Legal Counsel

Tax Administration

SARS FAQ Guide
Common Reporting Standard

South African Revenue Service

FAQ Guide to Common Reporting Standard

Preface

This guide addresses interpretive questions from Financial Institutions to enable them to gain a better understanding of the CRS Regulations issued under the Tax Administration Act, 2011 (Act No. 28 of 2011).

General Notes to FAQ Guide:

Although reasonably comprehensive, the FAQ Guide does not deal with all the legal detail associated with the subject matter, and should therefore not be used as a legal reference. It is not an official publication as defined in section 1 of the Tax Administration Act and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a general binding ruling under section 89 of the Act. Should an advance tax ruling be required, visit the SARS website for details of the application procedure. In the case of any discrepancies between SARS's interpretation of the CRS and the OECD *Commentaries to the CRS*, the latter will prevail.

The guide is based on the legislation as at date of issue.

For more information you may –

- visit the SARS web site at **www.sars.gov.za**;
- visit the SARS Tax Administration web page at **www.sars.gov.za/Legal/TaxAdmin/Pages/default.aspx**;
- visit your nearest SARS branch;
- contact your own tax adviser or tax practitioner;
- contact the SARS Contact Centre –
  - if calling locally, on 0800 00 7277; or
  - if calling internationally, on +2711 602 2093; or
- e-mail your interpretation enquiries to **TAAinfo@sars.gov.za**.

Legislative Research and Development
Legal Counsel
SOUTH AFRICAN REVENUE SERVICE
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Q No.	Question	Answer	Source
		PREAMBLE	
1.	**What is meant by the term "wider approach"?**	The SA **CRS Regulations** issued under the Tax Administration Act, 2011 (the TAA), in order to implement the Common Reporting Standard (CRS) on a consistent and efficient basis, oblige Reporting Financial Institutions (RFIs) under the *CRS Regulations* must report specified information on all Account Holders who are not SA or US tax resident and Controlling Persons of Passive Non-Financial Entities (NFEs), irrespective of whether South Africa has a multilateral or bilateral international tax agreement (as defined in section 1 of the TAA) or Tax Information Exchange Agreement (TIEA) with their jurisdiction of residence or whether the jurisdiction is currently a CRS Participating Jurisdiction. This will substantially ease the compliance burden on RFIs as they would otherwise have to effect system changes and collect historical information each time a jurisdiction is added to the CRS or South Africa concludes a new international tax agreement or TIEA providing for automatic exchange of information (AEOI) under the CRS. Two variations of the wider approach are possible. RFIs must obtain the information that must be reported as set out above in relation to CRS non-participating jurisdictions and either keep it until requested by the tax authority when the required international agreement is signed (the wider approach) or immediately provide it to the tax authority (the widest approach). The widest approach is effected by South Africa in the *CRS Regulations*, since it eases the compliance burden on RFIs more substantially and provides information to SARS that may be useful for domestic tax purposes.	*CRS Regulations* Preamble A(2) read with definition of "Reportable Jurisdiction" in Section VIII.D(4) *See further:* OECD *Commentaries on CRS* p 284 par 3 of Annex 5 for examples which illustrate the application of the wider approach
2.	**How will SARS handle information reported in respect of Account Holders who are tax residents in non-Participating Jurisdictions?**	This information will not be exchanged with the relevant jurisdiction(s) until a bilateral or multilateral agreement for the automatic exchange of information with South Africa is in place. The information will constitute "taxpayer information" under the TAA and will be subject to the strict confidentiality provisions of Chapter 6 thereof.	*CRS Regulations*, Preamble par A(2)
3.	**In the event of discrepancies between the CRS Model and the SA CRS Regulations, which one will prevail?**	Financial institutions should follow the Commentaries when applying and interpreting the CRS *and* their domestic law provisions. The *Commentaries on the CRS* are intended to illustrate and interpret the CRS, and there should not be any conflict between the CRS and the Commentary. South Africa's selection of jurisdictional choices permitted under the Model CRS and the *Commentaries to the CRS* does not detract from the fact that the SA *CRS Regulations* and this Guide must be interpreted in accordance with the Commentaries. The Standard for Automatic Exchange of Financial Account Information in Tax Matters (the Standard), which encompasses the CRS, provides that if a term is not defined by the CRS or explained in the Commentaries, it shall have a meaning	*CRS Regulations*, Preamble par D Section 1(2) of the *Model Competent Authority Agreement* (MCAA)

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		consistent with the local law of the applicable or implementing jurisdiction.	
SECTION I: GENERAL REPORTING REQUIREMENTS			
4.	**Will it be compulsory for an RFI to obtain the "place of birth" information of an account holder as a reportable item?**	An RFI must report to SARS the **place** of birth (e.g. town) of an individual Reportable Person *unless* the RFI is not required under domestic law to obtain and report such information, in which case the **country** of birth of such person must be reported. However, should the RFI have the place of birth available, for whatever reason, provision is made for the optional reporting thereof in the SA CRS Business Requirement Specification (BRS). It is clear that the place of birth would be more useful to a Participating Jurisdiction and RFIs are encouraged to provide this information, where available.	*CRS Regulations* Section I.A(1) read with par E
5.	**Will certain participating jurisdictions demand that SA RFIs verify the TIN of the account holder electronically?**	The Standard includes an expectation that Participating Jurisdictions will provide its RFIs with information with respect to the issuance, collection and, to the extent possible, the practical structure and other specifications of TINs issued by other participating jurisdictions. The OECD will be facilitating this process through a centralised information portal (**www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/#d.en.347759**). RFIs are not required to verify the accuracy of the TIN of an account holder under the *CRS Regulations* or the BRS. The following is, however, required: • *Pre-existing Accounts*: An RFI is required to use *reasonable efforts* to obtain the TIN(s) of a pre-existing account holder. If no TIN is found after due diligence that meets the "reasonableness test", none needs to provided. Also, the TIN is not required to be reported if *(i)* a TIN is not issued by the relevant Reportable Jurisdiction, or *(ii)* the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction. • *New Individual Accounts:* If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the RFI must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to Section I.D). Under the BRS the TIN is optional and a record will not be rejected if it does not pass a specific country TIN validation. However, the SARS Internal AEOI BRS requires SARS to do an internal report to confirm which TINs do not pass some basic validations but the BRS will not reject a record if it does not pass a specific country TIN validation.	*CRS Regulations* Section I.A(1); Section I.C and D; Section IV.B
6.	**Does the term "jurisdiction of residency" in Section I.A mean "jurisdiction of**	Pursuant to the *OECD Commentaries on CRS*, this means the jurisdictions of residence to be reported under the CRS and that are identified as a result of the due diligence procedures in Sections II through VII *but* without prejudice to any residence determination made by the RFI for any other *tax* purposes.	OECD *Commentaries on CRS*, par 6 of commentary on Section 1

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	***tax* residency"?**	It therefore follows that jurisdiction of *tax* residency is intended here which must be determined by applying the due diligence procedures in Sections II through VII.	
7.	**What is meant by the term "tax residency" or "residence for tax purposes" and how must it be determined?**	Tax residency features in the CRS in the following context: *Determination of Reportable Account* A Reportable Jurisdiction Person is defined to mean an individual or entity *resident in a Reportable Jurisdiction for tax purposes* under the laws of that jurisdiction (or where their place of effective management is if they do not have a tax residence). In determining if an account is a Reportable Account, the first test is to establish whether a Financial Account is a Reportable Account by virtue of the Account Holder. If the Account Holder is a Reportable Jurisdiction Person *and* a Reportable Person, the account is a Reportable Account. A Reportable Jurisdiction Person will be a Reportable Person unless specifically excluded from being so (e.g. a central bank). The *CRS Regulations* sets out detailed due diligence rules that RFIs must follow to establish where the Account Holder is *resident*, including specific rules for accounts held by individuals and for accounts held by entities. Preexisting Accounts: In general, for Preexisting Accounts, RFIs must determine the *residency* of the Account Holder based on the information it has on file, whereas for new accounts a *self-certification* is required from the Account Holder. For example, in the context of Pre-existing Accounts, if any of the indicia (or indicators) listed in Section III.B(2) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the RFI must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply the curing procedure and one of the exceptions subsequently applies. New Accounts: If an RFI determines from information in its possession or information publicly available that the customer was not a Reportable Person, they do not need to obtain a self-certification. An RFI is not required to provide customers with tax advice or to perform a legal analysis to determine the reasonableness of self-certification. Instead, as provided in CRS Regulations Section VI.A(1)(a), for New Accounts the RFI must obtain a self-certification, which may be part of the account opening documentation, that allows the RFI to determine the Account Holder's residence(s) for tax purposes. Thus, the RFI may rely on the self-certification made by the customer unless it knows or has reason to know that the self-certification is incorrect or unreliable, (the "reasonableness" test), which will be based on the information obtained in connection with the opening of the account, including any documentation obtained pursuant to AML/KYC procedures. The CRS Regulations provide examples of the application of the	*CRS Regulations* Sections IV.A &B; VI.A(1)(a) & B; VIII.D(3); IX.D(3) & E OECD *CRS Implementation Handbook* p 44 par 96 – 98 OECD *Commentaries on CRS* p 96 par 5 and p 236 Annex III re "dual residency status" and reporting country code OECD *CRS Implementation Handbook* p 54 par 127 *See further* OECD's discussion of the **Tax Residency Requirements of the CRS Participating Jurisdictions**

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		reasonableness tests, for example in Section IV.A. For purposes of reporting, the term "jurisdiction of residence" is used. Under Section I.A(1), the *jurisdiction of residence* to be reported with respect to a Reportable Account is the *jurisdiction of residence* identified by the RFI for the Reportable Person, pursuant to the due diligence procedures in Sections II through VII. In the case of a Reportable Person that is identified as having *more than one jurisdiction of residence*, the jurisdictions of residence to be reported are *all* the jurisdictions of residence identified by the RFI for the Reportable Person with respect to the relevant calendar year or other appropriate reporting period. *Determination of an Active Non-Financial Entity (NFE)* An Active NFE is defined in Section VIII.D(9), and in the context of jurisdiction of residence must meet the requirements listed in par D(9)*(h)*, for example that it is exempt from income tax in its *jurisdiction of residence*.	
8.	**What are the obligations under the CRS on an RFI to establish the tax residency of its customers in relation to the New Account procedures?**	According to the *OECD CRS FAQ* document, an RFI is not required to provide customers with tax advice or to perform a legal analysis to determine the reasonableness of self-certification, such as studying the relevant treaties or applying foreign law to determine where an Account Holder *is* resident for tax purposes if more than one jurisdiction is identified. For purposes of reporting, the term "jurisdiction of residence" is used in the CRS Regulations. Under Section I.A(1), the *jurisdiction of residence* to be reported with respect to a Reportable Account is the *jurisdiction of residence* identified by the RFI for the Reportable Person, pursuant to the due diligence procedures in Sections II through VII. In the case of a Reportable Person that is identified as having *more than one jurisdiction of residence*, the jurisdictions of residence to be reported are *all* the jurisdictions of residence identified by the RFI for the Reportable Person with respect to the relevant calendar year or other appropriate reporting period.	*CRS Regulations* Section IV.A OECD *CRS-Related FAQs* question C.4 "*What are the obligations under the Standard of a Financial Institution to establish the tax residency of its customers in relation to the New Account procedures*?"
9.	**What does the term "Account Balance or Value" mean in Section I.A(4)**	In general, the balance or value to be reported is that which the RFI calculates for the purpose of reporting to the Account Holder. Where the balance or value of an account is nil or a negative amount, for example where an account is overdrawn, the RFI must report the balance or value as nil. In general, the balance or value of a Financial Account is the balance or value calculated by the RFI for purposes of reporting to the Account Holder. In the case of an equity or debt interest in an RFI, the balance or value of an Equity Interest is the value calculated by the RFI for the purpose that requires the most frequent determination of value, and the balance or value of a debt interest is its principal amount. The value of the account should be reported in the currency in which the account is denominated. In the case of an account closure, the RFI must report the account balance or value as at one day before the closure of the account. Where the balance or value of an account is nil or a negative amount, for example where an account is overdrawn, the RFI must report the balance or value as nil.	OECD *Commentaries on CRS* p 98 par 13 *See further:* UK *CRS Guidance Notes* AEIM102170

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		An account with a balance or value equal to zero or which is negative will not be a closed account solely by reason of such a balance or value.	
10.	**Is a claim or payment from the Road Accident Fund a Reportable Account within the scope of CRS?**	No, any money held or processed for payment for and on behalf of a claimant under the Road Accident Fund ("RAF") will fall outside the scope of CRS.	
11.	**The Model CRS requires that if a Reportable Account was closed during a Reporting Period, only the *closure* of the account must be reported, but the SA CRS also requires the pre-closure balance. Why is this?**	The *CRS Regulations* requires that the *balance* as at one day before the closure of the account must be reported and not the *fact* that the account was closed. However, the information field in the CRS BRS will reflect the fact that the account was closed and the pre-closure balance. It is existing practice in South Africa that third party returns must include the pre-closure balance of accounts closed during the relevant tax period. Section I.A(4) of the *CRS Regulations* is aligned with this practice, i.e. not only the fact that an account was closed must be reported, but also the pre-closure balance of the account. In addition, the Standard requires that anti-avoidance measures be included in domestic CRS legislation. If an RFI is required to only report the fact of closure, this may lead to avoidance in that the account is closed at a strategic time and the money is transferred to avoid reporting of the balance thereof as at the end of the Reporting Period.	*CRS Regulations* Section I.A(4)
12.	**Will RFIs be required to verify the information collected?**	In certain instances, yes. For example: • In the context of due diligence for Pre-Existing Individual Lower Value Accounts, RFIs must have policies and procedures in place to *verify* the residence address *based* on Documentary Evidence as defined in Section VIII.E(6) of the CRS Regulations. 'Documentary evidence' is generally government issued documents and need not be additionally verified for correctness by the RFIs – the RFIs must only ensure they obtain them or access them to verify the residence address. RFIs for purposes of verifying that the residence address is current and corresponds with Documentary Evidence are not required to obtain a self-certification for Preexisting Accounts. • The term "AML/KYC Procedures", as defined in subparagraph E(2) of Section VIII, means the customer due diligence procedures of an RFI pursuant to AML or similar requirements to which such RFI is subject (e.g. know your customer provisions). These procedures include identifying and *verifying* the identity of the customer (including the beneficial owners of the customer), understanding the nature and purpose of the account, and on-going monitoring. Generally, as part of due diligence, RFIs must also verify Documentary Evidence and self-certifications. However, such	*CRS Regulations* Section III.B(1) read with OECD *Commentaries on CRS* par 7 of commentary on Section I CRS Regulations VIII.E(2) read with OECD *Commentaries on CRS* paras 143, 150-162 of commentary on Section VIII *See further:* OECD *Commentaries on CRS* par 24 of commentary on Section IV for examples of the application of the

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		verification by RFIs need only comply with the "reasonableness" test, essentially meaning making reasonable efforts in the form of genuine attempts to verify the information.	"reasonableness" test
13.	**Is a "stokvel" viewed as an entity or group of individuals?**	A "stokvel" is described under South African law as members of a specific group which – • is a formal or informal rotating credit scheme with entertainment, social and economic functions; • fundamentally consists of members who have pledged mutual support to each other towards the attainment of specific objectives; • establishes a continuous pool of capital by raising funds by means of the subscriptions of members; • grants credit to and on behalf of members; • provides for members to share in profits and to nominate management; and • relies on self-imposed regulation to protect the interest of its members; and is regulated by *Government Notice* No 620 published in *Government Gazette* 37903 issued on 15 August 2014 by the Registrar of Banks. It is not considered a legal entity to the extent that the RFI opens the account after the RFI is provided with the founding document or declaration from the mandated members who are acting on behalf of the group of people, together with the copy of resolution or similar document reflecting the authority of persons as the mandated members of the account. It is regarded as an individual account. In respect of such account the reporting responsibility of the RFI under the Regulations is limited to the authorised signatories or mandated officials of the "stokvel" account. Accordingly, the RFI is only required to perform due diligence in respect of the authorised signatories (mandated individual members) of the "stokvel" account, as they are each regarded as the Account Holder.	
14.	**What is the treatment of diplomats, asylum seekers or refugees for CRS purposes?**	The *CRS Regulations* do not differentiate between individual account holders based on status. Thus, diplomats or asylum seekers or refugees and other individuals must be treated similarly under the *CRS Regulations*. The same strict confidentiality rules prescribed by both the TAA and the Standard apply to all individual account holder information. The fact that an asylum seeker has a valid permit or identity number issued in terms of section 30 of Refugees Act, 1998, is not an indication that a person is necessarily tax resident in a country – at most it may constitute indicia.	*CRS Regulations* Section I.A
15.	**Who holds the CRS reporting responsibility with regards to securitisation vehicles?**	If a securitisation vehicle conducts its business in terms of Government Notice No. 2 ("Securitisation Schemes") issued on 1 January 2008 in *Government Gazette* 30628, read together with the subsequent notice in this regard as well as the Commercial Paper Notice published in *Government Gazette* 16167, the reporting responsibility for CRS purposes will be with the relevant Central Depository Securities Participant (CSDP) or broker as they will be regarded as the custodians of the accounts and will hold the most accurate	*CRS Regulations* Section I.A

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		information and records of each account holder. If the CSDP is holding securities in safe custody, then the CSDP will hold the reporting responsibilities for both FACTA and CRS. However, this will not always be the case, as not all commercial paper is in the Strate environment and, therefore, the CSDPs and brokers would not be custodians. While these entities may act as custodians even for commercial paper that has not been dematerialised, this is not always the case as investors may keep the certificates or documents of title themselves. In such cases, RFIs may need to determine who *has* the reporting responsibility by virtue of, for example, holding the most accurate information and records of each account holder or similar administrative criteria.	
16.	**May RFIs now deregister securitisation vehicles whose notes are held by a custodian from the IRS Portal and cease the submission of nil returns for FATCA purposes?**	No – the fact that reporting is required under the CRS if the custodian is an RFI in a Reportable Jurisdiction does not mean that FATCA reporting in respect of securitisation vehicles is no longer required as the US is not a Reportable Jurisdiction for CRS purposes under the *CRS Regulations*. In the context of FATCA, if a role player in any securitisation scheme or structure (which includes a synthetic securitisation and traditional securitisation scheme as defined in *Gazette* No 30628 of 1 January 2001) is regarded as a FATCA Reporting Institution that holds any Reportable Account, the due diligence procedures as set forth by the Annex I should be adhered to for each role player. However, if the role player is regarded as an exempt beneficial owner or deemed compliant FFI in terms of Annex II, Section I and II of the FATCA Agreement, it is not necessary for such a role player to perform reporting or due diligence obligations under the Agreement. Accordingly, any role player in the SPV scheme would need to apply due diligence and report if it is regarded as an RFI that holds Reportable Accounts. An SPV cannot for this reason deregister on the IRS portal.	*CRS Regulations* Section I.A *See the SARS* **Guide on the US Foreign Tax Compliance Act** *as updated.*
17.	**Pursuant to CRS reporting, are the requirements of treaties or TIEAs met or will additional information be required from RFIs over and above the CRS reporting?**	The new global Standard does not, nor is it intended to, restrict the other types or categories of exchange of information. Co-operation between tax administrations is critical in the fight against offshore tax evasion and in protecting the integrity of tax systems. A key aspect of that co-operation is exchange of information. The CRS sets out a minimum standard for the information to be exchanged on the basis of AEOI. Jurisdictions may choose or be required under treaties to exchange information beyond the minimum standard set out in the CRS. For example, CRS information received by a jurisdiction may result in an audit or investigation of the Account Holder for tax liability or tax evasion in that jurisdiction, which may result in exchange of information on request (EOIR) addressed to the jurisdiction where the Reportable Account is located.	*CRS Regulations* Section I *See further:* OECD *Commentaries on the CRS* par 1 & 4 of Introduction
18.	**When must an RFIs submit a Nil Return to SARS?**	A nil return is filed by an RFI that did not maintain any Reportable Accounts during the relevant reporting period. Reportable Accounts with a balance of zero must always be reported by an RFI on a "normal" return. This also applies to a Qualified Credit Card Issuer.	*CRS Regulations* Section I.F read with section 26 TAA

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		Where an account holder disinvests but does not instruct the RFI to close the account to allow for subsequent re-investment, the RFI may report the account as if it was closed. However, in years where there is opening or closing balance or transactions of any nature, the RFI must report such balance in a normal return, i.e. the RFI must resume reporting when the account is re-activated by the client.	
SECTION II: GENERAL DUE DILIGENCE REQUIREMENTS			
19.	**What is the meaning of the term "any tax"?**	The term "any tax" means any tax imposed by the laws of any Reportable Jurisdiction and is not limited to income tax. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) applies to taxes on income, profits, capital gains, and net wealth levied at the central government level. It also covers local taxes, compulsory social security contributions, estate, inheritance or gift taxes, etc. As the term clearly also covers local taxes it which would include municipal taxes.	*CRS Regulations* Section II.A(1) Article 2 and 3 of the **MAC**
20.	**Must an RFI formally notify SARS of the election of the "clearly identified group of Pre-existing accounts" or the "clearly identified group of Lower Value Accounts"?**	There is no obligation on an RFI to obtain prior approval from SARS of the group elections. However, the group must be identifiable and available in the records that the RFI is required to keep to demonstrate compliance with CRS reporting and due diligence under section 29 of the TAA.	*CRS Regulations* Section II.E(1) and (2)
21.	**What are the criteria for selecting a "clearly identified group"?**	The criteria may be determined by the RFI. It is assumed that the selection of the group will be driven by business expediency and to reduce the compliance or reporting burden on these accounts. A group of accounts may, for example, be those maintained by a particular line of business or those maintained in a particular location.	*See further:* UK *CRS Guidance Notes* AEIM102620
22.	**Why would an RFI report accounts even though they are below the *de minimis* levels?**	For Preexisting Individual Accounts, New Individual Accounts and New Entity Accounts, no *de minimis* threshold applies. In respect of Preexisting Entity Accounts, the *CRS Regulations* allows the application of the USD 250,000 (or local currency equivalent) threshold meaning accounts below this amount are not reportable and subject to review, unless the RFI elects otherwise. However, section 26(2)*(c)* of the TAA requires RFIs to obtain and report the information as required in a return, which return may prescribe that no *de minimis* level applies in respect of Preexisting Entity Accounts where the information may, for example, be required – • by a CRS Participating Jurisdiction; • under EOIR; or • for domestic tax purposes. Also, the two international standards – FATCA and CRS –	*CRS Regulations* Section V.A & B

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		allow RFIs to *elect* not to apply the minimum threshold standards. This allows an RFI to report on all accounts, irrespective of the monetary threshold.	
23.	**How must RFIs identify the true controlling person of certain trusts, especially given the differing trust regimes in different jurisdictions?**	The CRS must be applied in the context of SA trust law. SA is not concerned with the trust regimes in other jurisdictions – only that the CRS is applied and interpreted in context of SA trust law. RFIs must establish, maintain and document due diligence procedures that are designed to identify reportable accounts, which procedures must identify the jurisdiction in which an account holder or *a controlling person* is resident for the purposes of any tax imposed by the law of that jurisdiction and *apply the due diligence procedures* set out in the CRS Regulations. The definition of Controlling Person expressly sets out who are the natural persons who exercise control over a trust, namely the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ries) or class(es) of beneficiaries *and* any other natural person(s) exercising ultimate effective control over the trust. These persons must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the trust. This definition, accordingly, excludes the need to inquire as to whether any of these persons can exercise practical control over the trust. It is for this reason that the second sentence of Section VIII.D(6) of the CRS Regulations supplements the first sentence of the subparagraph. In addition, any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership) must also be treated as a Controlling Person of the trust. The terms used in the definition, such as “settlor” or “protector”, must be interpreted in SA law based on functionality or role in the context of a trust. For example, the equivalent term for “settlor” under domestic law is the founder of the trust although the term “settlor” is also used in SA law. Under SA trust law, the core idea is the separation of ownership or control from enjoyment, i.e. that the trustee entrusted with control exercises it on behalf of and in the interests of another person. Before assuming control of trust property, a trustee is required to lodge the trust instrument in terms of which the trust property is to be administered or disposed of by the trustee with the Master of the High Court. Any subsequent amendment of the trust instrument must also be lodged with the Master. This also applies in respect of a foreign trustee who has to administer or dispose of any trust property in the Republic. Regarding determining the identity of the beneficiaries, a trustee has many common law and statutory duties in this regard and trusts are also regulated by legislation that are intended to identify the persons controlling a trust. Under the Trust Property Control Act, 1988, a trustee must lodge the instrument by which a trust is created and from which the identities of the trustee, the founder (settlor) and beneficiaries are determined, with the Master of the High Court before assuming control of the trust property. Specifically,	*CRS Regulations* Section II.A(1); Section VIII.D(6)

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		when lodging the trust instrument with the Master the trustee must also furnish, among others— • The names of the beneficiaries under the trust and the relationship of the trustee to the beneficiaries; • The full names and copies of the identity documents of the trustees. • Whether the trust will be subject to annual audit and, if so, the details of the auditor to be appointed to audit the trust; and • The name of the bank and branch thereof at which the trust's banking account will be kept. Under the Income Tax Act, 1962, trusts must, in the circumstances described, register for income tax and submit returns disclosing their activities. The annual return for trusts requires the disclosure of whether there has been a change in the trust deed, beneficiaries or trustees. Any further information required can be obtained in terms of the normal provisions for the collection of information. In terms of the common law fiduciary duties of trustees, they are required to administer the trust property in the best interests of the beneficiaries and ensure that the benefits derived from the trust property accrue to the beneficiaries. These fiduciary duties include the requirement that the trustee correctly identifies the beneficiaries to ensure that they obtain the benefits vested in them. The Financial Intelligence Centre Act, 2001 (FICA), and the regulations made under the Act, require the identities of every trustee, every natural person who purports to be authorised to establish a business relationship or to enter into a transaction on behalf of the trust with an accountable institution, every beneficiary of the trust referred to by name in the trust deed or other founding instrument and the founder of the trust, as well as the particulars of how the beneficiaries of the trust are determined be established and verified. These requirements apply irrespective of where, or under which law, the trust is created. Under the Financial Advisory and Intermediary Services Act, 2002, an authorised financial services provider (FSP) must hold information on settlors, trustees and beneficiaries in relation to a transaction entered into with the trust as a client of the FSP. Section 8 of the General Code of Conduct requires the FSP to keep record of the advice given to the trust as client. Section 18 of Act and section 22 of Financial Intelligence Centre Act, 2001, compels an FSP to keep records in relation to the transaction with the trust. All trustees resident in South Africa and acting by way of business are subject to the obligations imposed by the AML/CFT legislation. This means that the trustee must keep records in respect of every transaction it is involved in (section 22(1) FICA).	
24.	**For purposes of reporting on the Controlling Person of a**	*Controlling persons of a trust* See **Q23** above. In terms of the definition of Controlling Person, the Controlling	*CRS Regulations* Section VIII.D(6) OECD

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	trust, what about a class of beneficiaries where the beneficiaries are not known?	Persons of a trust are the settlor(s), trustee(s), beneficiary/ies, protector(s) and any other natural person exercising ultimate effective control over the trust. *Beneficiaries identified as a class* The *CRS Implementation Handbook* paragraphs 202 and 203 make a distinction between two classes of beneficiaries, namely beneficiaries entitled to 'mandatory' distributions and those who are discretionary without any enforceable rights to receive trust property. Where the beneficiaries are not individually named but are *identified as a class*, the CRS does not require that *all* possible members of the class be treated as Reportable Persons. Rather, when a member of a class of beneficiaries receives a distribution from the trust or intends to exercise vested rights in the trust property, this will be a change of circumstances, prompting additional due diligence and reporting as necessary. Unlike the case of an Equity Interest in a trust that is an RFI, discretionary beneficiaries would be reported regardless of whether a distribution is received in a given year. When implementing the CRS, however, RFIs may align the scope of the beneficiaries of a trust reported as Controlling Persons of the trust with the scope of the beneficiaries of a trust treated as Reportable Persons of a trust that is an RFI. In such case the RFI would only need to report discretionary beneficiaries in the year they receive distributions from the trust. However, RFIs may only do so if they have appropriate procedures in place to identify when a distribution is made to a discretionary beneficiary of the trust in a given year that enables the trust to report such beneficiary as a Controlling Person. For instance, the RFI requires a notification from the trust or trustee that a distribution has been made to that discretionary beneficiary. Essentially, for beneficiary(ies) of trusts that are *designated by characteristics or by class*, RFIs should obtain sufficient information concerning the beneficiary(ies) to satisfy the RFI that it will be able to establish the identity of the beneficiary(ies) at the time of the pay-out or when the beneficiary(ies) intends to exercise vested rights.	*Commentaries on the CRS* par 134 of commentary on Section VIII OECD *CRS Implementation Handbook* par 227 and 229 ***Note**: The OECD GFTEI has indicated that Chapter 6 of the Commentaries on the CRS, which deals with trust, will be supplemented pursuant to the many interpretive questions received from other jurisdictions as well as BIAC (the Business and Industry Advisory Committee to the OECD). It was indicated that this may be available early 2017*
25.	**What is the treatment of trusts for CRS purposes?**	A trust is considered an entity for CRS purposes and there are two reporting lines for a trust. A trust can either be regarded as a Non-Financial Entity (NFE) that maintains a Financial Account with an RFI (review and reporting obligation on RFI), or the trust can be regarded as a Financial Institution (FI) (review and reporting obligation on trustee(s)).	Refer OECD *CRS Implementation Handbook*, Chapter 6, p 77-86 for an in depth discussion on trusts See further the UK *CRS Guidance Notes*, AEIM100800 and AEIM100820 See also Note in in **Q24**
26.	**The criteria (to determine the controlling person) do not**	Essentially, where a trust is an FI, then financial accounts in the trust will be equity and debt interests in the Trust. Where the trust is an NFE, then the controlling persons is a much broader set of persons which always includes the settlor,	Refer OECD *CRS Implementation Handbook*, Chapter 6, p 77- 86 for an in

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	appear to be consistent under the CRS for cases where Trusts are FIs (particularly those that are Investment entities and the reporting is to be carried out by the Managing entity), *and* where Trusts are Passive NFEs?	trustees, protector and beneficiaries and any other natural person exercising ultimate effective control over the trust.	depth discussion on trusts See also Note in in **Q24**
27.	**For purposes of reporting on Controlling Person, what accounts are reportable and by whom for each Entity type i.e. trust, partnerships, companies etc.?**	Accounts held by a Passive NFE that has Controlling Persons who are Reportable Persons, are reportable by virtue of this fact. For a Passive NFE that is a legal person, the Controlling Person is the natural person(s) who exercises control over the Entity, generally natural person(s) with a controlling ownership interest in the Entity. Whether a natural person has such controlling ownership interest will depend on the circumstances. An RFI will not be required to determine the Controlling Persons if an Entity is (or is a majority owned subsidiary of) a company listed on a stock exchange and is subject to market regulation and to disclosure requirements to ensure adequate transparency of beneficial ownership, provided all these requirements are met. In the case of a partnership and similar arrangements which are Passive NFEs, Controlling Person means any natural person who exercises control through direct or indirect ownership of the capital or profits of the partnership, voting rights in the partnership, or who otherwise exercises control over the management of the partnership or similar arrangement. In the case of a trust that is a Passive NFE, the term Controlling Person is explicitly defined in the Standard to mean the settlor(s), the trustee(s), the protector(s), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. The Reportable Account would be that of the NFE that has Controlling Persons who are Reportable Persons. If the Controlling Persons have accounts at the same RFI where the Entity account is held, such accounts would not the individual accounts by that RFI.	See also Note in **Q24**
28.	**If the Controlling Person of a trust is an FI, a Listed Entity or an Active NFE, must the Controlling**	A Controlling Person of a Passive NFE can only be a natural person. However, a natural person can have the controlling ownership interest through an entity in which case "look through" must be applied. For example, Company A and Mr X, a natural person, each holds 50% in a Passive NFE. The controlling persons of the Passive NFE are Mr X and the controlling persons of	

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	Persons of a trust still be identified?	Company A. If an Entity is a listed entity or Active NFE, it is not a Passive NFE. Under SA law, a trust cannot be a listed entity but it can be an Active NFE, in which the controlling natural persons of the trust need not be determined. If trust is an FI – the question is if the trust is an Investment Entity resident in a Non-Participating Jurisdiction? If so, it would likely be a passive NFE and then the trust would need to be looked through to determine the controlling person.	
29.	**The SARS *FATCA Guide* states that for RSA trusts regulated under the Trust Property Control Act, only the Trustees meet the FATCA Controlling Person definition. Is this also the case under the CRS?**	No. See definition of Controlling Person in Section VIII.D(6) and response to **Q23** and **Q27**. The definition of Controlling Person does not limit the interpretation thereof to domestic law and the Model CRS and the *Commentaries on the CRS* will thus prevail in the case of any conflict.	*CRS Regulations* Section VIII.D(6)
SECTION III: DUE DILLIGENCE FOR PRE-EXISTING INDIVIDUAL ACCOUNTS			
30.	**What is meant by the term "undocumented account"?**	Essentially, if a hold mail instruction or in-care-of address is discovered in the review of Pre-Existing Individual Accounts, and no other address or indicia of residence are identified for the Account Holder, the RFI must complete a paper record search or obtain a self-certification or other Documentary Evidence from the Account Holder to establish the jurisdiction of tax residence of the Account Holder. If the RFI cannot obtain a self-certification or Documentary Evidence from the Account Holder to cure the information held, the RFI is required to treat the account as an undocumented account. Where the RFI has identified and reported an account as an undocumented account, the RFI must repeat the enhanced review for high value individual accounts annually until the account ceases to be undocumented. Thus, a Reportable Account will only be regarded as undocumented if an RFI is dealing with Pre-Existing Individual Lower Value or High Value Accounts under the circumstances referred to in Section III.B(5) or C(5)(c) of the *CRS Regulations*, respectively.	*CRS Regulations* Section III.B(5) or C(5)(c) *See further:* UK *CRS Guidance Notes* AEIM103040 and 103100
31.	**What happens if indicia are found on a joint account?**	If an account is regarded as an equally held joint account, such as a joint loan, the prescribed information of all account holders are reportable if the account is a Reportable Account If a person other than the main account holder has a power of attorney in respect of the account and both the account holder and the person such power of attorney transact on the account, the account is reportable in respect of both persons.	*CRS Regulations* Section III.B(2)

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32.	**What is meant by the term "residence status" and "dual residence status"?**	Under the enhanced review procedures for purposes of identifying Reportable Accounts among Pre-existing Individual High Value Accounts, the RFI is not required to perform the paper record search described in subparagraph C(2) to the extent that the RFI's electronically searchable information includes the Account Holder's *residence status* and other information. This term *residence status* refers to the identification of the account holder as a Reportable Jurisdiction Person, i.e. an individual or entity *resident in a Reportable Jurisdiction for tax purposes* under the laws of that jurisdiction (or where its effective management is if it does not have a tax residence). Residency status is determined on the basis of the due diligence procedures. *Dual residence status* is where the complete reported information under Section I indicates more than one residence status. SARS will send a data record of this information to each of the residence jurisdictions showing all reportable residence jurisdictions so that there is an awareness of the possible need to resolve dual residence status or other issues attached to multiple reporting.	*CRS Regulations* Section III.C(3)(a)
33.	**What information must an RFI collect in respect of Power of Attorney (in so far as Power of Attorney is an indicium)?**	For purposes of identifying Reportable Accounts among Pre-existing Individual Accounts that are Lower Value Accounts, part of the procedure includes an electronic record search for indicia. One of the indicia is a *currently effective power of attorney or signatory authority* (hereafter collectively referred to as a power of attorney) granted to *a person with an address in a Reportable Jurisdiction*. However, under the indicia "curing process" even if the Account Holder information contains a currently effective power of attorney, an RFI is not required to treat the Account Holder as a resident of the relevant Reportable Jurisdiction if the RFI obtains or has: • A self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction. Note that the CRS allows for a self-certification to be provided by a third party on the basis of a power of attorney (refer OECD *CRS Implementation Handbook* p 107); or • Documentary evidence establishing the Account Holder's non-reportable status. For purposes of the enhanced review procedures that apply with respect to High Value Accounts, part of the procedure also includes an electronic record search for indicia such as a *power of attorney currently in effect*. If such a document is found it constitutes one of the six indicia when an RFI is not required to conduct a paper record search. An RFI is therefore required to determine the following: • If any of the records or documents found during an electronic or paper record search, as the case may be, <u>constitute</u> a power of attorney. o A power of attorney means a document, in whatever format, in terms of which the Account Holder has provided that another person has legal authority to	*CRS Regulations* Section III.B(2)(e) & (6)(b); C(2)(d) & (3)(f) *See further:* OECD C*ommentaries on CRS* paras 8, 9 & 22 of commentary on Section III; par 10 of commentary on Section VII (Example 1); and par 142 of commentary on Section VII (Example 1) OECD *CRS Implementation Handbook* p 107

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		represent the Account Holder and make decisions on their behalf (refer OECD *CRS Implementation Handbook* p 107). o Under SA domestic law, no specific format, procedure or content is prescribed for a power of attorney, thus an RFI must establish if any record or document, whether electronic or otherwise, affords such legal authority, in which case it will constitute a power of attorney. For example, a letter signed by the account holder to this effect may suffice. o If the power of attorney originates from a foreign jurisdiction, it would be sufficient to regard it as such if it provides that another person has legal authority to represent the Account Holder and make decisions on their behalf. It is not necessary to apply the law of the relevant jurisdiction to determine if a document constitutes a valid power of attorney. o A power of attorney could relate to individuals and entities. And • If the power of attorney granted to a person is <u>effective</u>**.** o It may appear *ex facie* the relevant document that it is no longer in effect and has lapsed in terms of, for example, a date indicated in the document. o Being effective may be demonstrated by the fact that the RFI is currently adhering to decisions communicated by the person regarding maintenance of the account such as transfers etc. o If, however, the RFI is currently communicating directly with the account holder or the latter is giving instructions on the account despite the existence a power of attorney, this may indicate that the power of attorney is no longer effective. If communications or instructions are received by both the account holder *and* the person to whom a power of attorney has been granted, this will indicate that the power of attorney is still effective. o If no instructions or communications have been received from the person to whom legal authority has been granted in the power of attorney for a significant period of time, this may be a factor indicating that the power of attorney is no longer effective. And • If the person to whom legal authority under a power of attorney has been granted, has an <u>address in a Reportable Jurisdiction</u>. o Based on the wording of the indicia, it is not required that the address of the person is indicated or appears in the power of attorney document. For example, communications between the person and the RFI may indicate that the person is using an address in a Reportable Jurisdiction. o Accordingly, the address of the person indicated in the power of attorney or any other record or document procured pursuant to the electronic or paper based search or communications, is the	

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		address that must be used by the RFI to establish if the person is located in a Reportable Jurisdiction. o The term "address" in the context of the person granted the power of attorney is not defined or referred to in the CRS *Regulations*, *Commentaries* or *Implementation Handbook*. However, in the context of the individual account holder, the mailing or residential (physical) address is required. As the person granted the power of attorney "steps into the shoes" of the account holder, it is assumed that a mailing or residence address will similarly be required and an electronic or facsimile address will not suffice. o It does not seem that the RFI is required to determine if the address is *current*, for example by applying the "residence address test", in terms of which a mailing or residence address is considered to be "current" where it is the *most recent* mailing or residence address that was recorded by the RFI with respect to the individual Account Holder. However, if the address of the person granted a power or attorney has changed over time, it follows that the RFI must use the most recent address used by the person in communications etc. o An RFI is not required to collect any other information regarding the person such as any other indicia, place of birth, telephone numbers, tax residence, TIN etc. in respect of the person to whom a power of attorney has been assigned and who has an address in a Reportable Jurisdiction.	
34.	**What does "relationship manager" mean?**	A relationship manager is an employee or officer of the RFI 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 of an administrative or clerical nature, is not considered to be a relationship manager. For example: • An individual holds a Custodial Account with an RFI. 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 RFI has a role that requires them to manage the account on an ongoing basis and maintain the RFI'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. • An individual holds a Custodial Account with a Financial Institution 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	OECD *Commentaries on CRS* paras 39 – 42 of commentary on Section III *See further:* UK *CRS Guidance Notes* AEIM 102980 & 103000

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		equivalent to US$427,000. The RFI's internal systems link the accounts to the same Account Holder thus the accounts must be aggregated, the aggregate balances exceed US$1million 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. • The facts are the same as in example 2 except that the employee has no direct contact with the Account Holder and simply performs an administrative role in relation to the accounts. Here the employee is not a relationship manager.	
35.	**What are the due diligence requirements in relation to a relationship manager?**	The purpose of the relationship manager test is to create an extra layer of comfort in the absence of a self-certification and indicia procedure. The relationship manager test only applies to Pre-Existing High Value Individual Accounts and only where the account has been assigned to a relationship manager. Where the relationship manager test is required, it must be applied annually, unless procedures for new accounts have been applied. Once new account due diligence procedures are applied to an account, e.g. by obtaining a reliable self-certification, then the relationship manager test is no longer applicable. Section III paragraph C contains the enhanced review procedures that apply with respect to High Value Accounts. Such procedures are the – • electronic record search; • paper record search; and • relationship manager inquiry. The relationship manager enquiry is required for high value individual accounts in addition to the electronic search and the paper record search. The RFI 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. Therefore, the relationship manager enquiry applies to accounts of individual Account Holders who meet the following criteria: • It is a High Value Pre-existing Account with an aggregate balance or value that exceeds $1,000,000 as of 29 February 2016 or the last day of February of any subsequent Reporting Period; • The account is assigned to a relationship manager (see **Q34**); • The relationship manager has *actual knowledge* that the Account Holder is a Reportable Person. *When will a relationship manager have "actual knowledge" that the Account Holder is a Reportable Person?* This term is not defined in the OECD *Commentaries* or *Implementation Handbook* and would thus have its ordinary meaning in the context where it is used. In South African case	*CRS Regulations* Section III.C(4), (5), (7) & (9); Section VII. A(5) and C(3); OECD *Commentaries on CRS* par 44, 48, 50 of commentary on Section III; par 3, 16, 19 of commentary on Section VII OECD *CRS-Related FAQs* Part C.Q1

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		law, it has been held that the phrase "actual personal knowledge" connotes an awareness of material facts creating in the mind of a reasonable person a belief or conviction (not merely a suspicion). See *SVV Construction (Pty) Ltd v Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund* 1993 2 SA 577 (C). The standard of knowledge test applicable to a Relationship Manager (for example, Section III.C(4) and the associated Commentary) could be operationalised through regular (e.g. yearly) instructions and training by an RFI to all of its employees that could be considered Relationship Managers according to the Standard (Paragraphs 38 to 42 of the Commentary to Section III.C(4)). This could include the RFI maintaining a record of a response made by each Relationship Manager stating that they are aware of their obligations and the channels to communicate any reason to know that an Account Holder for which they manage the relationship is a Reportable Person. These communications could then be centrally processed by the RFI in the manner required by the Standard. *Additional due diligence requirements involving a relationship manager* 1. Once an RFI has applied the enhanced review procedures to a High Value Account, the RFI is not required to re-apply such procedures, other than the relationship manager inquiry, to the same High Value Account in any subsequent year unless the account is undocumented in which case the RFI should re-apply them annually until such account ceases to be undocumented. With respect to the relationship manager inquiry, annual verifications would suffice without there being a requirement for a relationship manager to confirm on an account-by-account basis that they do not have actual knowledge that each Account Holder assigned to them is a Reportable Person. 2. The relationship manager also has an important role in identifying any *change of circumstance* in relation to a high value individual account. An RFI 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. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Reportable Jurisdiction, the RFI is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder. 3. Special Aggregation Rule Applicable to Relationship Managers: For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, an RFI is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts. This requirement includes aggregating all accounts that the relationship manager has associated with one another through a name, relationship code, customer	

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		identification number, TIN, or similar indicator, or that the relationship manager would typically associate with each other under the procedures of the RFI (or the department, division, or unit with which the relationship manager is associated). 4. If any of the indicia listed in Section III.B(2)(a) to (e) are discovered in the enhanced review of High Value Accounts, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then, pursuant to subparagraph C(5)(b) of Section III, the RFI must treat the account as a Reportable Account with respect to *each Reportable Jurisdiction* for which an indicium is identified, unless it elects to apply the curing procedure contained in subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account. An indicium discovered in one review procedure such as the relationship manager inquiry, cannot be used to cure an indicium identified in another review procedure such as the electronic or paper record search. For example, a current residence address in a Reportable Jurisdiction within the knowledge of the relationship manager cannot be used to cure a different residence address currently on file with the RFI discovered in the paper record search. 5. Section VII – Special Due Diligence Requirements – sets out the standards of knowledge applicable to a self-certification and Documentary Evidence that RFIS must meet. For example, an RFI has reason to know that a self-certification or Documentary Evidence is unreliable or incorrect if its knowledge of relevant facts or statements contained in the self-certification or other documentation, including the knowledge of the relevant relationship managers, if any, is such that a reasonably prudent person in the position of the RFI would question the claim being made.	
SECTION V: DUE DILLIGENCE FOR PRE-EXISTING ENTITY ACCOUNTS			
36.	**May RFIs rely on the current SA AML/KYC procedures to determine the Controlling Persons of an Account Holder of a Pre-Existing Account?**	In order to determine if an entity which is the Account Holder of a Pre-existing Account (i.e. a Financial Account maintained by a Reporting Financial Institution as of 29 February 2016), is a Reportable Person, an RFI may rely on "available" information collected and maintained pursuant to AML/KYC procedures as defined in the *CRS Regulations* with regards to all accounts opened before 1 March 2016. Thus, an RFI may have regard to the AML/KYC information obtained under the Financial Intelligence Centre Act, 2001 (FICA), prior to its amendment by the Financial Intelligence Centre Amendment Bill, B33 of 2015 (the "old FICA"). However, if there is a change of circumstances with respect to a Pre-existing Entity Account that causes the RFI to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the RFI must re-determine the status of the account in accordance with the procedures set forth in Section V.D.	*CRS Regulations* Section V.D(2)(b), (c) and E(3) *See further*: OECD *Commentaries on CRS* at p 16
37.	**What are the remediation (end of review) dates for RFIs in**	*Individual Financial Accounts* The review of Pre-existing High Value Individual Accounts must be completed by the last day of February 2017 (return	*CRS Regulations* Section III.D and Section V.E(1)

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	respect of all types of Reportable Accounts?	due end of May 2017) and the review of Lower Value Pre-existing Individual Accounts by the last day of February 2018 (return date end of May 2018). The review of all New Individual Accounts, opened in 2016, must be completed by end of February 2017 (returns required by end of May 2017). *Entity Financial Accounts* Pursuant to the Standard, SA must report all Pre-Existing Entity Accounts (i.e. a Financial Account maintained by a Reporting Financial Institution as of 29 February 2016) in 2018. This reporting is limited to Pre-existing Entity Accounts held by a Reportable Person or by a Passive NFE with one or more Controlling Persons that are Reportable Persons. Reporting in the 2017 period is only required if the due diligence has been performed and identified reportable accounts before the end of February 2017. Generally, the review of Pre-existing Entity Accounts with an aggregate account balance or value that exceeds $250,000 as of 29 February 2016, must be completed by the last day of February **2018*** (return due end of May 2018). 'Lower value' Pre-existing Entity Accounts, i.e. accounts with an aggregate account balance or value of less $250,000 as of 29 February 2016, need not be reviewed. However, if in subsequent Reporting Periods a 'lower value' Pre-existing Entity Account (account with an aggregate account balance or value that did not exceed $250,000 as at the end of February 2016), does exceed $250,000 during such subsequent period, the account must be reported in respect of that Reporting Period. For example, if an account is a 'lower value' Entity Account as at end of February 2016 but exceeds the $250,000 threshold during the 2018 Reporting Period, its review must be completed by end of February 2018 (return due end of May 2018) *or* if the threshold is exceeded during the 2019 Reporting Period, its review must be completed by end of February 2019 (return due end of May 2019). Thus a review period of 2 years is only afforded to Pre-Existing Entity Accounts with an aggregate account balance or value that exceeds $250,000 as at the end of February 2017. The review of such accounts must be completed by the last day of February **2018*** (return due end of May 2018). The review of all New Entity Accounts, opened during the 2017 Reporting Period, must be completed by end of February 2017 (returns required by end of May 2017).	See also **Q38.** *In the *CRS Regulations* this date is erroneously stated as the last day of February 2017. An erratum to this effect was published and an amendment to the Regulations will be proposed before the end of the current Reporting Period.
SECTION VI: DUE DILLIGENCE FOR NEW ENTITY ACCOUNTS			
38.	**Should RFIs rely on the current SA AML/KYC procedures to determine the Controlling Persons for New Accounts, or**	*Introduction* Under the *CRS Regulations*, for purposes of the due diligence requirements for New Entity Accounts and identifying Reportable Accounts among New Entity Accounts, an RFI must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. For purposes of determining the Controlling Persons	*CRS Regulations* Section VI.A(2)*(b)* *See further:* OECD *Commentaries on CRS* p 199 par 137

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	FATF 2012?	of an Account Holder, RFIs may rely on information collected and maintained pursuant to AML/KYC Procedures under the new FICA. RFIs are, however, not limited to AML/KYC information to comply with their due diligence obligation to determine such controlling persons. RFIs should rely on AML/KYC procedures in respect of new entity accounts opened after 1 March 2016 under FICA after its amendment by the Financial Intelligence Centre Amendment Bill, B33 of 2015 (the "new FICA"). The Bill was passed by Parliament in May 2016, but has still to come into operation as it was referred back to the National Assembly by the President on the issue of warrantless search and seizure. The review of a New Account to determine the controlling person(s) based on the new FICA must be concluded by the following dates: • End February 2017, if the RFI was able to obtain AML/KYC information under FATF 2012 or the new FICA during the 2016 Reporting Period. • End of February 2018, if an RFI did not or was unable to obtain AML/KYC information under the new FICA by the end of February 2017. It may conclude its review of new entity accounts opened during the 2016 Reporting Period by end of February 2018, together with new accounts opened during the 2017 Reporting Period. • Thereafter, the review for purposes of determining the Controlling Person of all new entity accounts opened during a Reporting Period must be concluded by the end of the same Reporting Period. *Background* The OECD Model CRS read with the OECD *Commentaries on the CRS* from the first publication thereof in 2014, required that for purposes of determining the Controlling Person, the term must be interpreted in a manner consistent with the Financial Action Task Force (FATF) recommendations (note that the *Commentaries* mistakenly only refer to recommendations 10 and 25, while it should also have referred to recommendation 24). In FATF 2012, recommendation 10 deals with customer due diligence, recommendation 24 deals with transparency and beneficial ownership of legal persons and recommendation 25 deals with transparency and beneficial ownership of legal arrangements. Compliance with FATF 2012 is therefore no surprise and has been applied under FATCA. Under the US Foreign Account Tax Compliance Act ("FATCA") inter-governmental agreement ("IGA") between South Africa and the US of October 2014, SA Reporting Institutions are required to provide controlling person information in respect of a Non-U.S. Passive Entity (PNE) with a Controlling Person that is a Specified U.S. Person. The FATCA IGA, published in October 2014, defines "controlling person" similarly to the OECD Model CRS. In terms of the FATCA IGA, Reporting Institutions must apply the principles of the FATF 2012 Recommendations in interpreting the concepts "Investment Entity" and "Controlling Persons". The draft FICA Amendment Bill, published for public comment in April 2015, in its Memorandum of Objects sets out the	This is elaborated on in the SARS **Guide on the US Foreign Tax Compliance Act**, p 8 par 1.6

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		relationship between the Bill and South Africa's obligations pursuant to becoming a signatory to FATF. Essentially, the new FICA applies recommendations 10, 24 and 25 of FATF 2012 almost to the letter. This is also mandated by the definition of Controlling Person in the CRS Regulations. *Application of new FICA* For purposes of CRS, *all* the additional requirements of implementing the new FICA, such as developing a Risk Management and Compliance Programme, need not be met. The relevant amended or new sections of FICA, that apply FATF 2012 for purposes of the due diligence of RFIs to identify Controlling Persons, are sections 1, 21(1) and 21B of the new FICA or, until the new FICA commences, recommendations 10, 24 and 25 of FATF 2012 . Accordingly, RFIs need only to rely on these provisions to apply AML/KYC procedures under the new FICA or FATF 2012. Thus RFIs must apply the new FICA or current FATF 2012 provisions to comply with their CRS due diligence obligations in respect of determining the controlling persons of new entity accounts for purposes of reporting on such accounts and persons by end of May 2017. In this regard: • RFIs that have already applied the FATF 2012 recommendations or the new FICA in anticipation of the commencement thereof, will have obtained the prescribed beneficial ownership information upon opening of new account and should be in a position to submit information on the controlling owner of an entity account by end of May 2017 (BRS return date). • RFIs that have not applied the FATF 2012 recommendations or the new FICA in anticipation of the commencement thereof to determine the controlling person of a new entity account and have no other means to determine the controlling person, will have to revisit their 2016 new accounts in order to complete the review. In view of the fact that this will take time, the review by such entities may be completed by end of February 2018.	
SECTION VII: SPECIAL DUE DILLIGENCE RULES			
39.	**When will a self-certification be regarded as invalid or unreliable?**	The self–certification obtained by the RFI would remain valid unless the RFI knows or there is a reason to know that the self-certification is incorrect or unreliable. If a reasonably prudent person in the position of the RFI would question the information provided then that is a reason to know that the information may be incorrect or unreliable. For example documentary evidence is not reliable if it is provided in person by an individual and the photograph or signature on the documentary evidence does not match the appearance or signature of the person.	OECD *Commentaries on CRS* p 146-147 paras 12 to 15, for an in-depth discussion regarding the reasonableness of self-certification
40.	**Will SARS be amending the quoted dollar/rand exchange rate on a regular**	Yes, SARS will review the quoted dollar/rand exchange rate on an annual basis, and if substantial currency fluctuations or changes are experienced in the market this may lead to an appropriate change. The Minister of Finance may prescribe a different exchange rate by notice in the Gazette which will also be published on SARS's official website.	*CRS Regulations* VII.C(4)(c)

Q No.	Question	Answer	Source
	/annual basis?		
SECTION VIII: DEFINED TERMS			
41.	**Is an Investment Entity (FI) located in a Participating Jurisdiction (with/without a GIIN) reportable by an SA RFI that holds an account for such FI?**	For purposes of compliance with the review procedures for identifying entity accounts with respect to which reporting is required, no Participating Jurisdiction Financial Institution (as defined in Section VII.A(2) of the CRS Regulations) is required to report on accounts held in that jurisdiction by FIs located in another Participating Jurisdiction. An Entity's status as an FI or non-financial entity (NFE) should be resolved under the laws of the Participating Jurisdiction in which the Entity is resident. There are two types of NFEs – Passive and Active. A Passive NFE includes an Investment Entity that is not a Participating Jurisdiction Financial Institution and meets the criteria of a Passive NFE. An RFI of the jurisdiction in which such Investment Entity holds an account must then review, including determining the Controlling Person, and report the account. If an Investment Entity that is a Financial Institution is located in a non-Participating Jurisdiction, it is regarded as a Passive NFE if: • Its gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets; and • The Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in Section VIII.A(6)*(a)*. An Investment Entity located in Non-Participating Jurisdiction that does not meet the above tests for a Passive NFE and is an FI under the laws of that jurisdiction / the CRS, retains its status as an FI and is not regarded as a Passive NFE for purposes of CRS reporting. For example, if an SA RFI determines that an account it maintains is held by an Entity which turns out to be an Investment Entity resident in a Non-Participating Jurisdiction and meets the criteria for a Passive NFE, then the SA RFI will have to treat that Investment Entity as a Passive NFE and look-through the entity to determine the Controlling Person(s), etc. Under the so-called "look through" provision the RFIs must treat an Account Holder that is an Investment Entity (or branch thereof) that is not a Participating Jurisdiction Financial Institution as a Passive NFE and report the Controlling Persons of such Entity that are Reportable Persons. Regarding the relevance of an allocated GIIN under FATCA, it would be incorrect for SA RFIs in complying with the CRS to place reliance on FATCA due diligence for the classification of foreign FIs given the differences in this regard between the two standards. The list of CRS Participating Jurisdictions is available and accessible to RFIs.	*CRS Regulations* Sections V.D(2); VIII.A(3), (4) and (6)(b) read with D(5) OECD *Commentaries on CRS* par 2 of commentary on Section IX *CRS Implementation Handbook* paras 28-31; OECD *Commentaries on CRS* p 95 par 123
42.	**Is an account held by an FI located in a Non-Participating**	If an Entity is located in a non-Participating Jurisdiction, i.e. a jurisdiction that has not implemented the CRS, the rules of the jurisdiction in which the account is maintained determine the Entity's status as an FI or NFE since there are no other rules	*CRS Regulations* Section VIII.D OECD *Commentaries on*

Q No.	Question	Answer	Source
	Jurisdiction and maintained by an SA RFI a Reportable Account to SARS?	available. Under the CRS, only an Investment Entity located in a non-Participating jurisdiction must be treated as a Passive NFE which means that the Entity needs to be looked through to identify who are the Controlling Persons. Accounts held by an FI, other than an Investment Entity, located in a non-Participating Jurisdiction and maintained by an RFI in a Participating Jurisdiction, are not reportable.	*CRS* par 2 of commentary on Section IX See further **Q41**
43.	**What is the treatment of derivatives for CRS purposes?**	The term derivative is not defined in the CRS nor dealt with in the CRS Commentary or CRS Implementation Handbook. What is defined is a Financial Asset. When a derivative is or becomes a Financial Asset and held in a Financial Account, as defined, then the *CRS Regulations* will apply. Whether a margin, cash, settlement or brokerage account associated with the derivative position constitutes a Financial Account, will depend on whether it fits within this definition.	*CRS Regulations* Section VIII.C, A(7) and C(1)
44.	**What is meant by the term "deceased estates"?**	An account that is held solely by the estate of a deceased person will be considered an Excluded Account where the RFI 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. Until such documentation has been provided, the account must be treated as having the same status as prior to the Account Holder's death and reported under Section I. The balance that should be reported is the balance as at one day before the closure of the account, in this case once the documentation for such account includes a copy of the deceased's will or death certificate. Once the documentation has been received the account becomes an Excluded Account as of that date for purposes of the remainder of the Reporting Period or any succeeding year.	*CRS Regulations* Section VIII.C(17)(d) - "Excluded Account"; Annex II - Excluded Accounts under Section VIII.C(17)(g)
45.	**What is meant by the term "securities regulator" in the definition of documentary evidence?**	The term interpreted in a South African context means a regulator in securities established by statute, such as the Financial Services Board, the Financial Intelligence Centre and the South African Reserve Bank, *or* a Self-Regulatory Organisation (SRO). The FSB function is supported by the Financial Markets Advisory Board (FMAB) and the FSB Directorate of Market Abuse (DMA) – both additional securities regulators. The Registrar for securities services referred to in the Financial Services Board Act, has ultimate oversight over these securities regulators. The main regulatory statute is the Financial Markets Act, 2012, which Act also defines of what "securities" are. South Africa has adopted the SRO model for the regulation of securities services, as recognised by the International Organisation for Securities Commission. The JSE and STRATE are examples of SROs. This framework is supported by the Financial Markets Act.	*CRS Regulations* Section VIII.E(6)(d)
46.	**May trusts rely on the Trustee Documented**	SARS agrees that a trust established under SA law, including a TDT, should be a Non-Reporting FI to the extent that it otherwise complies with Section VIII.B(1)(e), in line with the	*CRS Regulations* Section VIII.B(1)(e)

Q No.	Question	Answer	Source
	Trusts (TDTs) exemption under FATCA, in the context of a Non-Reporting Financial Institution?	FATCA IGA exclusion of certain trusts and TDTs. The term Trustee-Documented Trust for the purposes of the FATCA Agreement (IGA) means a South African trust and applies where the trustee of that trust is a Reporting Institution and reports all information pursuant to the FATCA IGA on behalf of the trust. Under SA law (South African trusts are regulated under the Trust Property Control Act, 1988) a trustee is any person (including the founder of a trust) who acts as trustee and shall act in that capacity only if authorised as such in writing by the Master. Section 6(4) of the Trust Property Control Act provides that authorisation can be given to a trustee which is a corporation. Such authorisation is given in the name of a nominee of the corporation for whose actions as trustee the corporation is legally liable and any substitution for such nominee of some other person must be endorsed on the authorisation. A Trustee-Documented Trust meeting the necessary requirements is exempt from FATCA reporting. However, to effect the inclusion of a trust, including a TDT, established under SA trust law as a Non-Reporting FI for CRS purposes, will require an amendment as such trusts are currently excluded as a result of the meaning of a "Reportable Jurisdiction", i.e. "any jurisdiction other than the United States of America or South Africa". This definition results from the application of the widest meaning under the CRS. This amendment, together with other technical corrections, will be proposed early in 2017.	
47.	**What does "managed by" in Section VIII.A(6) mean?**	The term "Investment Entity" means 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 described in Section VIII.A(6)(a). It is only in this context that the term "managed by" is used in the *CRS Regulations*. The *OECD CRS Commentaries* provides, for purposes of determining whether an Entity is an Investment Entity described in Section VIII.A(6)(b), that an Entity is managed by another Entity if the managing Entity performs, either directly or through a service provider, any of the activities or operations described in paragraph (A)(6)(a) on behalf of the managed Entity. These activities and operations include trading in money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; individual and collective portfolio management, or otherwise investing, administering, or managing Financial Assets or money on behalf of other persons. Further, the managing Entity must have discretionary authority to manage the Entity's assets (in whole or in part). See *OECD CRS Commentaries* on Section VIII par 17. For example, a private trust company that acts as a registered office or registered agent of a trust or performs administrative services unrelated to the Financial Assets or money of the trust, does not conduct the activities and operations described in Section VIII.A(6)(a) on behalf of the trust and thus the trust is not "managed by" the private trust company within the meaning of Section VIII.A(6)(b). Also, an Entity that invests all or a	*CRS Regulations* Section VIII.A(6)(a) and (b) *CRS Implementation Handbook* Annex 1 p 112 – 113 (FAQ 3 of Section VIII)

Q No.	Question	Answer	Source
		portion of its assets in a mutual fund, exchange traded fund, or similar vehicle will not be considered "managed by" the mutual fund, exchange traded fund, or similar vehicle. In both of these examples, a further determination needs to be made as to whether the Entity is managed by another Entity for the purpose of ascertaining whether the first mentioned Entity falls within the definition of Investment Entity, as set out in Section VIII.A(6)(b). For purposes of FATCA, an "Investment Entity" is defined as "an Entity that conducts as a business (or is *managed by* an Entity that conducts as a business) one or more of the activities or operations" similar to those listed in Section VIII.A(6)(a) of the *CRS Regulations.* The *SA FATCA Guide* states that an Entity will be regarded to be "managed by an Entity" if the Entity that manages it has – • *discretionary authority* to manage its assets; and • *full capacity* to manage *all the assets* of a third party (which includes financial and non-financial assets of such third party). The *SARS FATCA Guide* further states, in the context of trust, that: • A trust may be considered to be an Investment Entity in cases where the trust or its activities are being *professionally managed*. In this regard, a trust will be considered to be professionally managed where the trustees appoint an FI to carry out the day-to-day functions of the trust or the financial assets of the trust are managed by the FI; • An FI will only be considered to be managing the assets of a trust where it manages the investment strategy for the assets. An FI that is engaged by a trust solely to acquire or dispose of financial assets does not amount to management of the assets by the FI. A family trust which invests into a product (which includes a segregated mandate) offered by an FI, does not meet the "managed by" test; • Where the FI manages assets on a pooled basis and the trust merely buys into the product that is being managed on a pooled basis, it will not amount to the assets being "professionally managed". In this instance the trust has merely invested in fixed assets that change in value relative to the assets in the pool. This would include investments in managed portfolios that are sold on a retail basis. South Africa, accordingly, applies a fairly narrow view of the term "managed by" in the context of FATCA and the term will have the same meaning for CRS purposes. The wider view taken by other countries such as the UK, where even investment mandates qualify as meeting the *managed by* test, seems to conflict with the Model CRS and would not be sufficient in the SA CRS context, although *together with* other forms of management an investment mandate may suffice to meet the "managed by" standard both for purposes of FATCA and the CRS. Although for purposes of FATCA the managing entity must be	*SA FATCA Guide* par 2.2.3.

Q No.	Question	Answer	Source
		an Investment Entity and not any FI as defined in the CRS Regulations, this difference in the FATCA and CRS definitions should not substantially impact the meaning of "managed by" except to the extent that the management of investments differs between these FIs.	
48.	**How is a Church categorised under CRS?**	An account held by a church approved as a public benefit organisation by the Commissioner under section 30(3) of the Income Tax Act, is an excluded account. Other churches, meeting the requirements for a Reportable Account under the CRS Regulations, will be reportable. This will include, for example, churches that do not meet the definition of active NFE based on its activities, which means it will be regarded as a Passive NFE.	*CRS Regulations* Section VIII(C)(17)(g) and Annex II par (7)
49.	**If an entity issues *any kind of financial instrument* and these instruments are traded on an exchange, does this entity meet the Active NFE test? Does the subsection apply to non-corporates such as Trusts or Partnerships?**	*Stock traded on securities market* The term Active NFE means any NFE if (amongst other criteria) 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. The term Entity means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation. The term NFE means any Entity that is not an FI. The question is if an Entity other than a corporation could have "stock which it regularly trades on an established securities market". The relevant subparagraph does not refer to "stock or any other financial instrument", but it also does not refer to the "stock of a corporation". Where the CRS Regulations intended to limit "stock" to "stock of a corporation", it stated so expressly. For example: • The term Financial Asset includes a security such as, for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness. • The term Reportable Person means a Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities market. The term "stock" is not defined or otherwise limited to shares in a corporation, thus it has a wide meaning and could include, for example, SATRIX shares or a collective investment scheme (CIS) where a trust has a participating interest in or manages the CIS. "Stock" is what is generally traded on a securities market, also known as a "stock exchange". Applying a purposive approach, the purpose of the subparagraph is to determine if an NFE is actively and regularly trading on a securities market (or stock market) i.e. whether it *is* an Active NFE. Accordingly, to the extent that a financial instrument is "stock of an NFE that is regularly traded on an established securities market", the entity would be an Active NFE irrespective of whether the NFE is a corporation or other type of Entity, such	*CRS Regulations* Section VIII.D(9)(b) & E(3) and (4); A(7); D(2) & (7)

Q No.	Question	Answer	Source
		as a trust or partnership. In addition, a trust or partnership could be a Related Entity of an Entity, such as a corporation, that conducts such trading. An Entity is a Related Entity of another Entity if (i) either Entity controls the other Entity; (ii) the two Entities are under common control; or (iii) the two Entities are Investment Entities described in subparagraph A(6)*(b)*, 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 per cent of the vote and value in an Entity.	
50.	**What does "regularly traded" mean?**	The stock must be regularly traded on one or more established securities markets. This means that: • There is a meaningful volume of trading with respect to the stock on an on-going basis; and • An "established securities market" means it must be officially recognised and supervised by a government authority in which the market is located and that the exchange has a meaningful annual value of shares traded.	OECD *Commentaries on CRS* par 112 - 115 of commentary on Section VIII
51.	**May an RFI in seeking documentary evidence have regard to evidence not included in the definition thereof?**	The definition of Documentary Evidence uses the words "*includes* any of the following". This is generally taken to mean that the listed examples are not exhaustive. The term would be limited by the fact that any other document must constitute "evidence" for the purpose required. Thus, an RFI may use other documents or leverage processes, such as AML/ KYC (under the old or new FICA as the case may be), to obtain such evidence. This interpretation is reinforced by Section IX(G) which provides that with respect to a Pre-existing Entity Account, an RFI may use as Documentary Evidence any classification in the RFI's records with respect to the Account Holder that was – • determined based on a standardised industry coding system; • recorded by the RFI consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes); and • implemented by the RFI prior to the date used to classify the Financial Account as a Pre-existing Account.	*CRS Regulations* Section VIII.E(6) *See further* UK *CRS Guidance Notes*, AEIM102760 p 66
52.	**Is there a reporting obligation which exists for FIs in respect of an attorney's trust account referred to in the Attorneys Act, 1979?**	*Section 78(2)(a) Attorneys Act accounts* These accounts are opened in the name of the attorney or attorney's firm and are investment accounts which consist of various funds of the attorney's or attorney firm's clients which are held in trust, if the attorney or attorney firm is registered under the Attorneys Act. There is no obligation on an RFI to "look through" these accounts to the attorney's clients as there is already a regulatory framework for these accounts. *Section 78(2A) Attorneys Act account* These accounts are investment sub-accounts opened on behalf of each client of the attorney or attorney's firm for deposits to be held in trust in respect of a specific transaction involving the client. The account is closed by the attorney after	*CRS Regulations* Section VIII.C(17)(e)

Q No.	Question	Answer	Source
		the specific purpose or transaction has been fulfilled. Attorneys Act section 78(2A) trust accounts will be excluded from CRS reporting to the extent that they are Excluded Accounts as defined in Section VIII.C(17)(e) of the Regulations. Such accounts are generally referred to as escrow accounts.	
53.	**Where can one view a list of the Participating Jurisdictions to the CRS?**	Refer to the links below for the OECD Participating Jurisdiction list and SARS's list of other multilateral and bilateral agreement or arrangement between South Africa and another jurisdiction as updated and published by the OECD or SARS, as the case may be, from time to time: 1. Signatories of the Multilateral Competent Authority Agreement on automatic exchange of financial account information (MCAA): • **https://www.oecd.org/ctp/exchange-of-tax-information/MCAA-Signatories.pdf** 2. List of other multilateral and bilateral international tax agreement or EOI instruments as published on the SARS website: • **https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf** • **http://www.sars.gov.za/Legal/International-Treaties-Agreements/DTA-Protocols/Pages/default.aspx** • **http://www.sars.gov.za/Legal/International-Treaties-Agreements/Pages/Exchange-of-Information-Agreements-(Bilateral).aspx**	
54.	**Is a body corporate or homeowners association regarded as an Active or Passive NFE for CRS purposes?**	A body corporate or home owners associations will fulfil the definition of an Active NFE, and to that extent will be regarded as such for CRS purposes.	
SECTION IX: COMPLEMENTARY REPORTING AND DUE DILLIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION			
55.	**What is meant by the term change of circumstances**	This term is defined in the *CRS Regulations* Section IX.A	*See further* OECD *Commentaries on CRS* at p 115 to 116
56.	**Does the Residence of an FI referred to in Section IX.C apply only to those FIs that**	This paragraph of Section IX is intended as guidance to determine or verify the jurisdiction of residence of an FI so as to establish if it is located in a Participating Jurisdiction and, therefore, subject to CRS obligations. It is thus irrelevant whether the FI has declared its *tax* residence or not. What is sought here is whether the FI has a residence in a Participating	*CRS Regulations* Section IX.C

Q No.	Question	Answer	Source
	declare they have no tax residence or also to FIs that declares a tax residence?	Jurisdiction. In the context of a trust that is an FI, this is stated expressly, i.e. *irrespective of whether a trust is resident for tax purposes in a Participating Jurisdiction*, the trust is considered to be subject to the jurisdiction of a Participating Jurisdiction if one or more of its trustees are resident in such jurisdiction. However, this does not apply if the trust reports all the required CRS information with respect to Reportable Accounts maintained by the trust, to another Participating Jurisdiction because it (the trust) is resident for tax purposes in such other jurisdiction.	
SECTION X: EFFECTIVE IMPLEMENTATION			
57.	**What is meant by the anti-avoidance provision?**	If a person enters into an arrangement and the main purpose of this arrangement is to avoid any obligations under the CRS, the *CRS Regulations* are to have effect as if the arrangement had not been entered into. The anti-avoidance provisions are applicable to any person, which includes any natural person or any juristic person as per the ordinary meaning of the word "person", who knowingly took part in an anti-avoidance arrangement.	*CRS Regulations* Section X.A(1) See further OECD *Commentaries on CRS* p 208 for examples of situations where is it expected that an anti-avoidance rule would apply.
58.	**What sanctions or penalty can be imposed for non-compliance by an RFI?**	A **draft Public Notice** to be issued under section 210 of the TAA, which sets out the penalties that may be imposed for non-compliance in respect of the CRS, has been circulated for comments and is undergoing a final review, including benchmarking, before the publication thereof.	
59.	**How do FIs direct their clients to the BRS requirements and how is the BRS illustrated as a legal instrument?**	This information, including the final BRS, is available on the SARS website. The BRS constitutes the prescribed form (content) and manner (electronically) of submitting the CRS return required in terms of a public notice to be issued under section 26 of the TAA (primary legislation). The definition of "this Act" in section 1 of the TAA includes a regulation or public notice issued under the TAA, making the public notice requiring the BRS return secondary legislation which is both enforceable and, in the event of non-compliance under the TAA, sanctionable by administrative or criminal penalties.	
GENERAL QUESTIONS			
60.	**Can an entity's classification under the CRS be different to its classification under FATCA?**	Yes there can be a classification difference as can be seen from the examples below. *Under the CRS* The CRS requires due diligence reporting on the following account holder types: 1.) Accounts held by Reportable Persons; 2.) Accounts held by a Passive NFE (NFE that is not an Active NFE as described or Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction FI) with one or more Controlling Persons that is a Reportable Person.	

Q No.	Question	Answer	Source
		3.) Active Investment Entity located in non-Participating Jurisdiction. *Accounts excluded from CRS reporting are*: 1.) Accounts held by Non-RFIs under Section VIII(B) of the standard, read together with Annexure II of the *CRS Regulations*; 2.) Excluded accounts as per Section VIII[C](17)(g) of the Regulations, read together with Annex II of the *CRS Regulations*. <u>*Under the FATCA IGA*</u> FATCA requires due diligence reporting on the following account holder types: 1.) Specified U.S. Person; 2.) Non-U.S. Passive Entity (PNE) with Controlling Person that is a Specified U.S. Person; 3.) Non-participating FI (NPFI = a South African FI or other Partner Jurisdiction FI) that should be a PFI (only reporting on payment into such accounts required; 4.) Passive NFFE. *Accounts excluded from FACTA reporting are*: 1.) U.S. Person that is not a Specified U.S. Person; 2.) SA FI or other Partner Jurisdiction FI; 3.) Participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; 4.) Active NFFE; 5.) Passive NFFE of which no of the Controlling Person is a Specified U.S. Person.	
61.	**What are the record keeping obligations of Financial Institutions for CRS purposes?**	The record keeping obligations of RFIs for CRS purposes are regulated by the TAA, more specifically section 29. This follows from the fact that the SA CRS Regulations are issued under the TAA which means the regulations are included in the TAA (see definition of 'this Act' in section 1 of the TAA), as well as the introductory paragraph to Section VIII of the SA CRS Regulations. Although under section 29(3) of the TAA the retention period is currently 5 years, note that an amendment to make it 7 years is proposed in the Tax Administration Laws Amendment Bill, 2016.	