “Custodial Institution” means any entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity’s gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

Application

- ▶ Entities that buy, sell and hold securities for their clients as part of their brokerage services
- ▶ Entities that hold securities and other assets in electronic or physical form for safekeeping to minimize the risk of theft or loss; they may also offer other services such as account administration, transaction settlements, collection of dividends and interest payments, tax support, and foreign exchange
- ▶ Entities that only provide advice, do not hold, and will not hold financial assets and therefore, have no financial accounts, are not treated as custodial institutions

Example

- ▶ Brokerage firms
- ▶ Custodian banks



Investment entity under FATCA

Investment entity – FATCA

Definition

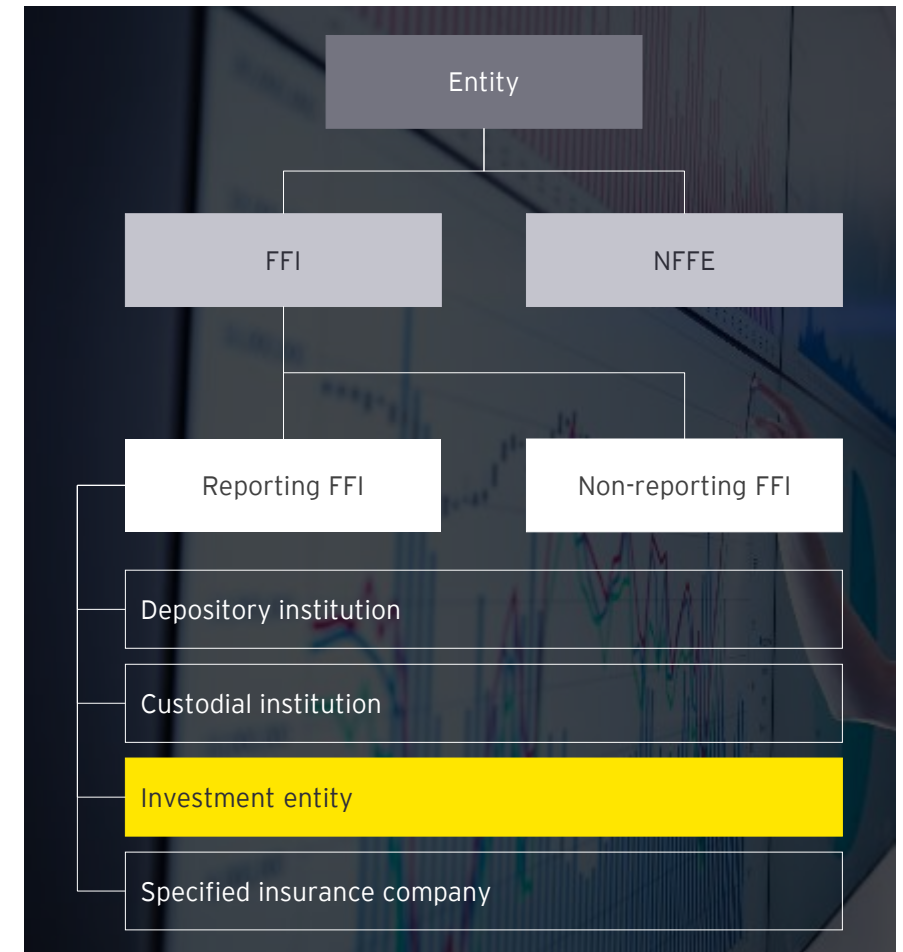
- ▶ The term “Investment Entity” means any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
 - ▶ Trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading
 - ▶ Individual and collective portfolio management
 - Or
 - ▶ Otherwise investing, administering or managing funds or money on behalf of other persons

Application

- ▶ Most types of funds would be considered Investment Entities.
- ▶ If an FI has discretionary management over any of the assets of an entity, the entity should meet the investment entity definition.
- ▶ Some investment advisors may not qualify under this category
- ▶ Note: Under the US Treasury Regulations, there is a two-part test to determine if the entity meets the investment entity definition under FATCA (income and management by a professional manager). Under the Inter-governmental agreement (IGA), the test is only one of professional management. However, an IGA may allow the US Treasury Regulations to be applied in lieu of the IGA definition (check the relevant IGA and associated guidance).

Example

- ▶ Investment funds, personal investment companies
- ▶ Entities that have funds managed by another FI, e.g., a fund professionally managed by a fund manager



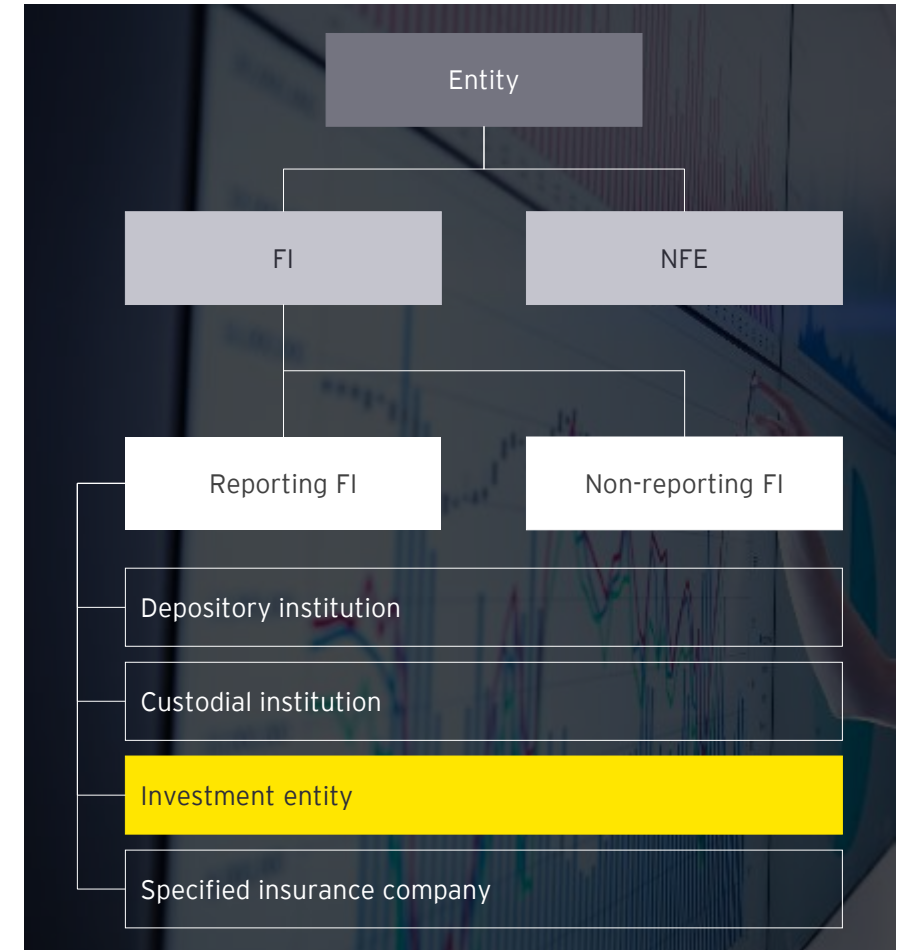
Investment entity under CRS

Investment entity – CRS

Definition

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

1. Entities that primarily conduct as a business investment activities or operations for or on behalf of other persons
2. Entities with gross income that is primarily attributable to investing, reinvesting or trading in financial assets, if they are managed by other FIs
3. Funds including, for the purpose of CRS, collective investment vehicles, mutual fund, exchange traded funds, private equity funds, venture capital funds, leveraged buy-out funds or any similar investment vehicles established with an investment strategy of investing, reinvesting, or trading in financial assets



Investment entity under CRS (cont.)

Investment entity – CRS

Type 1: Investment managers and advisors

Investment activities

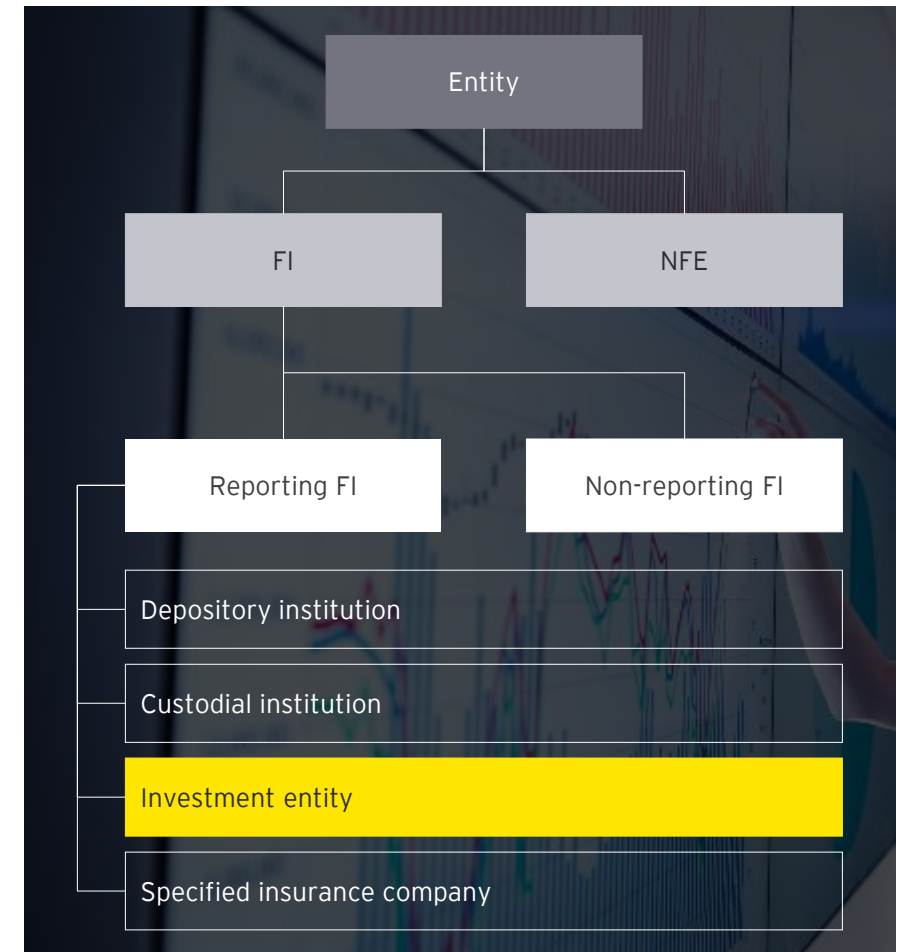
- ▶ Any entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer: i) trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; ii) individual and collective portfolio management iii) otherwise investing, administering or managing financial assets or money on behalf of other persons

Primarily conducting as a business

- ▶ An entity is treated as primarily conducting as a business if the entity's gross income attributable to the relevant investment activities equals or exceeds 50% of the entity's gross income during either its last three accounting periods, or since it commenced business, whichever is shorter.

Acting on behalf of

- ▶ Although no CRS-specific guidance has been released in this respect, persons are generally considered as acting on behalf of others where they (investment managers and advisors) have the authority to conclude binding contracts in the name and for the account of such other persons or companies.



Investment entity under CRS (cont.)

Investment entity – CRS

Type 2: Entities managed by investment managers and advisors

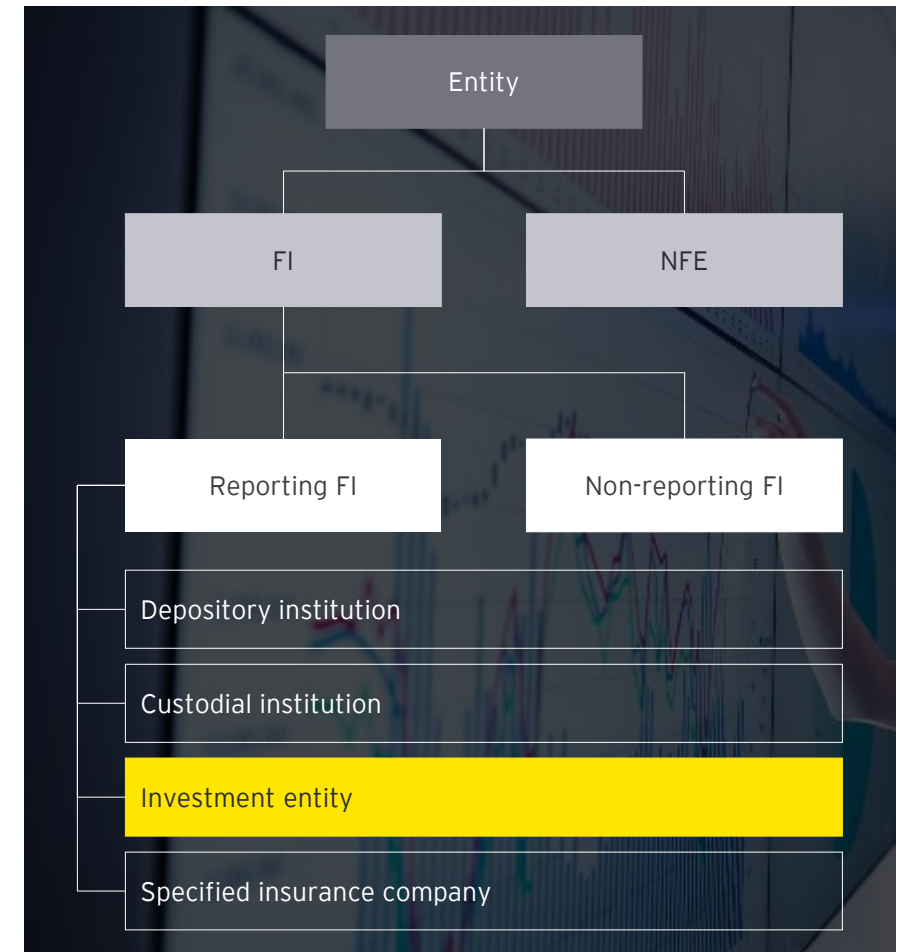
Any entity the gross income of which is primarily attributable to investing, reinvesting or trading in financial assets, if the entity is managed by another entity that is a depository institution, a custodial institution, a specified insurance company, or an investment entity

Managed by

- ▶ 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 qualifying as investment activities on behalf of the managed entity.
- ▶ Moreover, such management requires that the managing entity has a discretionary authority to manage the entity’s assets.
- ▶ If the entity is managed by a mix of FIs, NFEs and individuals, it will be considered to be managed by another entity that is a depository institution, a custodial institution, a specified insurance company, or an investment entity if any of the managing entities is such another entity.

Active NFEs

- ▶ Any Active NFE that qualifies as such because it is a holding NFE, or a treasury center, which are members of a nonfinancial group, a start-up NFE, or a NFE that is liquidating or emerging from bankruptcy, should not be considered as an investment entity.



Investment entity under CRS (cont.)

Investment entity

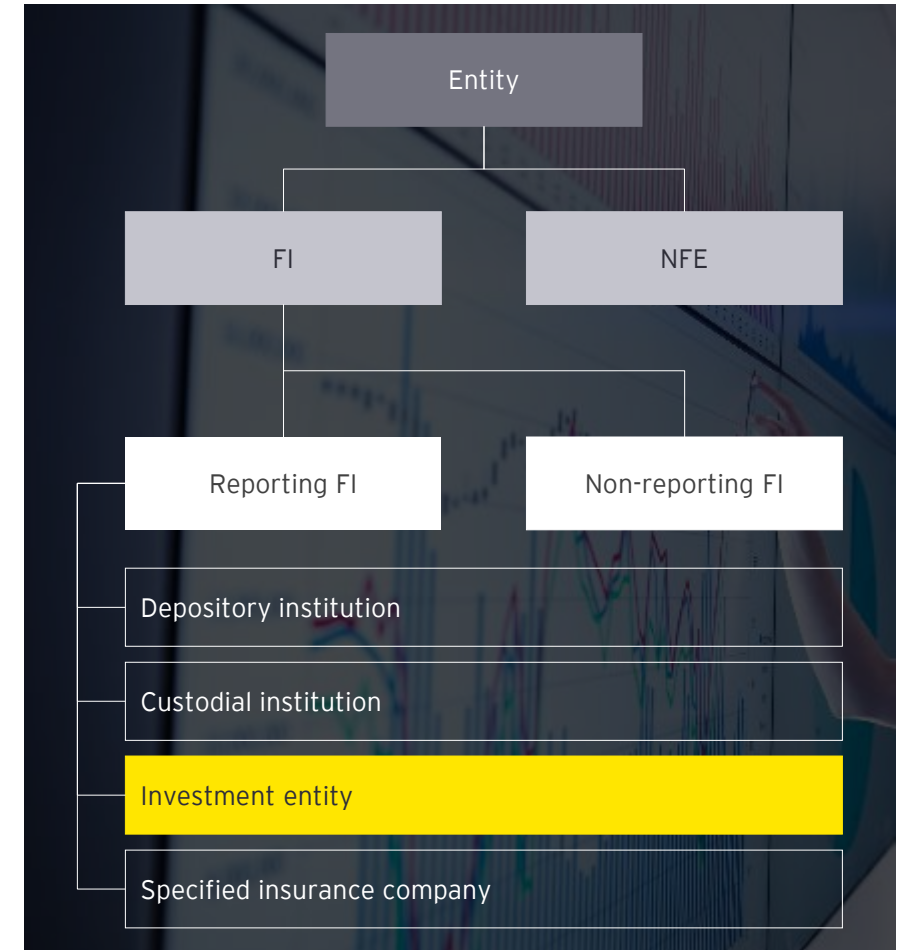
Type 3: Funds

Funds

- For the purpose of CRS, funds will always be considered as investment entities. In this respect, the term “fund” includes collective investment vehicles, mutual funds, exchange traded funds, private equity funds, venture capital funds, leveraged buy-out funds or any similar investment vehicles established with an investment strategy of investing, reinvesting or trading in financial assets.

Exception – directly investing in real estate

- Any entity, the primary business of which consists in investing, administering or managing non-debt, direct interests in real estate on behalf of other persons will not be considered as an investment entity (e.g., real estate investment trust, regardless of whether this trust is managed by another entity).



Specified insurance company under FATCA and CRS

Specified insurance company

Definition

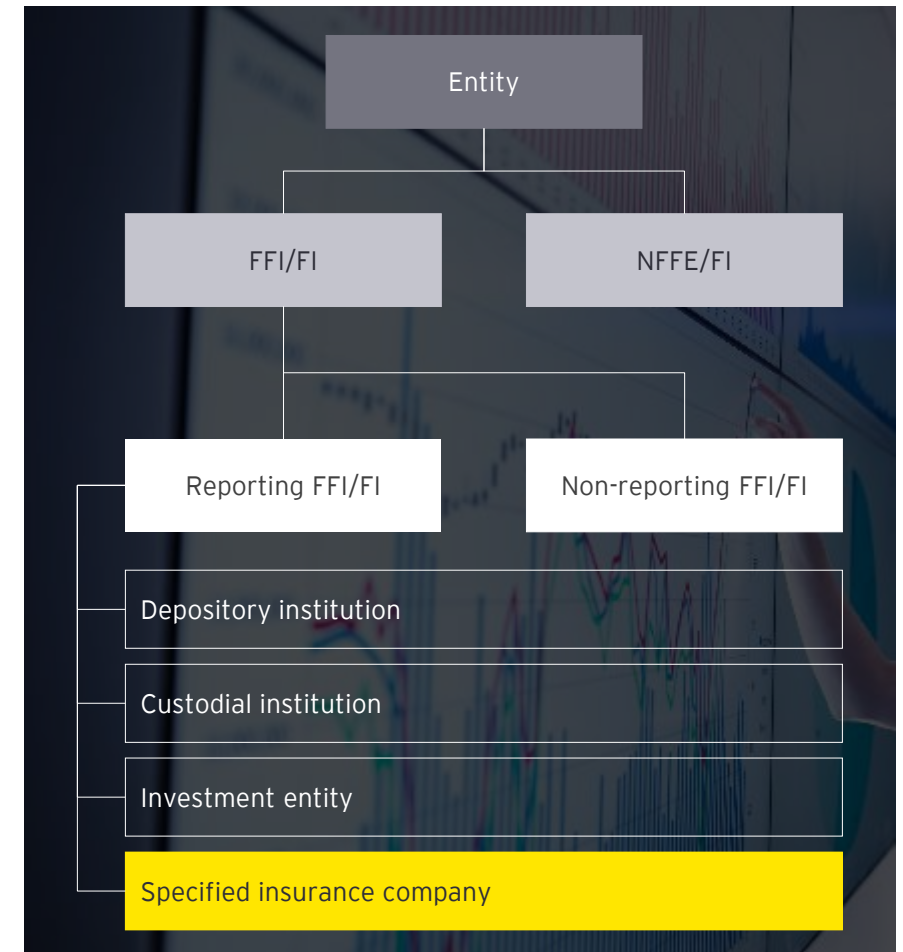
- ▶ The term “Specified Insurance Company” means any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a cash value insurance contract or an annuity contract.

Application

- ▶ Most insurance companies
- ▶ An insurance company (or a holding company of an insurance company) that issues life insurance or annuity contracts
- ▶ An insurance company that issues cash value insurance contracts or has accounts that are treated as financial accounts under FATCA

Examples

- ▶ Life insurance companies
- ▶ Health insurance companies



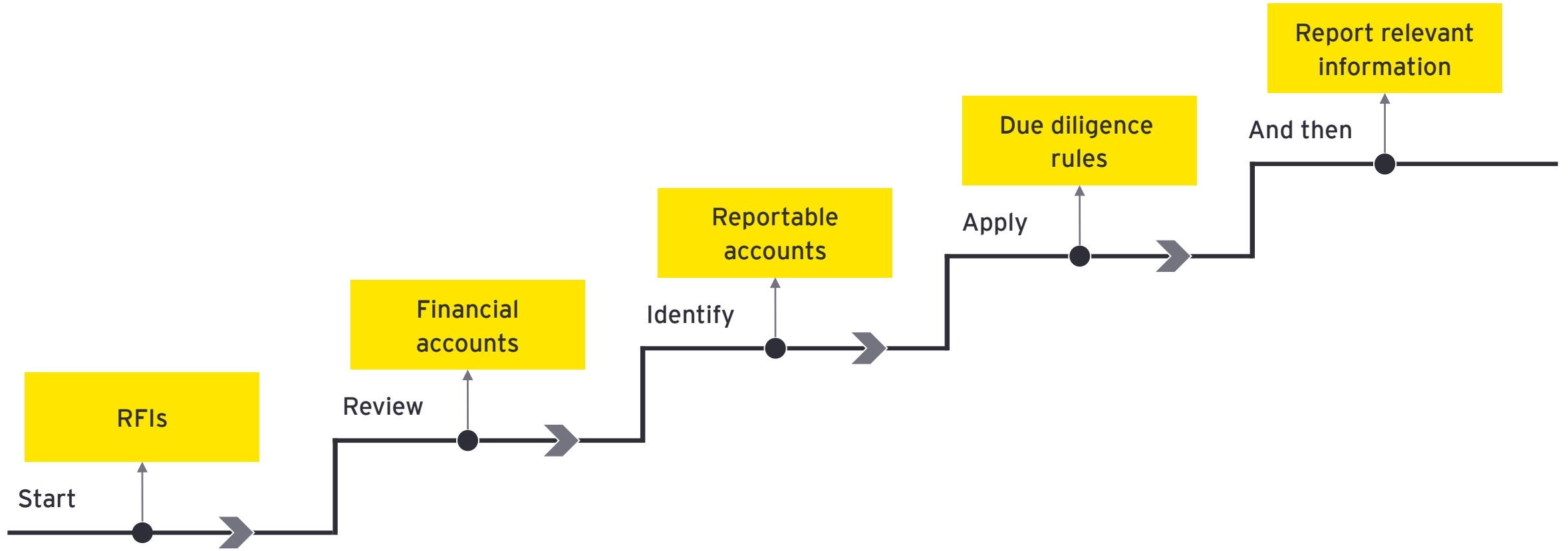


2.2

Identifying reporting obligations

Overview of FATCA and CRS reporting requirements for RFIs

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Financial accounts in scope for FATCA and CRS

Identify relevant financial accounts

Any financial account (above the de minimis, if applicable)

Financial accounts are:

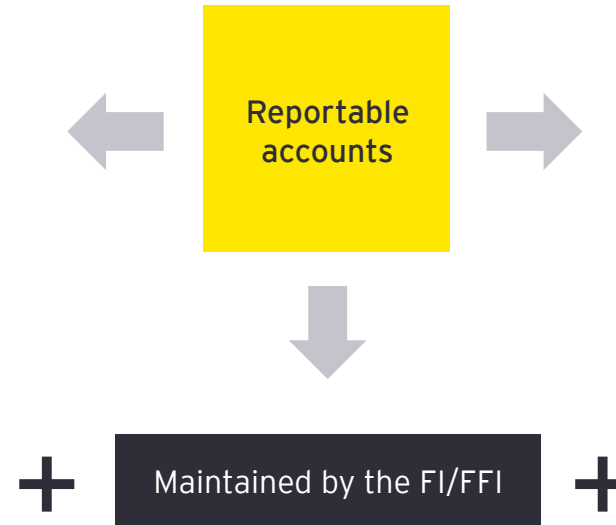
- ▶ Any depository or custodial account maintained by a financial institution (i.e., customer accounts)
- ▶ Any equity or debt interest in the financial institution (other than interests that are regularly traded on an established securities market)
- ▶ Any cash value insurance contract and any annuity contract issued/maintained by a financial institution
- ▶ Certain credit balances or credit cards and prepaid cards that are not excluded accounts

Identify relevant account holders

That are held by (i) one or more Reportable Persons/Specified US Person or by (ii) a Passive NFFE/NFE with one or more Controlling Persons that is a Reportable Person/Specified US Person

Reportable persons are:

- ▶ Resident in a reportable jurisdiction subject to the tax laws of such jurisdiction (Specified US person for FATCA), or an estate of a decedent that was a resident of a reportable jurisdiction, except a corporation the stock of which is regularly traded on one of more established securities markets, any corporation that is a related entity of such corporation, a governmental entity, an international organization, or a central bank of an FI
- ▶ A Passive NFFE/NFE with one or more controlling persons that is a Reportable Person/US Controlling Person, with a controlling person defined as:
 - ▶ A natural person who has controlling ownership interest (25% unless lower per domestic law)
 - ▶ If none - a natural person exercising control of controlling entity
 - ▶ If none - senior manager official(s)



Financial accounts in scope for FATCA and CRS (cont.)

Financial accounts

Depository account

Includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business

Generally includes checking and savings accounts.

Equity and debt interest in certain investment entities

Means, in the case of a partnership that is an FI, either a capital or profits interest in the partnership. In the case of a trust that is an FI, an equity interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust

Generally includes debt and equity interests and their equivalents, such as interests in partnership and trust

Custodial account

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

Cash value insurance contract and annuity contract

A cash value contract means an insurance contract (other than an indemnity reinsurance contract between two insurance companies) that has a cash value.

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

Generally includes: contracts insuring against mortality, morbidity, accident, liability, or property risk that has a cash value; and contracts where payments are made for a period of time determined in whole or part by life expectancy

Financial account definition does not include the following:

- ▶ Certain savings accounts such as:
 - ▶ Retirement and pension accounts
 - ▶ Non-retirement savings accounts
 - ▶ Accounts established to receive rollovers from the above accounts
 - ▶ Certain conditions and requirements apply
 - ▶ Account that is tax-favored
- ▶ Term life and general insurance contracts
- ▶ Accounts held by an estate
- ▶ Certain escrow accounts
- ▶ Certain annuity contracts
- ▶ Account or products excluded under IGAs (Model I and Model II)

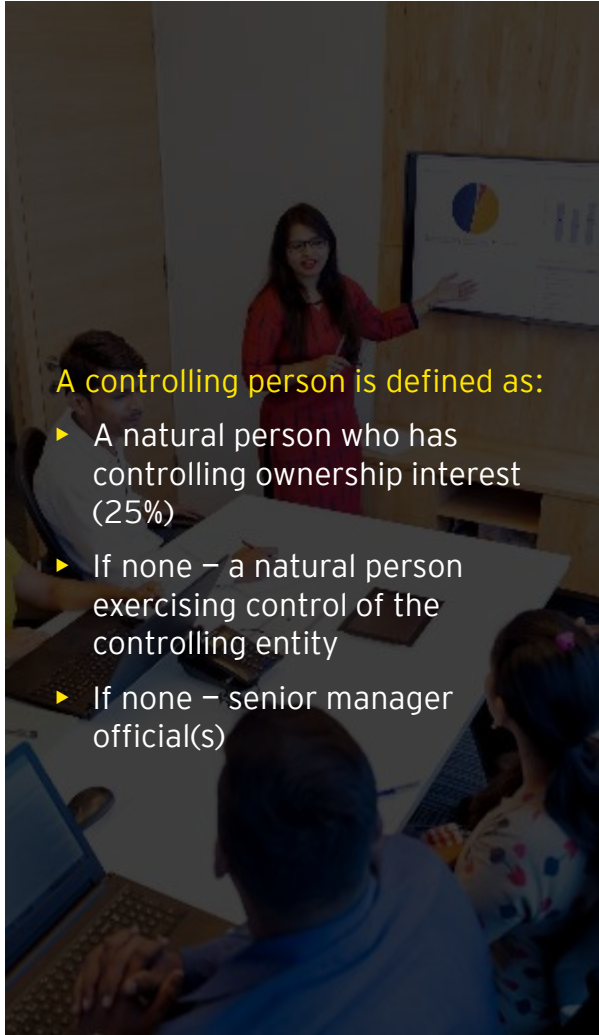
FATCA due diligence procedures: a high-level overview

FATCA requires FIs to perform due diligence procedures and review of pre-existing account holder population to identify reportable account holders under FATCA.

Identification	Individual account holders (and sole proprietors)	Entity account holders
New account holders Accounts opened as of 1 July 2014	<ul style="list-style-type: none"> ▶ Self-certification is required during account opening. ▶ The FI must confirm both the validity and reasonableness of the self-certification. 	<ul style="list-style-type: none"> ▶ Self-certification is required during account opening. ▶ The FI must confirm both the validity and reasonableness of the self-certification.
Pre-existing account holders Accounts held as of 30 June 2014 (or 1 January 2015 for entities*)	<ul style="list-style-type: none"> ▶ Exception from due diligence available for pre-existing accounts (US\$50,000 de Minimis rule) <p>Lower-value accounts (≤ US\$1m)</p> <ul style="list-style-type: none"> ▶ Electronic search for all pre-existing individual accounts and, if elected, obtaining of relevant documents to rebut foreign indicia <p>High-value accounts (> US\$1m)</p> <ul style="list-style-type: none"> ▶ In addition to electronic search, enhanced review (paper record search and annual relationship manager inquiry) is required for high-value accounts (paper search will not be necessary if all indicia is held electronically) 	<ul style="list-style-type: none"> ▶ Exception from due diligence available for pre-existing accounts (US\$250,000 de Minimis rule); US\$250,000 exemption optional and subject to election ▶ Review of information maintained for regulatory or customer relationship purposes (e.g., information pursuant to AML/KYC Procedures) ▶ Review of publicly available information or information in the possession of the FI (or self-certification to determine whether certain entity is not a reportable person under FATCA)
Ongoing monitoring for a change of circumstances	<ul style="list-style-type: none"> ▶ Account holder information should be monitored for when it changes, as this may result in the status of the account holder under FATCA to change. 	<ul style="list-style-type: none"> ▶ Account holder information should be monitored for when it changes, as this may result in the status of the account holder under FATCA to change.

*As per the IRS Notice 2014-33, FFIs may treat an obligation (which includes an account) held by an entity that is opened, executed, or issued on or after 1 July 2014, and before 1 January 2015, as a pre-existing obligation.

FATCA due diligence: new individuals and entities



A controlling person is defined as:

- ▶ A natural person who has controlling ownership interest (25%)
- ▶ If none – a natural person exercising control of the controlling entity
- ▶ If none – senior manager official(s)

New individual accounts

- ▶ Each new individual account holder must sign an IRS W form (for non-IGA jurisdictions where US indicia are identified) or a self-certification before the account opening.
- ▶ RFIs should perform validity and reasonableness test of the IRS form/Self-certification collected.
- ▶ Possible additional documentary evidence must be verified.
- ▶ RFIs should determine final individual FATCA classification (Specified US Person vs. non-reportable).

New entity accounts

- ▶ Each new entity account holder must sign an IRS form or self-certification before the account opening or they must be pre-classified (if possible).
- ▶ For Passive NFFEs, the controlling person(s) must provide a self-certification.
- ▶ It is mandatory to validate an IRS form/self-certification reasonableness by searching for contradictory residency indicators in the documentation provided.



Ongoing monitoring for change in circumstance

FATCA due diligence: pre-existing individuals and entities



Pre-existing lower-value individual accounts

Between de minimis of US\$50,000 and less than US\$1m before the effective date

- ▶ Jurisdictions have the option to allow for reporting financial institutions to apply:
 - ▶ Electronic record search
 - ▶ Optional curing indicia

Pre-existing high-value individual accounts

US\$1m and above before the effective date

- ▶ High-value account due diligence is a very critical milestone in the identification process. RFIs should perform:
 - ▶ Electronic record search
 - ▶ Paper record search for missing indicia
 - ▶ Relationship Manager inquiry

All pre-existing entity accounts

De minimis of US\$250,000 before the effective date

- ▶ Rely on “AML due diligence” requirements and account information to classify and identify residency indicia
- ▶ If the FFI cannot identify Active NFFE or FFI, an IRS W form self-certification is requested to identify Passive NFFEs
- ▶ Passive NFFEs must identify US controlling person(s)
- ▶ For accounts higher than US\$1m, a self-certification is required from the controlling person(s)



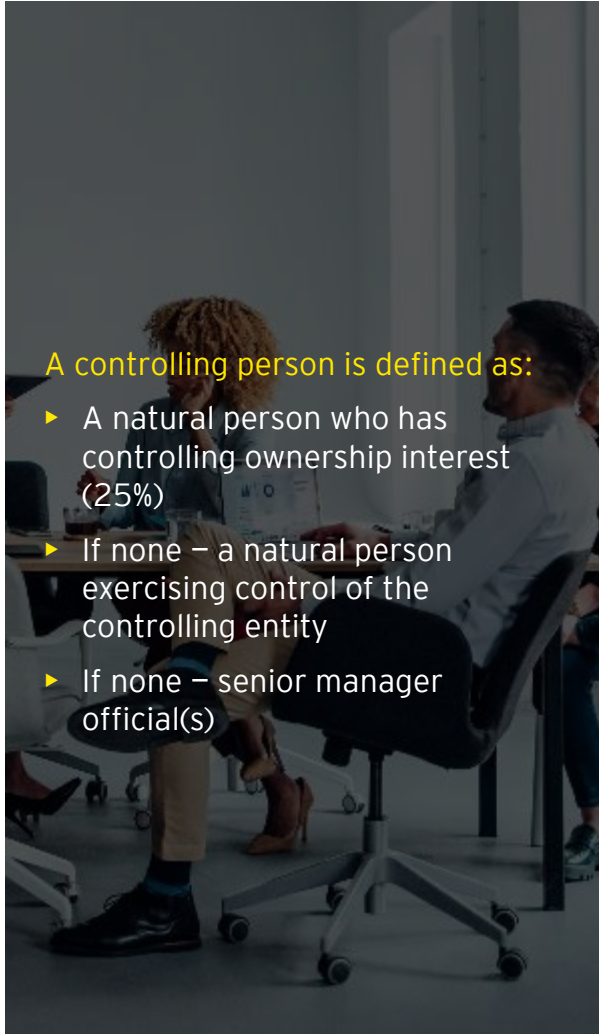
Ongoing monitoring for change in circumstance for indicia and thresholds.

CRS due diligence procedures: a high-level overview

CRS requires FIs to perform due diligence procedures and review of pre-existing account holder population to identify reportable account holders under CRS.

Identification	Individual account holders (and sole proprietors)	Entity account holders
<p>New account holders Accounts opened as of the effective date</p>	<ul style="list-style-type: none"> ▶ Self-certification (which indicates the tax residence of an account holder) is required during account opening (OECD FAQs provide for a 90-day window to perform a reasonableness test for FIs with a Day 2 account opening process). ▶ The FI must confirm both the validity and reasonableness of the self-certification, including the Residence by Investment (RBI)/Citizenship by Investment (CBI) requirements. 	<ul style="list-style-type: none"> ▶ A self-certification is needed unless pre-classification rules are applied (a review of publicly available information or information in the possession of the FI to determine whether a certain entity is not a reportable person under CRS e.g., a Financial Institution)
<p>Pre-existing account holders Accounts held as at the day before the effective date</p>	<p>Lower-value account holders (≤ US\$1m)</p> <ul style="list-style-type: none"> ▶ The residence address test should be based on a current residence address held in the database supported by documentary evidence. ▶ Alternatively, an electronic search should be completed for all pre-existing individual accounts and, if elected, obtaining of relevant documents to rebut foreign indicia. <p>High-value accounts (> US\$1m)</p> <ul style="list-style-type: none"> ▶ In addition to an electronic search, enhanced review (paper record search and annual Relationship Manager inquiry) is required for high-value accounts (paper search will not be necessary if all indicia is held electronically) 	<ul style="list-style-type: none"> ▶ Exception from due diligence is available for pre-existing accounts (US\$250,000 de minimis rule). The US\$250,000 exemption is optional, subject to election. RFI should review information maintained for regulatory or customer relationship purposes (e.g., information pursuant to AML/KYC Procedures) ▶ RFI should review publicly available information or information in the possession of the FI (or self-certification) to determine whether certain entities are not a reportable person under CRS
<p>Ongoing monitoring for a change of circumstances</p>	<ul style="list-style-type: none"> ▶ Account holder information should be monitored for when it changes – this may result in the status of the account holder under CRS to change. 	<ul style="list-style-type: none"> ▶ Account holder information should be monitored for when it changes – this may result in the status of the account holder under CRS to change.

CRS due diligence: new individuals and entities



A controlling person is defined as:

- ▶ A natural person who has controlling ownership interest (25%)
- ▶ If none – a natural person exercising control of the controlling entity
- ▶ If none – senior manager official(s)

New individual accounts

- ▶ Each new individual account holders must sign a CRS self-certification before the account opening.
- ▶ RFIs should perform a validity and reasonableness test of the IRS form/self-certification collected.
- ▶ Possible additional documentary evidence must be verified.
- ▶ RFIs should determine final individual CRS classification (reportable vs. non-reportable).

New entity accounts

- ▶ Each new entity account holder must sign a CRS self-certification before the account opening or they must be pre-classified (if possible).
- ▶ For Passive NFEs, the controlling person(s) must provide a self-certification.
- ▶ It is mandatory to validate its reasonableness by searching for contradictory residency indicators in the documentation provided.



Ongoing monitoring for change in circumstance

CRS due diligence: pre-existing individuals and entities



Pre-existing lower-value individual accounts

Up to US\$1m before the effective date

- ▶ Jurisdictions have the option to allow for RFIs to apply
 - ▶ Residency test
 - ▶ Electronic record search
 - ▶ Optional curing indicia

Pre-existing high-value individual accounts

US\$1m and above before the effective date

- ▶ High-value account due diligence is a very critical milestone in the identification process of account holders and RFIs must apply the following steps:
 - ▶ Electronic record search
 - ▶ Paper record search for missing indicia
 - ▶ Relationship Manager inquiry (annual)

All Pre-existing Entity accounts

De Minimis of US\$250,000 before the effective date

- ▶ Rely on "AML due diligence" requirements and account information to classify and identify residency indicia
- ▶ If the FI cannot identify Active NFE or FI, a self-certification requested to identify Passive NFEs
- ▶ Passive NFEs to identify Controlling Person(s)
- ▶ For accounts higher than US\$1m, self-certification required from the controlling person(s)



Ongoing monitoring for change in circumstance for indicia and thresholds.



2.3

Clarification on who needs to report and what needs to be reported

Information reported under FATCA and CRS

Account holder information*

- ▶ Name
- ▶ Address
- ▶ Jurisdiction(s) of residence
- ▶ Tax Identification Number (TIN) of each jurisdiction of residence
- ▶ Date and place of Birth
- ▶ Account Number
- ▶ Name and ID of Reporting FI/FFI
- ▶ Balance or Value (unless closed)

Individual

- ▶ Name
- ▶ Address
- ▶ Jurisdiction(s) of residence
- ▶ TIN(s)
- ▶ Date and place of Birth (for each controlling person)
- ▶ Account Number
- ▶ Name and ID of Reporting FI/FFI
- ▶ Balance or Value (unless closed)

Entity with reportable controlling Person

- ▶ Name
- ▶ Address
- ▶ Jurisdiction(s) of residence
- ▶ TIN of each jurisdiction of residence
- ▶ Account Number
- ▶ Name and ID of Reporting FI/FFI
- ▶ Balance or Value (unless closed)

Entity



Financial account information

Depository account

- ▶ Balance or Value (unless closed)
- ▶ Gross interest

Custodial Account

- ▶ Balance or Value (unless closed)
- ▶ Gross interest
- ▶ Gross dividends
- ▶ Gross total income
- ▶ Gross proceeds

Other such as cash value insurance products (Not Applicable)

- ▶ Gross payments (Including Redemptions) such as payment under a cash value insurance product

* For FATCA, US TIN should be provided.

3

General due diligence obligations



3.1

Collection of self-certification forms



Collection of self-certification forms

RFIs must collect self-certifications in the following scenarios:

1 Account opening

When a new account is opened, FIs are required to collect self-certification forms from the account holder to determine their tax residency status. This helps identify whether the account needs to be reported under CRS or FATCA.

2 Change in circumstance

If there is a change in the account holder's information that affects their tax residency status, such as a change of address, citizenship or other personal details, FIs must request an updated self-certification form to reflect the new circumstances.

3 Periodic reviews

Some FIs conduct periodic reviews of existing accounts to verify the accuracy of the information on file. During these reviews, they may request updated self-certification forms to verify the current tax residency status of the account holders.

4 High-value accounts

For high-value accounts, additional due diligence may be required under CRS and FATCA. This can include obtaining self-certification forms to confirm proper reporting of these accounts.

5 Pre-existing accounts

For pre-existing accounts, especially those above certain thresholds, FIs may need to collect self-certification forms to classify the accounts correctly under CRS and FATCA.

6 Entity accounts

When dealing with entity accounts, FIs must determine whether the entity is a FI or a nonfinancial entity (NFE). For certain NFEs, the institution needs to collect information about the controlling persons, which often involves obtaining self-certification forms.

7 Requests from tax authorities

If tax authorities request specific information about an account holder for compliance checks or investigations, FIs may need to collect or update self-certification forms to provide accurate and current data.

A photograph of three business professionals in a modern office setting. A woman in a tan blazer and a man in a grey suit are standing and looking at a laptop on a desk. Another man in a grey suit is sitting at the desk, looking at the laptop. The background shows large windows and a staircase.

3.2

Conducting a reasonableness check

FATCA due diligence: conducting a reasonableness check

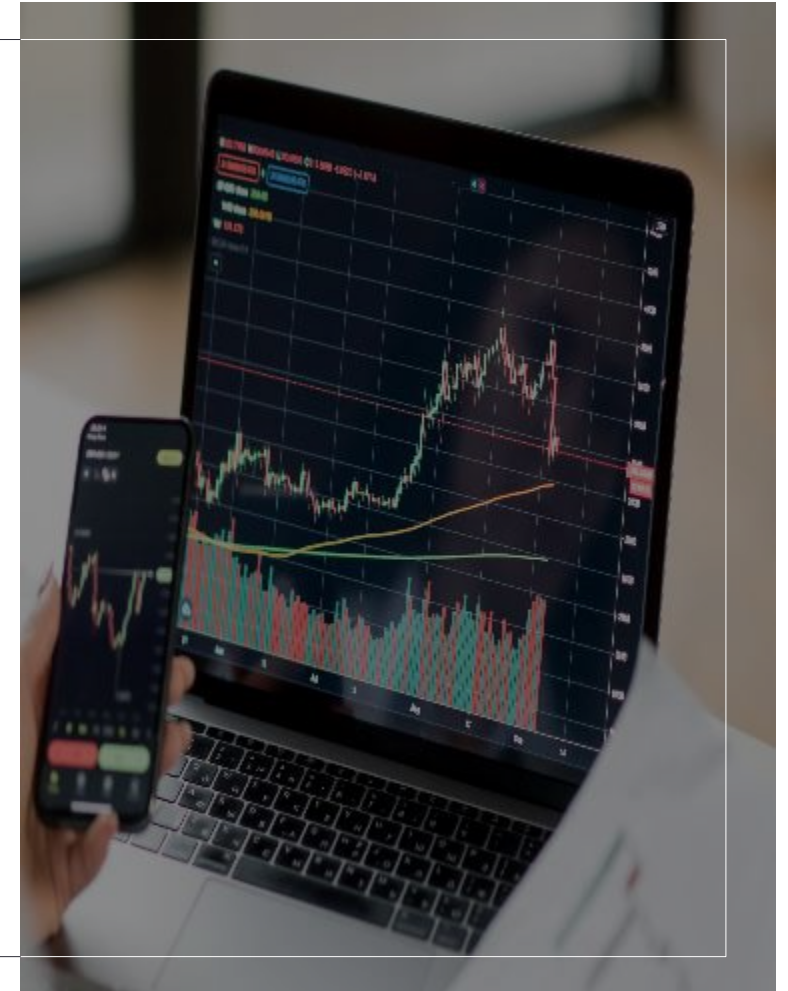


An RFI is considered to have confirmed the “reasonableness” of an IRS W form or self-certification if, during the account opening procedures and upon review of the information obtained in connection with the opening of the account (including any documentation collected pursuant to AML and KYC procedures), it does not know or have reason to know that the self-certification is incorrect or unreliable.

If the IRS W form or self-certification proves not to be reasonable, the RFI has two options:

- ▶ Obtain a valid form
- ▶ Obtain a reasonable explanation supported by documentary evidence (as appropriate)

An RFI is not expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of an IRS W form or self-certification.



CRS due diligence: conducting a reasonableness check

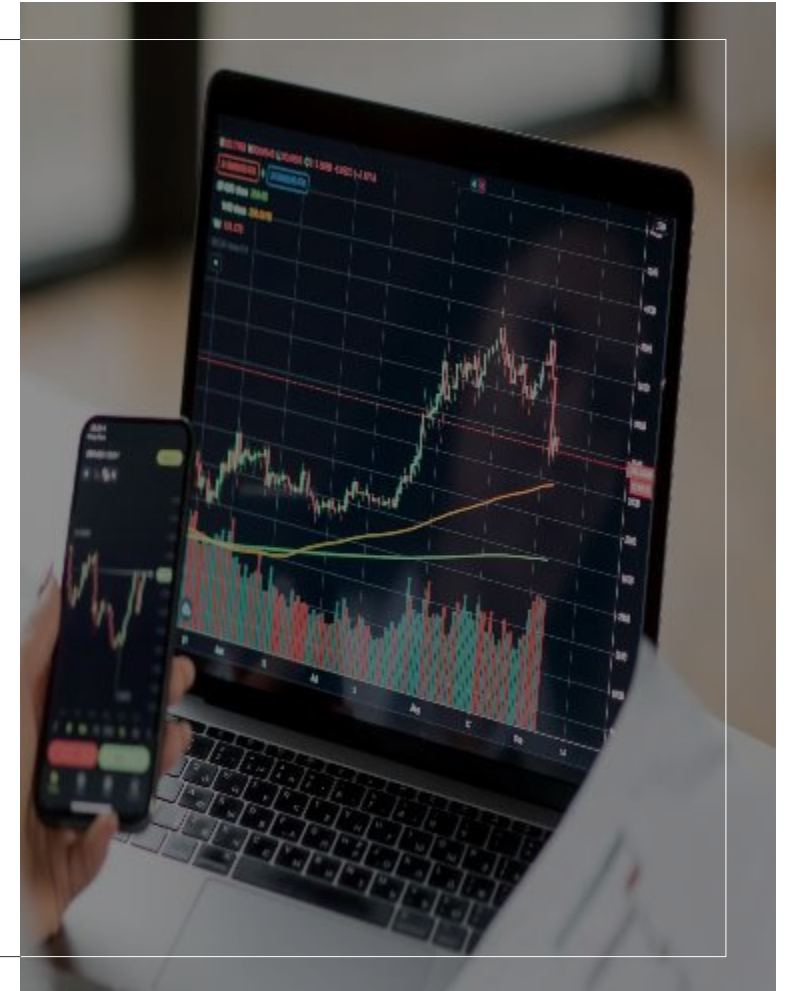
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An RFI is considered to have confirmed the “reasonableness” of a self-certification if, during the account opening procedures and upon review of the information obtained in connection with the opening of the account (including any documentation collected pursuant to AML and KYC procedures), it does not know or have reason to know that the self-certification is incorrect or unreliable. The CBI and RBI rules should also be considered.

If the self-certification proves not to be reasonable, the RFI has two options:

- ▶ Obtain a valid self-certification
- ▶ Obtain a reasonable explanation supported by documentary evidence (as appropriate)

An RFI is not expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification.



FATCA due diligence: change in circumstance

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 which may indicate that the account holder is a Specified US Person or that a FATCA classification assigned to an account is no longer applicable.



Individual

- ▶ Change in citizenship to or from the US
- ▶ New US indicia captured
- ▶ Lower-value to a high-value account
- ▶ Change in circumstances identified by the Relationship Manager

Entity

- ▶ Change in address
- ▶ New US indicators captured
- ▶ Change in activity
- ▶ Change in aggregated balance or value

CRS due diligence: change in circumstance

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 which may indicate that the account holder is a reportable person or that a CRS classification assigned to an account is no longer applicable.



Individual

- ▶ Change in tax residency
- ▶ New indicia captured
- ▶ Non-reportable jurisdiction becomes reportable jurisdiction
- ▶ Lower-value to a high-value account
- ▶ Relationship Manager identifies change in circumstances

Entity

- ▶ Change in tax residency
- ▶ New indicators captured
- ▶ Non-reportable jurisdiction becomes reportable jurisdiction
- ▶ Change in activity
- ▶ Change in aggregated balance or value



3.3

Conducting a validity check

FATCA and CRS due diligence: conducting a validity check

FATCA due diligence

For the IRS form/self-certification form to be valid, individuals are required to disclose the following:

- ▶ Name
- ▶ Residence address
- ▶ TIN, if identified as a US Person

For the IRS W form/self-certification form to be valid, entities are required to disclose the following:

- ▶ Legal name of entity
- ▶ Address
- ▶ FATCA classification
- ▶ TIN, if identified as a US Person

CRS due diligence

For the self-certification form to be valid, individuals are required to disclose the following:

- ▶ Name
- ▶ Residence address
- ▶ Date of birth
- ▶ Jurisdiction(s) of tax residence
- ▶ TIN for every country/jurisdiction of tax residence

For the self-certification form to be valid, entities are required to disclose the following:

- ▶ Legal name of entity
- ▶ Address
- ▶ CRS classification
- ▶ Jurisdiction(s) of tax residence
- ▶ TIN for every country/jurisdiction of tax residence



3.4

CBI and RBI schemes

CBI and RBI schemes

What are the CBI and the RBI schemes?

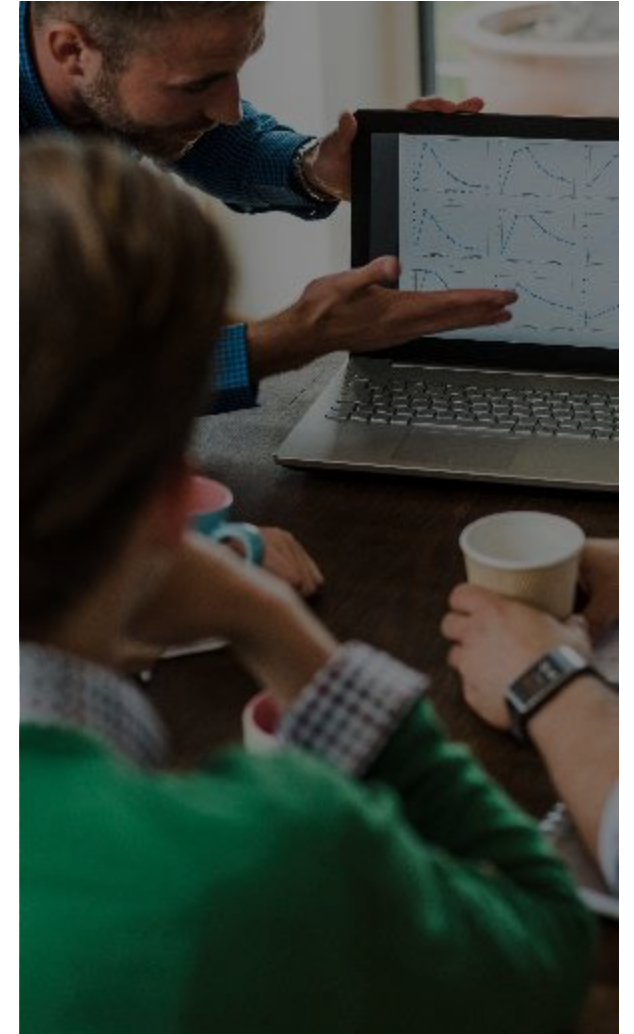
CBI and RBI are schemes that are offered by a substantial number of jurisdictions that allow foreign individuals to obtain citizenship or temporary or permanent residence rights based on local investments or for other purposes.

Instances of misuse of the CBI and the RBI schemes

The OECD has identified jurisdictions that potentially pose a high risk to the integrity of CRS, whereby taxpayers may misuse these schemes to hide their assets offshore to avoid reporting under CRS to other jurisdictions. This may lead to inaccurate or incomplete reporting under CRS, in particular, when not all jurisdictions of tax residence are disclosed to the RFIs. Such a scenario could arise where an individual does not actually or not only reside in the CBI and RBI jurisdiction but claims to be resident for tax purposes only in such jurisdiction and provides the RFI with supporting documentation issued under the CBI and RBI scheme, for example, a certificate of residence, ID card or passport.

Jurisdictions offering the CBI and the RBI schemes

Antigua and Barbuda	Dominica	Seychelles
Bahamas	Grenada	Turks and Caicos Islands
Bahrain	Malta	UAE
Barbados	Saint Kitts and Nevis	Vanuatu
Cyprus	Saint Lucia	



CRS due diligence: UAE CBI/RBI rules

For the purposes of the reasonableness test in the UAE, an RFI may deem the statement of “UAE tax residency for tax purposes” declared by an account holder or a controlling person (any of which a **Declaring Person**) in a self-certification as reasonable with regard to the territory of the UAE, if the RFI meets the following conditions:

(i) unless the RFI knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable and

(ii) provided that

With regard to new individual accounts

- a) Documentary evidence of a valid UAE residency visa is provided by a Declaring Person.
- b) Enhanced due diligence procedures carried out with respect to valid UAE residency visas with a term of five (5) years or more by the RFI does not render any reason to believe that the self-certification with regard to UAE tax residency is incorrect or unreliable.

With regard to new entity accounts

- a) Documentary evidence of valid trade license, registration certificate or similar issued by the relevant UAE licensing authority is provided.

“Enhanced Due Diligence” means an RFI must seek answers from the Declaring Person, including but not limited to the following questions:

- a) Did you obtain UAE tax residency under a residency by investment scheme?
- b) Are you a resident in any other jurisdiction(s)?
- c) In which jurisdiction(s) have you been subject to personal income tax during the previous calendar year?–



3.5

Handling cases of noncompliant clients

Handling cases of noncompliant clients

Handling noncompliance with self-certification requirements involves a series of steps on how financial institutions can meet their regulatory obligations while managing the risk of penalties. Here is a detailed approach:

1 Initial request and reminders

Request self-certification: When an account is opened or there is a change in circumstances, an FI should request the necessary self-certification form.

2 Temporary account restrictions

Restrict account features: Implement temporary restrictions on the account, such as limiting transactions, until the self-certification form is provided. Inform the account holder of these restrictions and the requirements to lift them.

3 Deadline for submission

Set a firm deadline: Establish a final deadline for the submission of the self-certification form. Communicate this deadline clearly to the account holder, explaining that failure to comply will lead to more severe actions.

4 Apply penalties or freezes

Apply penalties: If the account holder fails to provide the self-certification form by the deadline, freeze the account. This means the account holder cannot perform any transactions until they comply.

5 Withholding tax

FATCA-specific measure: Under FATCA, if the account holder remains noncompliant, the financial institution may be required to withhold a percentage of certain payments (withholding tax) made to the account holder.

6 Close the account

Consider account closure: If all efforts fail and the account holder remains noncompliant, consider closing the account. This is often the last resort, but may be necessary to mitigate regulatory risk.

Handling cases of noncompliant clients (cont.)



7 Maintain detailed communication records

Maintain communication records: Keep detailed records of all communications and actions taken to obtain the self-certification form. This includes initial requests, reminders, notices of restrictions and any reporting to tax authorities.

8 Conducting staff training and awareness sessions

Conduct training and awareness sessions: Training programs help familiarize staff members to be well-trained in compliance procedures and understand the importance of collecting self-certification forms. Regular updates keep staff updated on changes in regulations and best practices for handling noncompliance.

9 Customer education on the implication of noncompliance

Educate customers on implications of noncompliance: Educate account holders about the importance of self-certification forms, the regulations requiring them, and the potential consequences of noncompliance. Providing clear and understandable information can encourage compliance.

10 Seek legal and compliance advice

Seek legal and compliance advice: Engage with legal and compliance experts to confirm that the measures taken align with regulatory requirements and to seek guidance on complex cases of noncompliance.

By following these steps, financial institutions can effectively manage noncompliance and meet regulatory requirements while minimizing the risk of penalties and maintaining good customer relations.

Impact of noncompliance of RFIs with FATCA and CRS

FATCA withholding

- ▶ A withholding tax rate of 30% applies to non-participating foreign financial institutions (NPFFIs) on certain US-source income starting 1 July 2014.
- ▶ Gross proceeds from sale or disposal of investments in US securities and interest-bearing assets are subject to a 30% withholding tax starting 1 January 2019.

Audits/compliance reviews

- ▶ The Competent Authorities may carry out an audit and/or inspection of FIs' compliance with FATCA and CRS requirements, and verify whether procedures have been followed as communicated.
- ▶ In the UAE, RFIs are required to annually submit FATCA and CRS risk assessments.

Reputational risk

- Poor execution may lead to:**
- ▶ Heightened surveillance by Regulatory Authorities (RA)
 - ▶ High-profile clients attracting media attention
 - ▶ Significant variation in client-facing processes and communications compared with peers - potential to impact client relationships
 - ▶ Relationships with counterparties where there is real or perceived noncompliance

Penalties

- ▶ Defined under local law
- ▶ May be enforced for noncompliance as defined by each competent authority

GIIN cancellation (FATCA only)

- ▶ The IRS may terminate FATCA agreement and delist the Global Intermediary Identification Number(GIIN) from the IRS FFI list for noncompliance or for failure to complete the required certifications, resulting in application of 30% withholding on US-source income and potential difficulties in dealing with other financial counterparties.



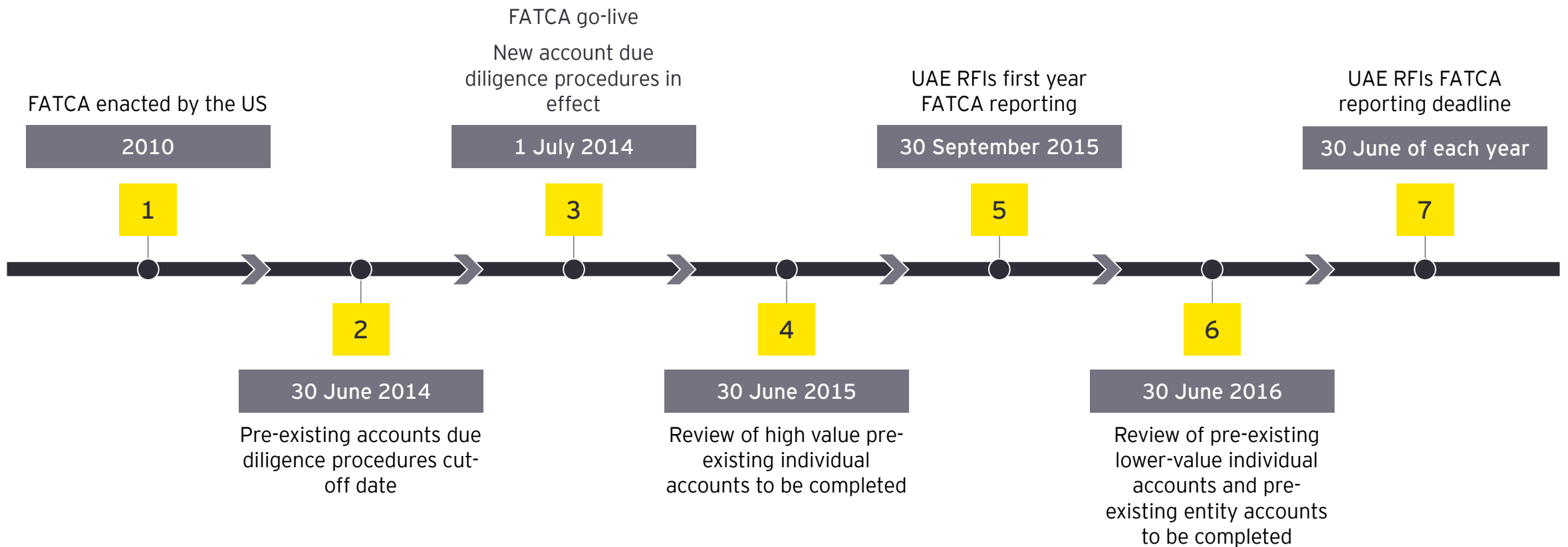
4 Annual reporting process



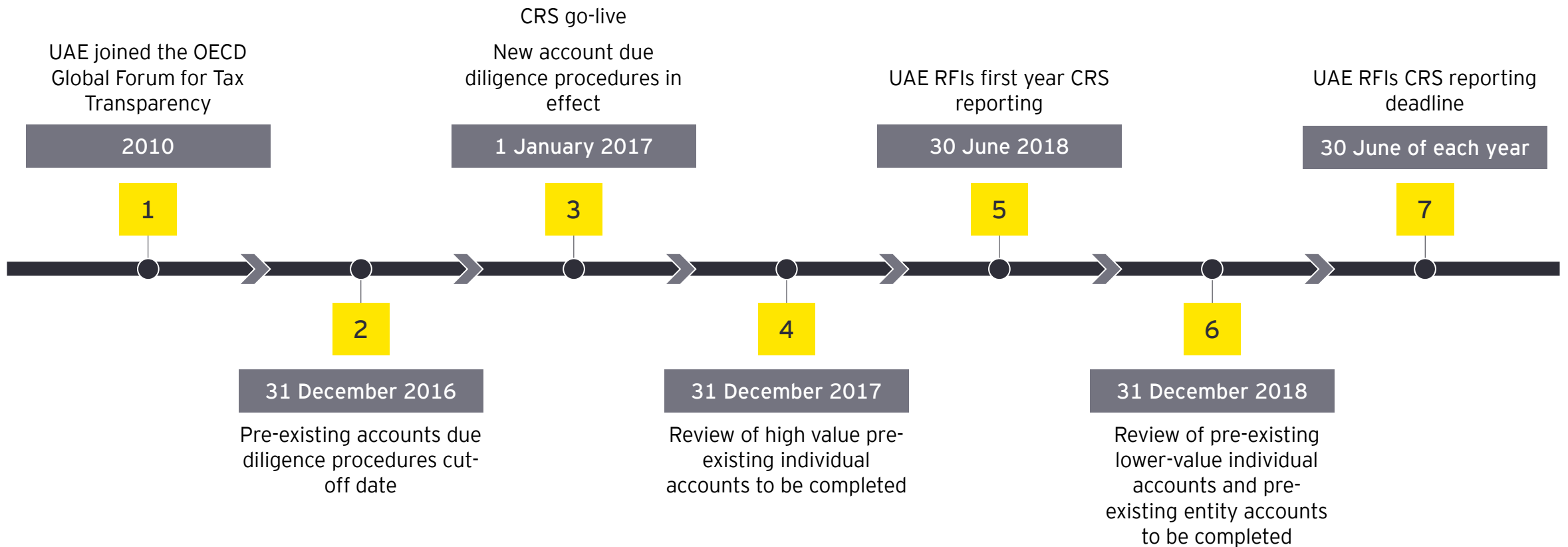
4.1

Overview of the reporting timeline

FATCA reporting timeline



CRS reporting timeline



MoF Training session

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MOF will host training sessions to address any portal-related inquiries regarding the annual reporting on the following dates:

03 June 2024,

10 June 2024,

24 June 2024 and 27 June 2024

Time: 11:00 AM to 12:00 PM



Thank you

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