SCHOOL OF
ACCOUNTANCY

A research report submitted to the Faculty of Commerce, Law and Management in fulfilment of the requirements for the degree of Master of Commerce specialising in Taxation.

A critical analysis into the Organisation for Economic Co-operation and Development 'Standard for Automatic Exchange of Financial Account Information in Tax Matters'.

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Abstract

The impact of the Organisation for Economic Co-operation and Development's Standard on Automatic Exchange of Financial Account Information in Tax Matters has a significant impact on Financial Institutions globally. This paper aims to critically evaluate the current South African legislation and the obligations it places on financial institutions. The research also highlights the challenges faced by a financial institutions in interpreting and implementing the often complex requirements of the regulations with a particular focus on the following areas namely customer on-boarding and enhanced due diligence procedures, monitoring of accounts, remediation of the existing customer base, system development, and reporting to the South African Revenue Service. The research also looks into the readiness of developing countries in implementing the Automatic Exchange of Information. The research concludes with a discussion into the appropriateness of South Africa's decision to agree to be one of the early adopters of this legislation despite the challenges identified above.

Key Words:

OECD, Standard on Automatic Exchange of Financial Account Information for Tax purposes, Common Reporting Standard, Financial Institutions.

Declaration

I declare that this research report is my own unaided work. It is submitted in partial fulfilment of the requirements for the degree of Master of Commerce (specialising in Taxation) at the University of Witwatersrand, Johannesburg. It has not been submitted for any other degree or examination at any other institution or at any other time.

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August 2016

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List of key abbreviations:

The following is a list of key abbreviations used in this report:

AEOI	Automatic Exchange of Information
AML	Anti Money Laundering
BRS	Business Requirement Specification
CAA	Competent Authority Arrangement
CLO	Client Liaison Officer
CRS	Common Reporting Standard
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FI	Financial Institution
KYC	Know Your Customer
OECD	Organisation for Economic Co-operation and Development
POPI	Protection of Personal Information
RM	Relationship Manager
SARS	South African Revenue Service
SVDP	Special Voluntary Disclosure Programme
ss	Sub-Section
TJN	Tax Justice Network

Chapter One: Introduction

1. Background and context of the study

According to the Organisation for Economic Co-operation and Development OECD (n.d, (a)), the new global standard on Automatic Exchange of Information (AEOI) reduces the possibility for tax evasion. It provides for the exchange of non-resident financial account information with the tax authorities in the account holders' country of residence. Participating jurisdictions that implement AEOI send and receive pre-agreed information each year, without having to send a specific request. AEOI will enable the discovery of formerly undetected tax evasion. It will enable governments to recover tax revenue lost to non-compliant taxpayers, and will further strengthen international efforts to increase transparency, cooperation, and accountability among financial institutions and tax administrations. Additionally, AEOI will generate secondary benefits by increasing voluntary disclosures of concealed assets and by encouraging taxpayers to report all relevant information. These secondary benefits will largely be achieved through the implementation of the South African Revenue Service (SARS) Special Voluntary Disclosure Programme (SVDP). South African taxpayers who have undisclosed foreign assets and income will now have an opportunity to declare these to SARS and pay the resultant taxes resulting in previously lost revenue being recouped. These non-compliant taxpayers no longer have a choice as the foreign tax jurisdiction in which these income generating assets are housed will now be sharing such information with SARS. Further benefits to the fiscus of other early adopter countries of the Standard are discussed in chapter six of this paper.

In South Africa, AEOI will be achieved through the implementation of the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters (the Standard) which encompasses the Common Reporting Standard (CRS). This piece of legislation places an obligation on all FIs to identify and monitor reportable accounts and reportable persons that are foreign tax residents through the implementation of various enhanced due diligence procedures. This will amongst other things involve the need to enhance existing on-boarding procedures for new/potential account holders in order for the Financial Institution (FI) to collect the tax and residency information for all account holders. This will assist the FI to determine if the account holder could potentially be tax residents or have tax obligations in foreign jurisdictions, run remediation programmes with the existing base of account holders as well as develop reporting capabilities in-house to ensure compliance.

This paper examines the real life implementation of the Standard in a FI that specialises in the areas of trust administration and fiduciary advice. It highlights the challenges and additional considerations faced by the FI in interpreting and implementing the requirements of the Standard. A best practice approach is also suggested for a FI in order to implement these requirements into their day-to day activities thereby ensuring compliance and avoiding the associated financial and reputational risks of non-compliance.

2. The research problem

2.1 Statement of the problem

Whilst the Standard is fairly detailed as to the requirements it places on a FI, there is very limited guidance for the FI as to how it can best achieve these obligations in an operationally efficient and cost effective manner. FIs are left to their own will in determining a best fit solution.

The problem that therefore arises is in the absence of a suggested approach to implementation from a regulatory authority such as SARS, how would a South African FI go about implementing these requirements into their day-to-day operational activities whilst ensuring they are fully compliant with the Standard and what loopholes exist with the Standard? South African FIs that have yet to implement the Standard can use this report as a guide in assisting them with implementation.

2.2 The Sub-Problems

2.2.1 In the absence of a suggested approach, what would be the best starting point for a FI in determining a best fit solution and what can that solution be?

Prior to the development and design of an operational process a FI will have to establish inter alia the requirements of the Standard that must be complied with. The problem will be examined through a thorough review of the Standard with a specific focus on

a) Due-diligence requirements for the various account/product types;
b) Key definitions that will be applicable to the FI.

This examination will help a FI better understand the applicability of the Standard on its operations and will enable the groundwork for an appropriate solution that will address requirements for both new and existing customers to be considered.

2.2.2 What are the complimentary aspects required for successful implementation that will also need to be considered by a FI but which are not covered in the Standard? And how should a FI approach these in order to ensure compliance?

The problem here is that there are additional issues that are not specifically covered in the Standard that will also need to be considered by a FI in implementing the Standard. FIs are left to establish these on their own and could potentially only realise the impact later on in the implementation or worse, overlook them completely.

The key items that will be examined here amongst others include:

a) Budgeting and cost considerations of implementation;
b) Updating of customer documentation and collection of relevant taxpayer information;
c) The identification of key risks and the design of mitigating controls; and
d) Other matters which are necessary for the successful overall implementation of the Standard.

2.2.3 What loopholes exist in the Standard in its current format for tax evaders and how are they used? And what are the challenges and benefits faced in other developing countries in implementing the Standard?

Whilst the OECD submits that implementation of the Standard will result in benefits to adopting countries, there are aspects that could erode any benefits derived from early adoption. These include:

a) Tax evaders using loopholes on the Standard to avoid being reported under the CRS and;
b) Challenges with CRS implementation faced by other early adopters that are considered developing countries.

2.3 Significance of the study

As the world becomes increasingly globalised it is becoming easier for all taxpayers to make, hold and manage investments through financial institutions outside of their country of residence. Vast amounts of money are kept offshore and go untaxed to the extent that taxpayers fail to comply with tax obligations in their home jurisdiction. Offshore tax evasion is a serious problem for jurisdictions all over the world, OECD and non-OECD, small and large, developing and developed countries. Countries have a shared interest in maintaining the integrity of their tax systems. Cooperation between tax administrations is critical in the fight

against tax evasion and in protecting the integrity of tax systems. A key aspect of that cooperation is the exchange of information. (OECD, 2014(a): 5)

The SARS reporting Business Requirements Specification requires that FIs report on the various income categories types such as interest, rentals, dividends and other income amongst other information. This will provide great insight into the various income generating assets like fixed properties, investments etc. held by a taxpayer in a foreign jurisdiction that they have not disclosed to their resident tax authority.

AEOI is broadly recognised to be a positive step for global transparency. Although support for AEOI is widespread, developing countries share a concern as to how to achieve practical implementation. For successful implementation of AEOI, the requirements include knowledge, political will, information technology, human resources, legal frameworks, rigorous confidentiality, data protection safeguards and resources dedicated to ensuring the information received is put to effective use. Many developing countries currently lack capacity in these areas, and are facing competing tax reform priorities. (OECD, 2014(b): 3)

Foreign Account Tax Compliance Act (FATCA) [in South Africa and abroad] has demonstrated that FIs face an uphill struggle to implement complex regulatory programmes in a short timeframe. The implementation calendar currently envisaged for the CRS means this will have to be implemented in a much shorter timeframe than for FATCA. There are fundamental differences between CRS and FATCA, with the result that large FIs have substantial IT projects to plan, budget for, build/source and roll out – all of this in a very short space of time. Ultimately, if the reporting is rushed, the quality of data that governments will be exchanging will be lacking. (European Union, 2015: 6)

While it is admirable that South Africa is one of the tax jurisdictions leading the way in this effort, consideration must be given as to whether or not FIs in a developing country is ready and capable to handle this significant responsibility.

The research will provide insight into the various legislative requirements of the Standard. It aims to promote a greater degree of understanding of the Standard considering the limited guidance given especially in the field of trust administration. The research will highlight

practical challenges faced by FIs in implementing the Standard and demonstrate the most effective manner available in order to meet the 2017 deadline for FIs submitting reports to SARS and in turn allowing SARS to share the information with other participating tax jurisdictions. The research can then serve as a reference point for any FI dealing with clients who are impacted by these regulations. The challenges identified will however, help all FIs identify common pitfalls that may be experienced with the implementation of the Standard and can help contribute to a revision of existing regulations to consider the more practical solutions to assist a FI with compliance.

3. Research Methodology

The research method adopted is of a qualitative, interpretive nature, and is based on a detailed interpretation and analysis of amongst other things, the relevant pieces of legislation that pertain to the Standard and other aspects of tax and trust administration as well as supporting guidance material published by the OECD. In addition some of the findings highlighted are sourced from international tax forums and institutes. The core of the research however is based on actual findings from CRS implementation in a FI. This also includes a quantitative analysis on the costs associated with implementing this piece of legislation.

4. Limitations of the study

The study will answer the problem statement and sub-problems listed above, but the following have been identified as limitations:

a) This research is restricted to an analysis of the requirements of the Standard insofar as it pertains to the CRS and therefore does not cover any regulations pertaining to FATCA (although references may be made to this separate piece of legislation).
b) The Standard is quite comprehensive, however, only sections and definitions relevant to the application of the Standard in a trust administration business will be discussed. A trust administration business in this context refers to a FI which serves in the capacity of corporate trustee as well as manages the day to day affairs of the trust.

Whilst the research will highlight the more complex areas of implementation within a FI, it cannot necessarily be applied across all FIs given the diversity of product categories and customer types that exist within the various FIs in South Africa.

5. Chapter Outline

5.1 Chapter One – Introduction

This chapter will provide the background to the topic and introduce the issues that will be studied. It will include the research problem and sub-problems, research methodology, scope and limitations.

5.2 Chapter Two – The key areas of the Standard explained

This chapter will provide an overview of the key regulations as contained in the Standard. These include the due-diligence requirements and key definitions. The due-diligence procedures are further analysed as these are applied differently depending on the monetary value of the account and the customer type (i.e. existing customer versus new customer and individual account holder versus entity account holder).

5.3 Chapter Three – A suggested solution for implementing the Standard into a FI

This chapter will identify through the use of procedure guidelines, a suggested solution to the successful implementation of the Standard in a FI. The solution discussed here has been implemented in an actual FI in South Africa and is designed as per the regulations discussed in chapter two. The focal point will be around the specific requirements that apply to trust entities and their related parties. In addition to this the associated risks and control measures at each critical step in the process will be highlighted and discussed.

5.4 Chapter Four – Additional requirements and other practical considerations of CRS implementation

This chapter will explore other key factors that will need to be considered by a FI in fulfilling the requirements identified in chapter three. Some of the key areas for discussion will include the updating of on-boarding documentation to include the self-certification documents, the remediation exercise on existing customer base, staff and customer impact, system enhancements to include all relevant CRS reporting fields and finally the building of a report to SARS. It will also highlight certain areas of the regulations that do not provide guidelines on the more complex account types such as Trust entities and have also been adapted from learnings of CRS implementation in a South African FI.

5.5 Chapter Five – Cost considerations of CRS implementation in a FI

This chapter explores the costs of implementing CRS in a FI. General cost considerations will be highlighted first. The various cost driving functions of the areas in a FI involved in the overall CRS project will be analysed and a charge out rate will be assigned to each to provide an overall estimated cost figure. The charge out rates and costing activities has all been sourced from the implementation of CRS in a South African FI. Ways of reducing these costs will also be recommended.

5.6 Chapter Six – Benefits and challenges faced by developing tax jurisdictions with CRS implementation

This chapter examines the overall readiness of developing tax jurisdictions in implementing the AEOI. This will include an investigation into challenges faced as well as the benefits to be derived by these tax jurisdictions. It will also explore some of the reasons that could have prompted South Africa's National Treasury to sign on as early adopters.

5.7 Chapter Seven - Loopholes and possible ways to escape the net of CRS

This chapter explores some the methods and means tax evaders may be tempted to use to avoid being reported under the CRS. The OECD standard in its current format has loopholes and perceived ambiguities in the OECD standard. Understanding these loopholes is necessary to consider as it will directly impact the quality and accuracy of financial information that will be shared by both adopting and non/late-adopting jurisdictions.

5.8 Chapter Eight – Conclusion

This chapter will conclude with a summary of recommendations based on the findings in earlier chapters.

Chapter Two: The key areas of the Standard explained

Literature Review

The OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters as published in the Government Gazette on 2 March 2016 provides the best starting point in research of this nature. Without an analysis of this piece of legislation one cannot determine the minimum requirements that will need to be implemented by a FI to ensure compliance. The South African Revenue Service also published its Business Requirement Specification (BRS) for the Automatic Exchange of Information. This document provides great insight into the type of information that will need to be reported to SARS and ultimately plays an important role in the design of the customer documentation that is required to collect such information. In addition, each tax jurisdiction will have its own unique set of legislation and reporting requirements so these are currently the only documents available detailing the Standard in a South African context

The OECD is at the forefront of improving the economic and social well-being of people around the world by providing platform for inter-governmental cooperation. Given that AEOI is the concept of the OECD it is necessary to analyse their publications as it provides great insight as to the reasons and benefits to be derived by tax jurisdictions who agree to share information as well as the challenges faced by implementing jurisdictions. They have also published useful guidelines on how FIs should design customer documentation.

The Tax Justice Network (TJN) is an independent international network launched in 2003. They are dedicated to high-level research, analysis and advocacy in the area of international tax and the international aspects of financial regulation. TJN maps, analyses and explains the roles of tax and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. The world of offshore tax havens is a particular focus of their work. Their core goals include creating understanding and debate and to promote reform, especially in poorer countries (Tax Justice Network, n.d). It is imperative to consider findings of research conducted by organisations such as this one as it provides a view that is independent to that of the OECD as to the perceived benefits to and challenges faced by developing countries implementing AEOI.

Another aspect that may be overlooked by FIs is the concept of privacy of customer information. This is of significant importance now especially with the Protection of Personal Information Act being legislated in South Africa. A FI must be careful to protect themselves

against possible lawsuits from customers who feel their information may be used in a way other than for its intended purpose. Phillip Baker QC (2016) a practicing barrister and senior visiting research fellow at London University has published a research paper on The Rights to confidentiality and privacy in an age of transparency: A European perspective and aspects of his research are considered useful in this discussion.

Given that the Standard casts a net that is rapidly closing around tax evaders, there will certainly be scrambling on the part of these errant taxpayers to utilise any loopholes to avoid being reported to their respective tax jurisdictions in which they are resident. Some of the methods that may be used are discussed in a report entitled 'The 24 OECD Common Reporting Standard Loopholes' as published by Mark Morris. Mark Morris has been recognised by the EU Commission for his valuable exchange of views on the EU Savings Tax Directive Amendments since 2005. He currently advises several competent authorities on the misapplication in their official guidelines concerning AEOI.

Finally, aspects from articles published by international audit and tax advisory firm KPMG (2016) as well Fenergo (2016) are referred to as they provide concise summaries to support requirements that need to be considered by a FI before implementing the Standard. Definitions are also sourced from the following: West's Encyclopaedia of American Law, Collins Dictionary of Law, BusinessDictionary.com and the Trust Property Control Act 57 of 1998.

The core areas of the Standard that are relevant to the FI used in the case study will be discussed. These include:

- General reporting and due diligence requirements;
- Due diligence processes for individual accounts which include the identification, review and remediation of pre-existing individual accounts as well as the on-boarding of new individual accounts;
- Due diligence processes for entity accounts which include the identification, review and remediation of pre-existing entity accounts as well as the on-boarding of new entity accounts and;
- A change in circumstance for both individual and entity accounts.

The due diligence procedures discussed below have been adapted from the Standard as contained in *the Government Gazette, Republic of South Africa, No 10573, Vol. 609, 2 March*

2016, The OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters (with the relevant section numbers included) unless otherwise stated. Refer to Appendix A for all the key definitions contained in this report.

General reporting and due diligence requirements (s. I, Para. (A – F))

The client information to be reported, and exchanged between relevant revenue authorities, includes the following information (as it relates to each reportable account of each reportable person that is an account holder):

- Client name;
- Address;
- Jurisdictions of residence;
- Tax identification number (may not be required under certain circumstances);
- Date of birth – individuals only (may not be required under certain circumstances);
- Place of birth – individuals only;
- Country of birth;
- The account number;
- The account balance or value at the end of the relevant reporting period;
- In relation to closed account, the balance as at one day before the closure of the account;
- The total gross amount of interest;
- The total gross amount of dividends;
- The total gross amount of other income generated with respect to assets held in the account;
- The total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the reporting period with respect to which the Reporting Financial Institution acted as custodian, broker, nominee, or otherwise as an agent for the account holder and,
- The information must identify the currency in which each amount is denominated (KPMG, 2016).

In addition to the above the Standard also requires that all Reporting FIs 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 Standard. (s.II, Para. A, ss.1)
A financial account is treated as a reportable account beginning as of the date it is identified as such pursuant to the due diligence procedures in the relevant sections of the Standard and, unless otherwise provided, information with respect to a reportable account must be reported annually in the period following the reporting period to which the information relates. (s. II, Para. A, ss. 2)

The balance or value of an account is determined as of the last day of the reporting period, unless it is not possible or usual to value a specific type of account at that date in which case the value at the normal valuation date for such account that is nearest to the last day of February in that reporting period, must be used. (s. II, Para. B)

Where a balance or value threshold is to be determined as of the last day of the reporting period, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that reporting period. (s. II, Para. C)

Reporting FIs may use service providers to fulfil the reporting and due diligence obligations imposed on such reporting FIs, but these obligations remain the responsibility of the Reporting FIs. (s. II, Para. D)

A Reporting FI may apply the due diligence procedures for:

- New financial accounts to all pre-existing financial accounts or with respect to any clearly identified group of pre-existing financial accounts, but the rules otherwise applicable to such pre-existing financial accounts continue to apply (s. II, Para. E, ss. 1); and
- High value financial accounts to all lower value financial accounts or with respect to any clearly identified group of lower value financial accounts (s. II, Para. E, ss. 2)

Due diligence processes for identification, review and remediation of pre-existing individual accounts

The Standard stipulates different review procedures that must be carried out by the FIs on individual financial accounts in order to identify if the account holder/s are reportable persons. Prior to the commencement of these procedures the FI will first need to categorise the

financial accounts into high value and low value accounts. The due diligence procedures that need to be applied differ depending on which category the financial account falls into.

For the purposes of determining the aggregate balance or value of financial accounts held, by an individual account holder the FI must apply the following rules:

- All financial accounts maintained by a FI for an individual account holder will be required to be aggregated. (i.e. the sum total will need to be determined).
- All financial accounts held by a related entity for an individual account holder (e.g. different divisions within the same FI) must also be included in this aggregated total. This will only need to be done if the FIs computerised systems on which the account information is maintained have a direct link to the financial systems of the related entity by reference to a data element (e.g. client or account number). (s. VII, Para. C, ss. 1)
- A special aggregation rule is also applicable to RMs within a FI. In the case of any financial accounts that a Relationship Manager (RM) knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same account holder, all such accounts should be aggregated in determining the overall financial account balances of that account holder. (s. VII, Para. C, ss. 3)

All currency conversions must be translated at a rate of R15: $1. The rand value of the high value financial account threshold mentioned above is therefore R 15,000,000 ($ 1,000,000) (s. VII, Para. C, ss. 4(b))

Due Diligence on pre-existing low value individual accounts

FIs are given an option when it comes to the identification, remediation and reporting of low value individual accounts:

- FIs that have documentary evidence of the current residential address of the individual account holder may treat that account holder as being a tax resident in the foreign jurisdiction based on the residential address as specified on the relevant documentation. (s. III, Para. B, ss. 1)
- If the FI does not collect the residential addresses of its account holders then it must electronically search for indicia on their databases.
- The indicia that will need to be searched for are as follows (s. III, Para. B, ss. 2(a-f)):
    - Evidence of the individual account holder as a resident of a reportable jurisdiction;

- The current mailing or residential address (including a post office box) of the account holder is located in a reportable jurisdiction;
- The account holder has one or more telephone numbers in a reportable jurisdiction and no number in the jurisdiction of the reporting financial institution;
- The account holder has standing instructions (or more commonly referred to a scheduled payment) to transfer funds to a financial account that is maintained in a reportable jurisdiction;
- The account holder has granted power of attorney or signatory authority to a person who has an address in a reportable jurisdiction or;
- The account holder has specified a hold mail/care-of address of a person in a reportable jurisdiction.

- If no indicia is found by the FI using an electronic search of its database then no further action is required by that FI until a change in circumstance of the account holder occurs (this will be discussed in detail later in this chapter). (s. III, Para. B, ss. 3)
- Should indicia be found, the individual account holder will be requested to complete a tax residency self-certification form to establish their tax residence/ies. If the account holder does not provide the self-certification form as requested by the FI, he/she will be reported to SARS as undocumented and may be subject to administrative penalties. If the account holder does provide a self-certification form then the FI must apply a reasonableness test on that self-certification form. The test is necessary as the Standard prevents a FI from accepting any self-certification forms or documentary evidence which is known to contain errors or where the FI has reasonable doubt over the validity of the information supplied in the self-certification forms. (s. III, Para. B, ss. 4)
- A reasonability test is a comparison of the account holder’s tax residency declared at on-boarding versus what was subsequently declared on the self-certification form referred to above. This information used to conduct this test can be sourced using documents collected for KYC/AML purposes, information that is publically available or information obtained during interviews with the account holders. Should discrepancies be identified between these sources of information and the self-certification forms, the FI will have to re-confirm the accuracy of the information supplied by the account holder in order to determine its accuracy. (s. VII, Para. A)

- A FI is required to review, remediate all pre-existing low value individual accounts by 28th February 2018. (s. III, Para. D)

Due diligence on high value pre-existing individual accounts

The due diligence procedures of high and low value pre-existing individual accounts are principally the same; however, the Standard does contain a few additional requirements when it comes to the treatment of high value pre-existing individual accounts.

- The electronic search for indicia is the same as discussed for the low value accounts above, however in the case of high value accounts the electronic search is only allowed if the front end system used for the capturing and storing of account holder information caters for all of the following fields:
- The individual account holder's residence status, residential and mailing address, telephone number/s, details of standing instructions to transfer funds to an account in a reportable jurisdiction, details of a care of/hold mail address in a reportable jurisdiction and details of Power of Attorney/Signatory of a person in a reportable jurisdiction. These are the same fields that are used for the indicia check above. (s. III, Para. C, ss. 1)

If all of the above fields aren't available then it will be necessary for the FI to search for indicia using the paper based search.

- The paper based search (for documents not older than 5 years) includes a review of the current customer master file, the most recent documentary evidence collected with respect to the financial account, the most recent account opening contract or documentation, the most recent documentation obtained by the FI pursuant to AML/KYC procedures or for other regulatory purposes, any Power of Attorney or signature authority forms, and any standing instructions to transfer funds currently in effect. (s. III, Para. C, ss. 2(a-e))
- A RM (or Client Liaison Officer (CLO)) declaration is required to be signed for all high value individual accounts regardless of whether indicia are discovered on these financial accounts or not. The CLO declaration essentially confirms that to the best of the RM knowledge the information supplied by the account holder is correct. This must be done on an annual basis for any financial accounts that fall into this category.

The CLO declaration applies only to individual and not entity account holders or their controlling persons. (s. III, Para. C, ss. 4).

The review of all high value accounts must be completed by 28th February 2017. (s. III, Para. D).

Due diligence procedures for new individual accounts

The Standard requires that for all new individual accounts the FI must (s. IV, Para. A-D):

- Obtain from the account holder a tax residency self-certification upon account opening/on-boarding of the financial account
- The self-certification form received from the customer should also undergo a reasonableness test by comparing it to other information collected at the point of on-boarding (e.g. KYC and AML documentation).
- If after applying the test above, the FI cannot place any reliance on the self-certification then a new self-certification must be requested from the account holder.
- If the self-certification received from the account holder indicates that they are a tax resident in a foreign jurisdiction/s then that financial account and the related account holder must be treated as a reportable person for the purposes of CRS.
- If the self-certification received from the account holder indicates that they are not a tax resident in a foreign jurisdiction/s then neither the financial account nor the related account holder should be reported to SARS (This would imply that the account holder is or should be a tax resident in South Africa). The account will remain a non-reportable account until such time that a change in circumstance occurs.

Identification, review and remediation of pre-existing entity accounts

Pre-existing entity accounts that are not required to be reviewed/identified or reported

Due diligence procedures will have to be performed on all pre-existing entity accounts that have a financial account with an aggregate balance in excess of $ 250,000 No choice is given in this regard. (s. V, Para. B)

A pre-existing entity account with an aggregate account balance of less than $ 250,000 as of 29th February 2016 does not have to be identified, reviewed or reported by the FI under the regulations of the Standard. This rule is however flexible and ultimately at the discretion of the FI who may elect rather to perform due diligence procedures across all pre-existing entity

accounts regardless of whether the aggregate account balance is below $ 250,000. (s. V, Para. A)

The financial account balance rules for entity accounts are similar to those discussed for individual accounts. All financial accounts maintained by a FI for an entity account holder will be required to be aggregated. (I.e. the sum total of all accounts will need to be determined). All financial accounts held by a related entity's for an entity account holder (E.g. different divisions within the same FI) must also be included in this aggregated total. This will only need to be done if the FI's computerised systems on which the account information is maintained have a direct link to the financial systems of the related entity by reference to a data element (e.g. client or account number) (s. VII, Para. C, ss. 2). The special aggregation rule for RMs also applies to entity accounts.

A pre-existing entity account (together with the controlling persons identified) will **ONLY** become reportable under the Standard if:

- The entity who is the account holder has one or more controlling persons who is a reportable person or
- The entity who is the account holder meets the definition of a Passive NFE and has one or more controlling persons who are reportable persons or
- The entity who is the account holder has no reportable controlling persons but has a place of incorporation/organisation/effective management or has an address or telephone number in a reportable jurisdiction

In order to determine whether or not a pre-existing entity account will be considered a reportable financial account the following due diligence procedures will need to be applied:

Determining whether or not a pre-existing entity account is a reportable financial account:

- The FI must review all information maintained for regulatory or customer relationship purposes (e.g. KYC/AML documentation) to make this determination.
- If upon inspection of the documentation it is identified that the entity who is the account holder has on record a place of incorporation, organisation, place of effective management, an address or telephone number in a reportable jurisdiction then that financial account will become reportable under the CRS.(s. V, Para. D, ss. 1(a))
- The financial account will remain reportable unless the FI obtains a tax residency self-certification form from the account holder or reasonably determines based on

information in its possession or that is publicly available which proves that the financial account is not reportable. (s. V, Para. D, ss. 1(b)).

Determining whether or not a pre-existing entity is a Passive NFE with one or more controlling persons:

- It must first be determined if the entity who is the account holder meets the definition of a Passive NFE. This determination must be made through the use of a self-certification form completed by authorised persons of the entity unless the FI has information on hand which could indicate that the entity is in fact not classified as a Passive NFE and thus not reportable. (s. V, Para. D, ss. 2(a))
- The controlling persons of the entity must then be identified. This can be achieved using information collected during KYC/AML procedures. The same indicia checks discussed under the due-diligence procedures for individual account holders can be applied to determine if the controlling persons of entities are reportable persons. If the aggregate balance of a pre-existing entity financial account is less than $ 1,000,000, the information collected and maintained as part of the AML/KYC procedures can be checked for indicia. However, should the aggregate financial account balance be greater than or equal to $ 1,000,000 then it will be necessary for the FI to obtain a tax residency self-certification form from the controlling persons of that entity. (s. V, Para. D, ss. 2(b-c))

Due diligence for new entity accounts:

- The due diligence procedures for new entity accounts and their related controlling persons (i.e. accounts opened on/after 1 March 2016), are essentially the same as those for the pre-existing accounts. The key distinction however is that the Standard requires the appropriate tax residency self-certification forms to be collected from both the entity who is the account holder and the controlling persons at the point which the FI opens the financial account for the entity. (s. VI, Para. A, ss. 1(a))
- For the purposes of determining the aggregate balance of the financial account and related currency conversions if necessary the same aggregation rules that apply to individual accounts are applicable to entity held accounts.

The reasonableness test referred to under the due diligence procedures for individual accounts will also need to be applied on the self-certification forms received from both pre-existing as well as their controlling persons. (s. VI, Para. A, ss. 1(b))

The review of all new entity accounts must be completed by 28th February 2017 whilst pre-existing entity accounts must be completed by 28th February 2018.

A Change in circumstance

The Standard also requires that a FI must ensure an adequate process is in place to identify if and when the tax residency of either the individual or entity account holder or its related controlling persons could change subsequent to the on-boarding of the financial account. Should there be a change in circumstance the FI will be required to re-consider the status of the financial account by re-applying due-diligence procedures applicable to that account type. (s. IX, Para. A, ss.1)

Examples of a change in circumstance of an account holder and its related controlling persons include but are not limited to the following:

- An individual account holder who was previously not tax resident in a reportable jurisdiction/s subsequently becomes a tax resident in a reportable jurisdiction/s making the financial account and the account holder reportable under the CRS
- An individual account holder who was previously tax resident in reportable jurisdiction/s and therefore reportable under the CRS, subsequently ceases to be tax resident in any reportable jurisdiction/s making the financial account and account holder not-reportable
- An individual account whose aggregate account balance either increases/decreases above/below the R 15,000,000 threshold for the classification of a high value/low value accounts resulting in a change in due diligence procedures that need to be applied to that financial account
- An entity account that previously had no controlling persons as a reportable person subsequently acquires at least one controlling person who is a reportable person making the entity financial account and the controlling person reportable under the CRS
- An entity that previously had one or more controlling person/s that were reportable persons and whose status has now changed to a non-reportable person/s resulting in neither the entity financial account nor the controlling person being reportable under the CRS

- An entity who was not previously classified as a passive NFE now meets the criteria making it a passive NFE and vice versa

In the event there is a change in circumstance that causes the FI to know or have reason to know that the original documentary evidence (or other equivalent documentation) is incorrect or unreliable then, by the later of the last day of the relevant reporting period (February), or 90 calendar days following the notice or discovery of such change in circumstances, obtain a new self-certification and new evidence to establish the correct residence(s) for tax purposes of the Account Holder and/or the controlling persons. (s. IX, Para. A, ss. 2)

How to determine if an entity account is reportable under the CRS:

Based on the explanation of the rules above the following example illustrates how to determine if an entity account holder may become reportable under the CRS.

Trust A is a South African trust with no foreign indicia. Controlling persons A1 has no foreign indicia whilst A2 was identified as having foreign indicia. The resultant scenario is that Trust A (despite having no foreign indicia) will be reportable under the CRS.

Trust B is a South African trust with no foreign indicia. Controlling persons B1 has Australian indicia whilst B2 was identified as having indicia of Great Britain. The resultant scenario is that Trust B (despite having no foreign indicia) and controlling person B1 and B2 will be reportable under CRS.

Trust C is a South African trust with no foreign indicia. Controlling persons C1 and C2 have no foreign indicia. The resultant scenario is that neither Trust C nor its controlling persons will be reportable under the CRS.

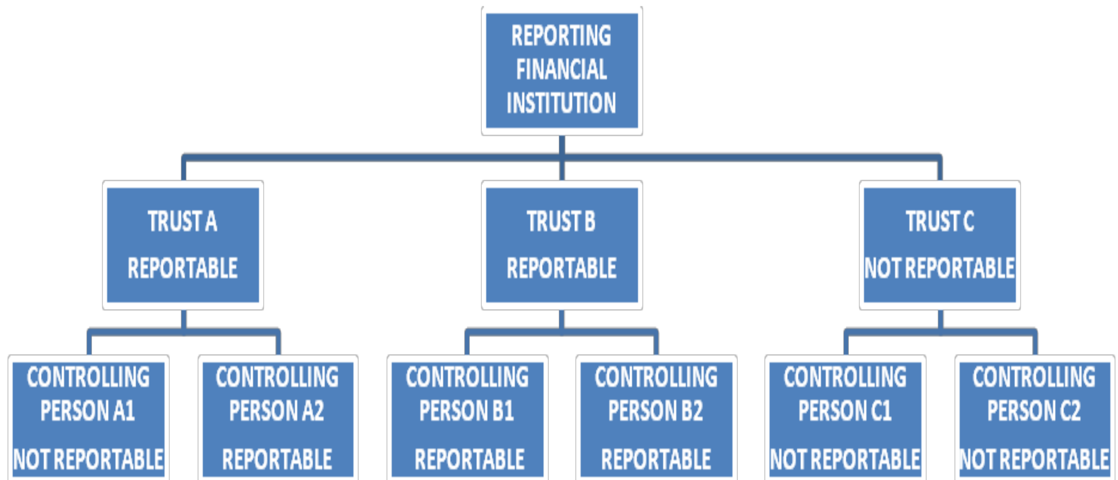

Figure 1.1

Chapter Three: A suggested solution for implementing the Standard into a FI

Now that the relevant sections of the Standard have been explained it will be necessary to determine the most efficient way to implement these requirements into the day to day operations of a FI. In designing these procedures all relevant stakeholders in the process should be consulted to ensure that the process achieves the desired outcome and more importantly is understood by those that it impacts the most which in the case of a FI is usually the staff members who directly interact with customers. The format and design of the tax residency self-certification forms, related customer communications and additional points for a FI to consider will be discussed in chapter four.

Some context is first required into the type of FI that is being used as a case study for this report. The FI concerned is a division within one of the largest banks in South Africa and its core activities include the following: asset management services for individuals, trust and estate administration, will drafting and custody, reporting of the bank accounts of all customers in the broader FI who are deceased to the appropriate executors of the estates and the providing of fiduciary advice.

No financial accounts are opened in the areas of will drafting, the providing of fiduciary advice and reporting of financial accounts of the deceased hence the Standard is not applicable to these. In the case of estate administration, upon receipt of the death certificate or will of the deceased, all bank accounts of the deceased are closed and any new financial accounts are opened in the name of the Estate late. This falls in line with the definition of an excluded account as contained in the Standard and as a result no further action is required on these account types.

The requirements of the Standard are applicable to the trust administration and asset management services for individual's rendered by the FI. These functions involve the opening of financial accounts to receive income from assets such as fixed properties and investments held by the Trust entities/individuals as well as to pay these proceeds out to beneficiaries/account holders and settle other expenses. As South Africa is a participating jurisdiction to the Standard, the FI becomes a reporting financial institution. None of the Trusts managed by the FI are FIs themselves, meaning the rules around the reporting requirements for Trust deed documented Trusts do not apply and therefore all Trust entities and their

controlling persons will be reported by the FI. It should also be noted that none of the Trust account types in the FI are excluded accounts as defined.

In designing both the processes relating to the on-boarding of new account holders as well as the remediation of pre-existing accounts below it should be noted that the FI elected to perform the same due-diligence procedures across all entity accounts and hence did not choose the option to exclude entity accounts with an aggregate account balance of less than $ 250,000 as discussed in chapter one.

The due diligence requirements for both the individual and entity financial accounts have been streamlined into a single process thus significantly simplifying its implementation into the day to day business operations.

Process for the on-boarding of new individual and entity account holders and their controlling persons

New account holder is being on-boarded:
At the point of on-boarding a prospective account holder it must first be determined: – If the customer is an individual account holder – If the customer is forming a new trust or – The trust is already in existence and the FI has assumed the role of trustee/trust Administration or fiduciary advisor – In addition if the new-to-bank account holder is a trust entity then the controlling persons of that Trust must also be identified and categorised into either natural or juristic persons.
For the trust:
– The entity tax residency self-certification form will need to be completed by the authorised representative of the Trust. This can include any natural persons granted authority to act on behalf of the Trust as contained in the Trust deed or by virtue of being granted a power of attorney.
– In the event that the FI is the sole trustee on the trust the entity self-certification form will not be required. (See chapter four under matters not covered by the Standard).

– If the FI is not the sole trustee or is a co-trustee then all authorised signatories will be required to complete the entity tax residency self-certification form including any FI staff members who have been granted the authority to do so.
Individual account holders and controlling persons who are natural persons:
– The natural person tax residency self-certification form will need to be completed for each person identified in this category.
– If the FI is also identified as a controlling person e.g. a corporate trustee on a trust, then the staff member of that FI who has been named as a trustee on behalf of the FI will also be required to complete the form. These staff members must include their personal details e.g. demographic data, tax reference numbers on the self-certification forms. The information of the FI cannot be used.
– In the event that the account holder or controlling person is unable to complete the form due to incapacity such as by virtue of being a minor then a power of attorney or parent/guardian will need to complete and sign the form on their behalf.
Controlling persons who are juristic persons:
– In the event that a controlling person is a juristic person, then the entity tax-residency self-certification form should be completed by that entity which is a controlling person.
High value individual account holders:
– If any individual account holders have an account balance in excess of R 15,000,000 then it will be necessary for the FI to complete a client liaison officer declaration.
– This declaration is **NOT** to be completed by customers but rather by the relevant FI RM.
Reasonability test on self-certification forms received (this step is highlighted in red in the figure 1.3 and 1.4 below to emphasise importance of this test being carried out)**:**
– Once the account holder/controlling person/s have provided the required tax residency self-certification forms a reasonability test will need to be conducted on the information contained in the form. – A quality assurance check should also be carried out to confirm that all required fields on the self-certification forms are complete and declarations signed by the correct persons.
– If the FI can find no evidence that may prove the information supplied by the account holder/controlling person is incorrect then the self-certification has passed the reasonability test.
– If the FI suspects that there may be evidence which prevents reliance on the

information contained in the self-certification form: o The account holder/controlling person should be requested to re-confirm that the information provided on the self-certification form is correct. o If the FI believes that the self-certification is still incorrect then a new self-certification form may be requested from the account holder/controlling person.
– Evidence that these checks were carried out must be retained for audit verification purposes.
Account holder/controlling person does not co-operate in providing the self-certification forms:
– If the account holder/controlling person refuse to provide the required self-certification forms they will be reported as undocumented and recalcitrant.
Checking for indicia (Types of indicia are discussed in Chapter 2)
– The entity self-certification forms must be inspected for entity specific indicia.
– The natural person self-certification forms must be inspected for individual specific indicia.
No Indicia found
– If no indicia are found on the trust, individual account holders or controlling persons of the trust then these accounts will not be reportable under the CRS.
Indicia found
– If indicia are found on the trust, individual account holders or controlling persons of trusts then these accounts will be reportable under the CRS.
Capturing information received on front end system of FI and storage of forms:
– The relevant information from the self-certification forms must then be captured by the FI front end system and the forms stored in hardcopy on the client file and electronically on an appropriate document storage system.
Change in client circumstance:
– Should the circumstance of the account holder and/or controlling person change it will be necessary for the FI to re-visit the procedures above to consider if the indicia that were previously identified or not are still applicable and then determine the appropriate process to follow. – A new tax residency self-certification form should be requested if there is a change in

circumstance. – The FI front end system should then be updated to reflect the relevant changes accordingly.

Table 1.1

Process for the remediation of pre-existing account holders and controlling persons

The remediation of the pre-existing account base will principally follow the same process as set out above. The key distinction between the two processes, however, will firstly be the need for the FI using their respective business intelligence function to categorise the client data into the respective account categories and secondly to conduct an impact analysis using an electronic search to identify those financial accounts which have any indicia in a foreign jurisdiction. This will be necessary as these financial accounts have already been on-boarded by the FI and these determinations will have to be made retrospectively.

Issuing of tax residency self-certification forms to account holders and controlling persons:
– The issuing of the relevant tax residency self-certification forms will follow the same rules as set out above. – A communiqué to the customer should also accompany the self-certification form which sets out why these forms are required and the obligations of the account holder to comply with the request.
Monitoring of responses:
One of three scenarios will subsequently occur: – The request is fulfilled and the self-certification forms are returned by the account holders/controlling person/s. – The request is not acknowledged as having being received by the account holders/controlling person/s. – The account holders/controlling person/s refuse to comply with the request to provide the information.
The request is fulfilled and the self-certification forms returned:
– The reasonability test will then need to be applied.

The request is not acknowledged as having being received:
If no response is received after the first communication: – A second communication should be sent 7 days after the first communication. If no response is received after the second communication a third and final communication must be sent out: – A third communication should be sent 7 days after the second communication. If the self-certification forms are received after these subsequent communications then the reasonability test should be applied accordingly.
Account holder and/or controlling person/s refuse to comply with the request to provide self-certification forms:
If no feedback is received or the account holder does not wish to co-operate in providing the relevant information then an appropriate classification as per the SARS Business Requirements Specification should be recorded against the profile of the financial account. – Account holder contacted but no response received. – Account holder did not co-operate in providing data. – Unable to contact account holder due to reasonable efforts. – Account holder still to be contacted due to timing of identification (SARS: 2016)
Recording of customer communication:
– All communications sent out and received during this process should be recorded by the FI. – The dates and method/s of communication should also be recorded. – This will serve as evidence that the customer has been contacted.

Table 1.2

After the procedures listed above have completed the FI will then need to collate the demographic and financial account information for all reportable accounts and controlling persons into a SARS prescribed reporting format and submit the file to SARS. Prior to the final file submission the FI will need to be subjected to additional testing for accuracy, file layout and other validations.

Most, if not all FIs will also require the procedures above to be to be mapped out in a process view as well as to identify and rate associated risks and suggest control mechanisms to

mitigate these risks. This exercise also stems from the South African Reserve Bank's requirements for all banks to ensure its high risk areas are identified and risks mitigated to ensure capital adequacy planning is in place in accordance with Basel reporting requirements. For the purposes of risk rating, inherent risk is defined as the probability of loss arising out of circumstances or existing in an environment, in the absence of any action to control or modify the circumstances (Business Dictionary, n.d.). Residual risk is defined as exposure to loss remaining after other known risks have been countered, factored in, or eliminated (Business Dictionary, n.d.). The key processes, risks and controls are illustrated below.

High Level overview of critical timelines

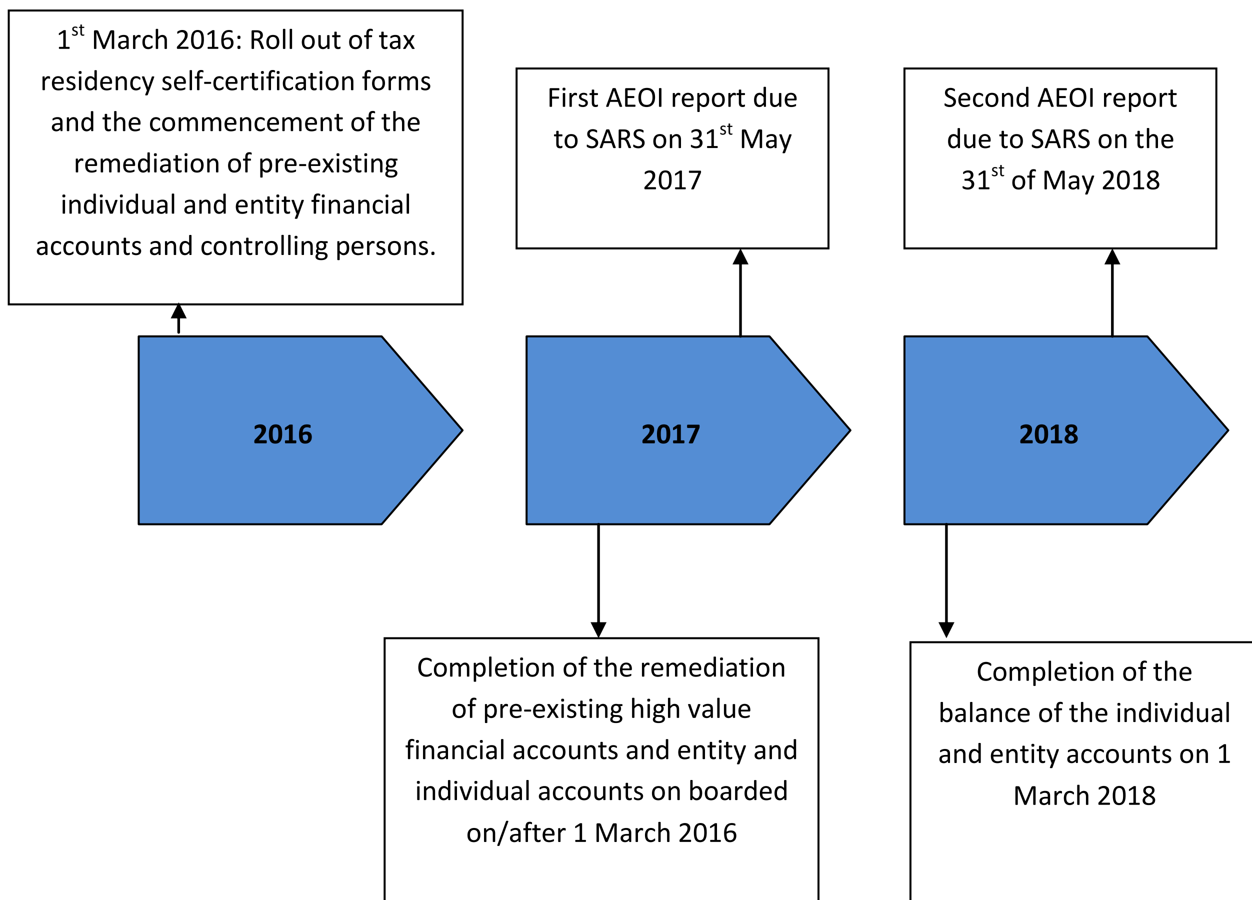

Figure 1.2

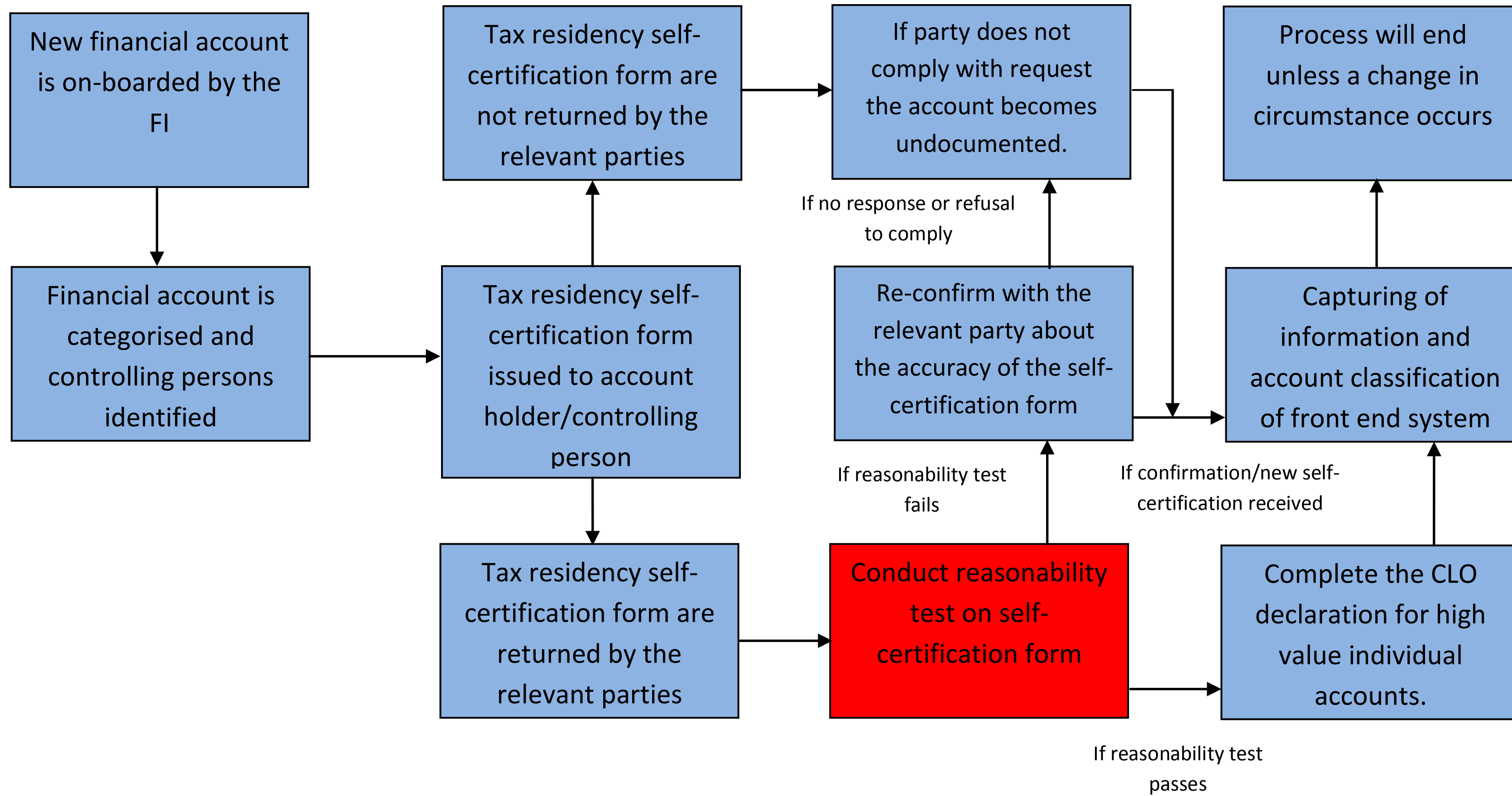

Figure 1.3 Due diligence procedures for the on-boarding of new financial accounts

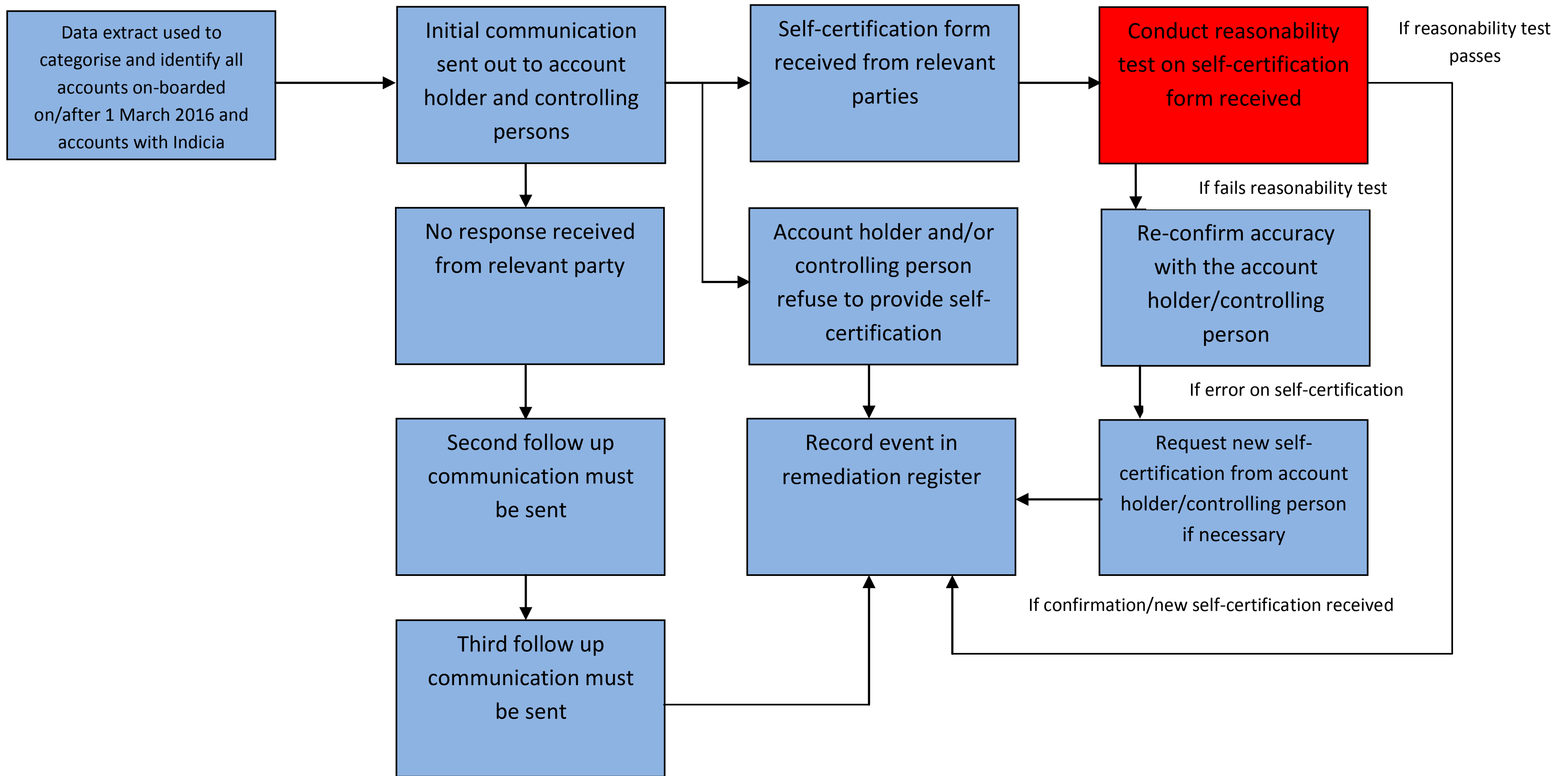

Figure 1.4 Due diligence procedures for pre-existing financial accounts

Key Processes , Risks and Controls

No.	Process	Risk	Inherent Risk Rating	Control measure	Residual Risk Rating	Responsible functional area in the FI
1.	Categorising account type and controlling persons.	Staff of a FI may incorrectly and/or not identify all relevant parties to an account.	Medium	A detailed procedure guideline should be developed and rolled out to all impacted staff as part of a formalised training programme to create awareness of CRS requirements.	Low	RMs
2.	Issuing of Self-certification forms.	The incorrect self-certification forms may be issued for the incorrect account type/ or not issued at all.	Medium	A monthly exception report should be generated from the FI front end system and actively monitored to identify missing information on account profiles. Any apparent errors will be identified during the quality assurance process.	Low	This should be done at a supervisory level by an independent compliance function within the FI.
3.	Reasonability Test.	The reasonability Test may be incorrectly applied or not applied at all.	High	A sample of forms received should be checked against the client file for evidence that all available information has been considered in applying the test.	Low	This should be done at a supervisory level by an independent compliance function within the FI.

4.	Completion of the CLO declaration.	The staff member of the FI may not complete the CLO declaration as they have incorrectly applied the aggregation rules in determining if an account is classified as a high value account.	Medium	A monthly exception report of all high value accounts should be generated from the FI front end system and actively monitored and followed up with staff to ensure that all declarations for the identified accounts have been completed.	Low	This should be done at a supervisory level by an independent compliance function within the FI and then communicated to affected staff to complete.
5.	Checking for indicia	Incorrect indicia checks may be applied and this could result in the account being incorrectly reported to SARS or not reported at all.	High	Errors in the indicia process will be identified during the Quality Assurance process.	Low	This should be done at a supervisory level by an independent compliance function within the FI.
6.	Change in circumstance	Undue reliance may be placed on the account holder or controlling person informing the FI of a change in circumstance resulting in the FI not taking appropriate actions in changing the reporting status of the account and controlling persons.	High	The FI should institute an annual review process to pro-actively identify in instances of a change in circumstance.	Low	RMs

7.	Classification of account on front end system.	FI staff may in error capture the status of the account thus leading to incorrect reporting of the account to SARS.	Medium	A sample of forms received should be checked against the system as evidence that all available information has been captured correctly.	Low	This should be done at a supervisory level by an independent compliance function within the FI.
8.	Reporting to SARS.	The quality of financial and demographic information reported to SARS may be inferior or incorrect and not in line with SARS requirements.	High	The report to SARS should be appropriately tested and all financial and demographic data tested to ensure accuracy.	Low	This should be done at a supervisory level by an independent compliance function within the FI together with the business intelligence team who creates the file.
10.	Remediation	The data set to be extracted for the purposes of remediation may not adequately identify all impacted customers and/or may not contain all fields necessary for the identification of indicia.	High	A data requirements specifications should be drafted to ensure all required information is available. The data extract should be validated using a sanity test	Low	

Table 1.

Chapter Four: Additional requirements and other practical considerations of CRS implementation

Whilst the processes described in the previous chapter appears fairly straightforward, there are numerous other requirements that need to be considered and addressed to ensure a successful implementation of the Standard. These additional requirements which will be discussed below present its own unique set of challenges to the FI. These will vary between FI and are dependent on the account types within a specific FI. A few of the more significant aspects faced by the FI considered in this paper will be discussed in this chapter and suggestions made as to how to overcome them.

Design of the self-certification forms

As discussed briefly in chapter one the Standard requires that a FI update their on-boarding process to include the relevant tax residency self-certification forms for all new financial accounts opened. This form will allow the prospective account holder to supply their relevant tax residency information and also allow the FI to determine the classification of the account holder for CRS reporting purposes at the point of on-boarding. This is the first step in ensuring that a FI is compliant with the requirements of the Standard as it will prevent the need for the FI to have to retrospectively collect the information from the account holders.

In order to successfully gather the information required to decide whether or not the financial account and respective account holders/controlling persons are reportable under CRS, it is imperative that the FI design these forms in a manner which is both efficient for the relevant parties to complete as well as ensuring that it caters for all the required information to be collected. The OECD has provided guidelines around the minimum requirements that are to be considered by FI when designing both the entity and individual self-certification forms. These guidelines, however, are very basic and a South African FI cannot rely solely on these as the Tax authority in each participating jurisdiction will have their own set of requirements in addition to those specified by the OECD.

In a South African context a more appropriate starting point will be for the FI to investigate and unpack the reporting obligations contained in the South African Revenue Service, Business Requirements Specifications for the Automatic Exchange of Information. Each reporting FI in South Africa will ultimately have to comply with these requirements when the reporting of the account

information of reportable accounts and persons occurs. The table below has been adapted from the SARS BRS and illustrates the information that will need to be reported to SARS if a financial account and its related parties are found to be reportable under the CRS. This provides an appropriate guideline as to the type of information that will need to be collected through the use of the self-certification forms. Additional considerations have also been noted.

Fields to be reported as per SARS BRS (SARS, 2016)	Applicability to the natural person self-certification	Applicability to the juristic person self-certification	Additional Guidance
Nature of person	✔	✔	The various types of juristics persons must be catered for in this section. E.g. Company, Close Corporation, Trust etc.
Surname	✔	n/a	
Registered name of entity	n/a	✔	
Initials	✔	n/a	
First Names	✔	n/a	
Date of Birth /Incorporation date for entity	✔	✔	
Country of Birth /Place of Incorporation	✔	✔	The place of effective management of an entity should also be requested as this will also assist in determining tax residency.
Postal address same as physical address indicator	✔	✔	A tick box with Yes/No would suffice here.
Physical address care of indicator	✔	✔	A tick box with Yes/No would suffice here.

Physical address	✔	✔	This should include details such as the unit number, name of complex, street number and name, suburb, city and town.
Physical address postal code	✔	✔	
Physical address country	✔	✔	
Postal address care off indicator	✔	✔	A tick box with Yes/No would suffice here.
Postal address	✔	✔	
Postal code	✔	✔	
Postal address country	✔	✔	
Identification/Registration Number	✔	✔	This refers to an identity document, passport or other accepted means of identification or in the case of a juristic person the company/Trust registration number would apply here.
Identification Type	✔	n/a	Passport, Identity document or other accepted means of identification.
Tax identification number	✔	✔	The form should cater for more than one tax identification number as the account holder may be registered in more than one tax jurisdiction for tax purposes.
Account Holder Type	✔	✔	This can be achieved by including on the form the different types of account classifications specified by the Standard and requesting the person completing the form to confirm which classification their account will fall into.

Table 1.4

The OECD (2016: 6) also prescribes that the following declaration is also included on all self-certification forms and signed by either the account holder or the controlling persons and authorised signatories completing the forms on behalf of the juristic person.

> I declare that all statements made in this declaration are, to the best of my knowledge and belief, correct and complete. I undertake to advise [the Financial Institution/insert FI's name] within [XX] days of any change in circumstances which affects the tax residency status of the individual identified in this form or causes the information contained herein to become incorrect or incomplete, and to provide [the Financial Institution that maintains the account/FI's name] with a suitably updated self-certification and Declaration within [up to XX] days of such change in circumstances.

It will also be necessary for the FI to include the relevant data protection and privacy clauses on the self-certification forms. This will safeguard the FI in the event that there may be a misuse of account holder's information. There is no guarantee that the tax jurisdictions to which the information is reported will be used purely for its intended purpose and a FI will need to protect itself against this (this concept is discussed further in chapter five).

Incorporating FATCA and CRS into a single operational process

Whilst this paper does not cover the requirements of FATCA in detail, it is worth mentioning that the FI should align as far as practically possible the requirements of both the CRS and FATCA. In principle they both require the collection of the same account holder information, so scope does exist for a single due diligence process. In addition it will also be worthwhile adding into the tax residency self-certifications instructions for any account holders or controlling persons who are considered U.S persons (i.e. any entity or controlling persons who have indicia of the United States of America on their profile). These U.S persons should be reminded that in addition to providing the self-certification form they will also need to provide the FI with the appropriate Internal Revenue Service forms. FIs should also be cautious when determining the account classification for FATCA purposes as in some cases these classifications differ from those defined in the CRS.

Remediation of pre-existing accounts

The Standard also requires an entity to also obtain the tax information of all pre-existing accounts and their controlling persons. This is perhaps the biggest challenge faced by a FI as it requires that all accounts held by the FI prior to 1 March 2016 be identified and inspected for Indicia. There are numerous factors to consider in ensuring the successful completion of this exercise. The two key elements that will be discussed though relate to the ability of a FI to identify impacted accounts and to ensure adequate staffing is in place to handle the remediation exercise.

- **Data requirements**

  A data requirements specification will need to be drafted and supplied to the business intelligence teams within the FI to ensure the correct data set is extracted. This requirement should contain all the relevant fields required to categorise the account holders, controlling persons and apply indicia checks as set out in the due diligence rules in Figure 1.3 above. It is also important to ensure that the data is in some way validated and tested for accuracy before reliance can be placed on it for the use in the remediation exercise.

- **Contacting of pre-existing account holders and controlling persons**

  As this exercise is happening post on-boarding of an account each account holder and controlling person identified in this data set will need to be contacted individually and requested to complete the tax residency self-certification form that is applicable to them. Depending on the number of pre-existing accounts identified in the data set the FI may have to set up a dedicated team just to conduct this exercise within the prescribed timelines. Another option will be to leverage into any other areas of the FI which are conducting an exercise of a similar nature. This is a viable option especially in the case of larger FI which usually have call centre like environments and are accustomed to conducting exercises of a similar nature.

Impact on staff of the FI

Staff of a FI is perhaps the most pivotal stakeholders in implementing the Standard as they are the ones responsible for ensuring the due-diligence procedures are carried out effectively and in line with the Standard. The challenge for the FI is therefore to ensure that all impacted staff is trained and having a working knowledge of the Standard as a significant amount of reliance is placed on them. Failing to do this will result in the FI being exposed to a significant amount of risk due to non-compliance.

For instance the Standard explicitly places ultimate responsibility on the FI in ensuring that the information supplied by the account holders and controlling person are correct through the application of the reasonability tests and CLO declarations. No amount of disclaimers on the self-certification forms can absolve the FI of this responsibility. Whilst it is acknowledged that safeguards like these are necessary, the fact remains that if an account holder wishes to hide their tax residency status they will certainly try. In addition, staff of a FI is not trained in the art of forensic analysis and investigation and will ultimately rely on a gut feel of sorts. In most cases any doubt about the

information supplied on the self-certification forms may only be prompted due to a slip of tongue of the tax dodging customer or as a result of adverse media reports about them.

Embedding this sort of skill set into staff is challenging to say the least. To this point it is suggested that a formal training module be developed and rolled out to all impacted staff to ensure that their knowledge of Standard is at the required level. Face to face training sessions should also be conducted which should include scenario analysis of the different methods customers could use to conceal tax residency related information and methods and probing questions that could be asked which could bring hidden facts to the surface. Staff should also be encouraged to escalate any matters that may be unsure of to the relevant subject matter expert within the FI for further clarity or guidance. To ensure that these training modules are effective, a set of assessment questions should be created and staff should be expected to successfully complete this. Most FIs have formal online learning tools so this assessment can easily be incorporated and completion rates of staff tracked. This will also assist staff in clearly articulating the requirements of the Standard to any prospective and pre-existing customers.

Impact on customers

A FI will also need to manage the expectations of their customers from whom this information is being requested. Information cannot simply be requested without adequate reasons as to why. In fact given the complexity of the account classifications as per the Standard it will be necessary for some form of guidance to be given to the customer before the FI can expect them to complete the self-certification forms. The simplest method to achieve this would be designing a fact sheet containing a high level overview of the CRS and the obligations it places on FIs to collect tax information of account holders and controlling persons. In addition a glossary of the key terms that could assist a customer in determining their account status should also be supplied. A word of caution though, a FI must ensure that no form of tax advice is being given in either any of the documentation or through conversations with the customer as this creates financial and reputational risk for the FI should the advice be incorrect. Customers should be encouraged to consult tax advisors in their tax jurisdictions to assist them in making a more informed decision. As a matter of courtesy and managing relationships it also advised that should a customer fail to comply with the request to provide the information they should be notified that the FI has no other option but to report them to SARS as recalcitrant and that they may be subject to fines and penalties as determined by SARS.

System development and the design of the report to SARS

System development and reporting to SARS are two of the more technical aspects that need to be in place in FIs in ensuring compliance. The starting point for both these requirements should be the SARS BRS for AEOI as this will provide a clear indication of the type of information that SARS requires. Once the FI has a view on all required fields, a gap analysis should be undertaken to identify which reporting fields are already available on their front end system (i.e. the system which is used by the FI to capture all customer information) versus those that aren't and that still require some form of IT development. This will avoid the duplication of fields that already exist and minimise the cost of development for new fields especially where the FI is reliant on a service provider to perform this task. Whilst the ideal situation would be for all relevant CRS fields to be available on a front end system, the FI should also seriously consider the cost of building these additional fields especially when they have a small number of account holders that are impacted by the Standard. If this is the case, maintaining a manual register of sorts to capture the information would suffice and save on significant development costs. A similar exercise can be undertaken when designing and building the report to SARS. In this case, however, the FI can leverage of the design and build of existing third party reporting to SARS such as FATCA and IT3 reporting (which is a summary of any income such as interest and dividends that have been paid by a FI into a customer's financial account held with that FI). It is imperative that a FI institute a formal process of testing and validating the account information on the file before it is submitted to SARS. This would help mitigate the likelihood of errors on the file and improve overall data quality.

Quality assurance and monitoring

A key governance requirement in most FIs would relate to a quality assurance and monitoring function to be instituted over all CRS related procedures. This would serve as an ideal opportunity for the FI to ensure that staff are carrying out due diligence procedures as well as capturing information from the self-certifications on the front end system of the FI correctly and if necessary take remedial action where trends in errors are identified. A simple yet effective manner of instituting these additional controls would be through a combined use of exception reports, information contained in client files and sample checks of the tax residency self-certification forms. The exception reports can be used to identify amongst other aspects, accounts that have breached the high value accounts threshold as well fields on the front end system that have been captured incorrectly or not captured at all. The sample checks on the client files will highlight whether the self-certification forms are being completed as requested and can also be used to assess whether

the reasonability test is being applied correctly. This function should ideally be conducted by an independent functional area in the FI. e.g. compliance manager.

Retention of evidence

The FI will also need to ensure that evidence of all communication between themselves and the customer as well as the self-certification forms are retained and stored in an appropriate document management system. This is necessary in the event that an internal party e.g. the internal audit function or an external party like SARS request the documentation for audit verification purposes. This is the only proof the FI will have to show the relevant requesting parties that they have carried out and complied with the due diligence procedures. These documents should be retained for a period of 5 years as per the requirements of the Tax Administration Act, 2011 (Act No. 28 of 2011).

Safeguarding of customer data and privacy controls

This aspect is now more significant than ever especially considering the requirements of the Protection of Personal Information Act (POPI). This piece of legislation ensures that all South African Financial institutions conduct themselves in a responsible manner when collecting, processing, storing and sharing another person's personal information by holding them accountable should they abuse or compromise that personal information in any way. (Workpool, n.d.)

Data protection is not simply about the confidentiality of the data being gathered and exchanged. That the information will be kept confidential, and that there will be no unauthorised disclosure of information, is simply the starting point. Foreign tax authorities that have inadequate provisions for guaranteeing the confidentiality of data, and which are prone to leaks, are clearly providing inadequate data protection and cannot possibly receive data whilst these inadequate safeguards exist. However, confidentiality is only the starting point; data protection law gives the data subject much more extensive rights. Data may only be gathered and exchanged for a lawful purpose which must be clearly identified in sufficiently specified terms that any misuse of the data can be challenged, and must not be retained longer than is necessary for the identified purpose. The data subject has the right to be notified and to have access to the data and the right to correct any inaccuracies. Legal remedies need to exist to protect the rights of the data subject, and compensation has to be paid for improper processing of data. (Baker, 2016: 6)

FIs will therefore need to ensure that adequate controls are in place to ensure that data collected for CRS is protected as required by POPI. In addition should an FI make use of service providers to collect this information the relevant POPI clauses should be included in all service level agreements with that service provider.

Matters not covered in the Standard

The Standard has been written in very much a one approach fits all manner. The FI in the case study has found that there are a few practical considerations that need to be addressed before full application of the Standard is achieved. No guidance exists on these matters either in the Standard or through the application of any industry best practices. As a result the FI had to determine its own best practice solution through extensive consultation with other subject matter experts within the larger group FI.

If the FI serves as the sole Trustee on the Trust account, then completing the entity self-certification would not be necessary as, this would amount to the FI attesting to itself. Trust entities in which a FI is the sole Trustee would in most cases be defaulted to a Passive NFE for CRS account classification purposes.

Another consideration is whether or not account holders and controlling persons of financial accounts that have terminated their relationships with the FI during the reporting period should be contacted as part of the remediation exercise. The Standard does require reporting of financial accounts with indicia despite the accounts being closed before the end of February 2016. To this extent the decision was taken by the FI that only account holders and controlling persons with terminated financial accounts that have any foreign Indicia will be contacted as part of the remediation exercise as these may need to be reported. Any other terminated accounts will be excluded from this exercise completely.

The Standard also does not specify the number of times an account holder and the controlling persons must be contacted as part of the remediation exercise. This determination is left at the discretion of the FI. In other words a FI may choose to contact the account holder once or multiple times in an attempt to obtain the self-certification forms. In deciding the number of times to contact the account holder a fine balance between maintaining positive relations with a customer and the need to meet the SARS deadline must be achieved. Should a FI decide to go with a single contact approach and no response is received from the account holder and/or controlling person then the FI

runs the risk of reporting the account to SARS when in fact it may not be reportable, furthermore if it is reported that the account holder is recalcitrant, SARS will incorrectly levy administrative penalties on that financial account. Errors like this cannot bode well for the reputation of the FI. An alternative approach will be to align the requests with other compliance related remediation projects being run in the FI. In the FI discussed in this paper, it was decided to align the three contact strategy for CRS to the process currently being used for the KYC remediation programme being run within the FI. This multiple contact strategy provides the account holders and controlling persons an ample amount of time to submit the required information thereby significantly reducing the risk of incorrect reporting by the FI.

Chapter Five: Costs considerations of CRS implementation in a FI

The cost of CRS compliance will come in many direct and indirect forms such as the cost to:

- Monitor the global implementation of CRS and keep up-to-date with local laws jurisdictions
- Keep policy and requirements up-to-date
- Conduct remediation and reviews for all in-scope financial accounts on a regular basis
- Conduct remediation and reviews for all accounts that come into scope for new countries entering into agreements
- Collate, collect, validate and store data and documentation to evidence compliance. (Fenergo, 2016: 22)

Like with the any other project it will be necessary for the FI to prepare a budget and track the actual costs incurred against the budgeted costs. This will help the FI in identifying any significant deviations from the budget and enable corrective action to be taken immediately thereby preventing project costs from spiralling out of control. Given that this is a new piece of legislation the FI may experience some difficulty in allocating appropriate budgeted hours to the project. Care must be taken to ensure that any allocations are reasonable thereby avoiding over or under budgeting for the implementation. The table below illustrates the budgeted and actual costs incurred by the FI used in the case study. It also includes a variance analysis of budgeted vs actual time spent on each activity. A costing model similar to activity based costing was undertaken and an average cost per resource allocated. This cost represents the average cost of all staff within the FI and is used for all budgeting purposes within the FI. It should also be noted that the costs reflected below exclude the opportunity cost of implementation and therefore any potential revenue that could be generated through the different allocation of resources are not considered. There is potential however for a FI to manage and minimise the costs of a few of the activities described below. The costs arrived at below may not apply equally to all FIs, however they are presented purely to serve as a guideline of how a costing excercise could be potentially undertaken.

Learnings from FATCA implementation

The fact that the Standard draws extensively on FATCA and on existing FATF standards should significantly reduce the costs of implementation. Furthermore the main burden relating to due diligence and reporting obligations falls on financial institutions rather than governments with many financial institutions already familiar with these obligations both through FATCA and their exposure to the Standard in other implementing jurisdictions where they have operations. (OECD, n.d. (b))

Using an external party to assist with compliance

Some FIs may opt to use an external service provider to assist with compliance. The benefit of this is that the FI will save significant expenditure associated with system development costs, staff costs of personnel with the appropriate level of technical tax knowledge and other skilled project resources. Another area where the FI can benefit is the time saved by staff during the remediation of pre-existing financial accounts which involves contacting account holders and controlling persons to complete the tax residency self-certification forms. This is usually viewed as an administratively intensive exercise which most FIs would likely want to avoid at all costs. Consideration must also be given to whether or not the service provider is capable of fulfilling the objective of the Standard. This can only be done after the necessary due diligence procedures are conducted on any potential service providers to determine their ability to deliver data that is both timeous and at the required level of quality as well as the overall fee that will be charged for an exercise of this nature. In the FI used in this case study past experience in dealing with an external service providers suggests that despite outsourcing, staff of the FI inevitably end up just as involved with the more complex aspects whether this exercise is outsourced or not.

Another point that may argue against the use of a service provider has to deal with the due diligence procedures discussed in two. For instance in applying the reasonability test which is a key step in the process, a service provider will simply not have the same level of knowledge of the account holder that the staff of the FI will possess resulting in the incorrect application of these rules.

Finally, it should be noted that the ultimate responsibility for implementing due diligence procedures and thus the risk of non-compliance lies with the FI, this aspect can unfortunately not be outsourced. The suggestion therefore to any FIs intending to make use of service providers for this exercise will be to possibly make use of certain aspects of their services particularly in the areas of system design and development and the interpretation of the legislation and design of processes whilst all other aspects should ideally remain within the FI.

Collaborating with other areas within the larger group FI

A collaborative effort will be an option for a FI within a larger group structure. Greater economies of scale can be achieved in this scenario particularly within the areas of information sharing and peer review. It will be possible for subject matter experts within the different business units in the FI to create a CRS working group and discuss and debate areas of the Standard and devise an overall best practice solution for implementation within the broader FI. For business units within the FI that are

minimally impacted by the Standard, cost saving can be achieved as it may not be necessary to employ specialist resources to perform these tasks but rather leverage of the solutions devised by this broader working group. Staff costs can be saved and effiencey created as there will be no need to employ staff to manage the remediation of the pre-existing accounts. In larger FI it is very likely that a centralised area within the FI will be responsible for the remediation of all pre-existing account holders from the various business units within the FI. This central remediation will be adequately staffed and fully trained to handle all account types and customer queries.

Relying on existing customer data

If possible the FI can also rely on existing customer data that has been collected through other compliance related functions such as KYC, AML and FATCA. This can save the FI a significant amount of time and operational costs involved with having to contact each account holder and controlling person/s and subsequently re-collecting this data. This approach would also result in an improved customer experience and will also save considerable amounts of time in supplying the same information. Care must be taken as the Standard only allows data already on file to be used on certain categories of financial accounts.

No.	Cost Driver/Activity	Functional Area in FI	Number of resources allocated to task	Budgeted Time allocated per a task (Hours)	Actual Time Spent per task (Hours)	Variance analysis (Hours)	Reason for variances
1	Interpretation of regulations	Tax subject matter expert	1	12	15	-3	Additional time required to consider items not explicitly contained in regulations.
2	Interpretation and drafting of data requirement specifications for SARS reporting	Tax subject matter expert	1	10	12	-2	
3	Drafting of business requirement specifications for system development	Tax subject matter expert	1	5	5	0	
4	System development	IT Project team	1	25	30	-5	Delays experienced in development on the side of the service provider.
5	Design of Tax residency self-certification forms	Tax subject matter expert	1	10	8	2	
		Marketing and public relations	1	5	4	1	
		Legal	1	4	2	2	
6	Design of customer communications	Tax subject matter expert	1	10	8	2	
		Marketing and public relations	1	5	4	1	
		Legal	1	4	2	2	
7	Drafting of Data requirements specifications to conduct impact	Tax subject matter expert	1	5	4	1	

	analysis	Business Intelligence analyst	1	3	2	1	
8	Drafting of CRS project plan	Tax subject matter expert	1	5	5	0	
9	Process design and risk analysis	Tax subject matter expert	1	8	6	2	
		Process engineer	1	4	2	2	
10	Design of training material for staff	Tax subject matter expert	1	5	5	0	
		Learning and development	1	2	2	0	
11	Training sessions for impacted staff	Tax subject matter expert	1	2	2	0	
12	Remediation of pre-existing customer base	Remediation team	5	125*	125*	0	These numbers have been estimated as the activities had not commenced at the time of submission of this paper.
13	Monitoring and Quality Assurance of self-certification forms	Tax subject matter expert	1	30**	30**	0	
14	Building and Testing of submission file to SARS	Business Intelligence analyst	1	25***	25***	0	
Total hours				**304**	**298**		
Cost at a charge out rate of R 545 per hour				**R 165,680**	**R 162,410**		

Table 1.5

* The time is based on 250 accounts that needed to be remediated across the FI. It is estimated that each account should take a total of 30 minutes to remediate.

**The time is based on 250 accounts that needed to undergo Quality Assurance (QA) in the FI. It is estimated that each account should take a total of 5 - 8 minutes for QA.

*** Estimated based on time spent during the building and testing of the FATCA file to SARS during the 2016 3rd party submissions.

Chapter Six: Benefits and challenges faced by developing tax jurisdictions with CRS implementation

Despite the challenges of FIs having to look beyond just the Standard in ensuring successful implementation, why did South Africa sign on as early adopter to the Standard? To further understand this, it will be necessary to analyse the benefits that may be derived by a jurisdiction in implementing this Standard. In addition, the challenges of implementation in other developing jurisdictions similar to South Africa should also be considered to understand if South Africa is capable of overcoming these challenges.

The following key benefits will be realised for developing countries that choose to implement AEOI.

Detection of tax evasion and offshore wealth:

Detection of tax evasion is critical for developing countries in particular: US$8.5 trillion of household assets are held abroad. In 2012, more than 25% of all Latin American and almost 33% of all Middle Eastern and African household wealth was held abroad compared to the worldwide average of 6%. Estimates of tax revenue and illicit financial flows lost by developing countries generally range in the hundreds of billions of US dollars per year, exceeding the amount of official development assistance. (OECD, 2014(b): 9)

AEOI can alert tax administrations to tax evasion that was previously unknown and unknowable, potentially raising substantial revenue:

AEOI may also assist in de-politicizing compliance actions taken against high profile individuals, as the source of information is external to the domestic tax administration. Unlike EOI (Exchange of information) on request which requires substantial efforts on the part of tax administrations to investigate cases and establish foreseeable relevance in each case in order to obtain information, AEOI can achieve efficiencies in information gathering for tax administrations. This is one reason that AEOI can be suitable for developing countries which face capacity constraints. (OECD, 2014(b): 9)

Deterrence from future non-compliance:

AEOI should deter tax evasion and encourage timely compliance by taxpayers where taxpayers are aware that financial institutions will report directly to the tax administration. Many Global Forum members reported this as a key benefit of AEOI and evidence supports this conclusion. For example, in Denmark, a 2010 study found that tax evasion occurred only in 0.3% of cases where income was

subject to third-party reporting, but in 37% cases for self-reported income. In the US, 99% compliance was achieved for individuals whose income was reported to the tax administration by financial institutions whereas misreporting by individuals was found in 56% of cases in which there was little or no third party reporting. (OECD, 2014(b): 9)

Support domestic synergies:

The Standard relies on financial institutions to report information to the tax administration. In this sense, it is an extension of a growing trend among tax administrations around the world to use third party information reporting to assist with tax compliance. The implementation of the Standard may provide an opportunity for tax administrations to enhance domestic compliance. That is, a jurisdiction may choose to design its implementing legislation to require that financial institutions report information on both domestic and foreign residents (and this may in fact be a simpler process for financial institutions to manage), thereby enhancing the breadth of information automatically available to the tax administration. Capacity building efforts in tax administration modernisation may be helpful to assist developing countries in designing the requisite systems to enable the use of information received both from domestic and international sources in their tax compliance efforts. As the Standard builds on anti-money laundering frameworks, implementing the Standard is an opportunity to strengthen and improve these practices, assisting with the detection of illicit activities. Furthermore, improved performance of the tax administration and anti-money laundering institutions in turn builds morale amongst citizens and complements other state-building efforts. (OECD, 2014(b): 10)

Enhance reputation:

It is clear that the G20 sees AEOI as the new global standard with which jurisdictions should comply as part of their responsibilities towards the global financial system. Participating in the Standard demonstrates a continuing commitment to transparency and to tackling tax evasion and the flow of illicit funds. It is concrete evidence of a jurisdiction's commitment to improving both domestic and international tax compliance, and indicative of the quality and capacity of its institutions. Furthermore, participating in AEOI will require regular exchanges and the building of wide networks of co-operation between tax administrations, in a way that EOI on request may not (for example, where certain jurisdictions rarely receive or send requests). (OECD, 2014(b): 10)

Many developing countries are not currently in a position to benefit from AEOI. Examining responses of developing countries (excluding for this purpose G20, OECD and Early Adopters) to a Global

Forum survey indicates that only 3 developing countries are currently sending information automatically, compared to 50 developed countries. The survey also revealed that 17 developing countries had received information automatically, although in general they considered it to be less useful as compared to developed countries, largely on account of limited capacity to match and use the information received. The World Bank Group reported on the key challenges faced by developing countries in implementing AEOI: the urgency of other basic domestic reforms; high costs of information technology infrastructure; human resources needs for analysing and using received data efficiently; difficulty of making legislative changes; and limited awareness of exchange of information practices (especially amongst low income countries, many of which are not Global Forum members and have not yet committed to or been assisted in meeting the standard on EOI on Request). (OECD, 2014(b):12)

The findings in a study conducted by the Tax Justice Network were aimed at finding out the views on AEOI from developing countries. The survey was sent to 37 developing countries on all continents, either to the tax authorities or to relevant contacts that are or were involved in these countries' tax authorities or ministries of finance. Responses were received from 8 jurisdictions: 3 from Africa, 3 from Latin America and 2 from Asia. The developing countries that participated were Argentina, China, Costa Rica, Honduras, Liberia, Morocco, Pakistan and Uganda. It seems that many developing countries are aware of and interested in AEOI, acknowledge its potential benefits, and express clear preferences for its design and capacity building needs. (Tax Justice Network, 2014: 30)

The following two key survey questions will further highlight the views of other developing countries:

Arguments in favour of implementing AEOI:

46% of respondents believed that AEOI would deter taxpayers from future non-compliance. 34% indicated that this would assist in collection of tax revenues as tax evasion would become more difficult. 10% suggested that it would help against corruption and 10% felt that not being part of the AEOI would place additional pressure on their respective governments to comply and adopt the AEOI standard. (Tax Justice Network, 2014: 31)

Arguments against implementing AEOI:

A lack of capacity seems to be the key matter that could prevent developing countries from usefully implementing AEOI. These are exemplified by the top three priorities: limited resources to analyse information (28%), followed by limited resources to send information (27%) and the lack of IT

technology or electronic records (26%). Difficulties in providing information to other countries was a relevant argument, suggesting that non-reciprocity provisions would help reduce the barriers to developing countries' participation in AEOI. The fourth argument was that 'other countries not joining affect a jurisdiction's competitive advantage' (12%), indicating the virulent logic of 'tax wars,' otherwise known as harmful tax competition. The last option that 'costs will be greater than benefits' (7%), was only chosen by a few jurisdictions. This suggests that most countries are convinced that AEOI's benefits are greater than its costs. The sceptics show that there is a need for more and better studies, including quantitative estimates about the potential revenue and investment benefits. (Tax Justice Network, 2014: 32)

The findings in the independent report released by Tax Justice Network therefore validate the key perceived benefits and challenges of AEOI implementation in developing jurisdictions as highlighted by the OECD.

SARS and the CRS

As per SARS (2016, (a)), South Africa currently has 8 bilateral tax information exchange agreements in place, whilst another 10 are currently either in the process of being negotiated or finalised but not yet signed by either party. It is therefore submitted that based on the current bilateral agreements and the expectation to sign and complete a few more in the near future, the South African Tax authorities do derive some value from the sharing of tax information. Furthermore, considering information sharing is already being in place, is it expected that SARS would already have both the staff and infrastructure in place to handle any form of data exchange required and as such has to an extent addressed the primary concerns raised by other developing countries i.e. resourcing capacity and IT infrastructure.

In addition the SARS Special Voluntary Disclosure programme (SVDP) which will run from 1 October 2016 to 31 August 2017 will give individuals and companies who have in the past not disclosed tax and exchange control defaults in relation to offshore assets an opportunity to voluntary disclose the assets and regularise their affairs with SARS and thereby potentially avoid the imposition of understatement and other administrative penalties (SARS, 2016(b)). The SVDP is therefore seen largely to go hand in hand with the CRS. The Minister of Finance also announced in his budget speech in February 2016 that unacceptable transfer pricing practices and treaty shopping amongst other areas will receive further special attention. SARS, through the use of country by country

information sharing agreements, will be able to identify aggressive or abusive tax planning. These sorts of initiatives highlight the urgency and drive of the National Treasury and SARS to combat the concealment of offshore assets. The dire need to increase revenue collection through taxes to effectively manage South Africa's national debt and means tax information sharing agreements are therefore a top priority. The success of these initiatives are then reliant on cooperation with other tax jurisdictions as the information shared will help to identify any errant taxpayers that have not made use of the SVDP. National Treasury were then left with very little alternative but to sign on as early adopters to the CRS in order to derive full value out of these initiatives.

Chapter Seven: Loopholes and possible ways to escape the net of CRS

For South Africa to benefit from adopting the AEOI, the ability and consistent application of the OECD standard is critical across all tax jurisdictions otherwise taxpayers will make use of the loopholes and short-comings of this piece of legislation as applied in their respective jurisdictions. This chapter will explore some of the loopholes that exist in the current OECD Standard for the Automatic Exchange of Information as published by the OECD and how tax evaders may use them to escape being reported in jurisdictions where they are tax resident.

According to Morris (2017) tax evaders could exploit 16 actual loopholes and 8 ambiguities in the OECD standard to retain secrecy on cross-border accounts. Some of these are highlighted below.

Residence by investment certificate

The beneficial owner avoids the definition of Reportable Jurisdiction Person by either:

(i) Obtaining synthetic residence-by-investment certificates to emulate being a fiscal resident in the same jurisdiction as the reporting FI; or
(ii) Structuring an untaxed Investment Entity to be managed in the same jurisdiction of the beneficial owner. (Morris; 2017:6)

The weakness in the Standard is that documentary evidence is "a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident. FIs interpret this need not be a fiscal resident certificate, but merely a certificate of residence. Furthermore, many FIs ignore that the residence test must have the current address on record such as utility bill, and simply rely on the certificate of residence, even if it is not a fiscal tax resident certificate. (Morris; 2017:6)

Commonly used residence-by-investment schemes in certain jurisdictions to circumvent the CRS are:

Dubai:

Globally by far, the most prevalently used residence-by-investment scheme to circumvent reporting is the United Arab Emirates through its Free Trade Zone residence certificates. Banks, Custodial Institutions and Trustees help their clients incorporate a Dubai company in the Free Trade Zone to get a certificate of residence, and then rent a flexi-desk (not even an office) and telephone-line to show they are physically resident in Dubai. As the account

holder / controlling person is "resident" in the same jurisdiction as the Dubai FI, there is no reporting. (Morris; 2017:7)

The Bahamas:

FIs work in tandem with Bahamian property developers who will, for an annual fee, provide a property lease agreement and utility bill such as telephone land-line, thereby satisfying the documentary evidence for the residence test. (Morris; 2017:7)

Andorra:

Andorra FIs assist their clients to obtain a Passive Residence Certificate. This is achieved by staying in Andorra for less than 181 days but more than 90 days a year. It is emphasised there is no border controls to monitor movements out of the country. This passive residence certificate is not a fiscal residence, merely the right to stay short-term in the country without employment. Nevertheless, FIs accept the passive residence certificate for CRS purposes. (Morris; 2017:7)

Panama:

Clients of banks with three year deposits of at least USD 300,000 may avail of a non-fiscal residence permit. (Morris; 2017:7)

Passive NFE maintains Account in a Non-Participating Jurisdiction

In this scenario a tax evader uses a CRS jurisdiction Passive Non-Financial Entity to hold accounts in a non-participating jurisdiction like the United States. This is a problematic loophole to tackle because neither the NFE, nor the Non-Participating FI reports. (Morris; 2017:12)

Untaxed Foreign Investment Entity maintaining an offshore account, managed in same jurisdiction as Equity Interest

A significant structural deficiency of the OECD standard is that it does not cover foreign untaxed Investment Entities, structured so that management is resident in the same jurisdiction as the Equity Interest Account Holders. A fundamental flaw of the Standard is to omit covering this strategy because most tax evaders currently hold their undeclared offshore accounts in foreign Investment Entities they manage. The most common entity used to hold an undeclared account is an offshore company with the portfolios managed by a bank. This, as an Investment Entity is out of scope of the

CRS because the manager does not report on himself, as he is in the same jurisdiction. (Morris; 2017:9)

FIs encouraging potential clients to shift accounts to related Non-Participating Jurisdiction FI

FIs predominantly trust service providers, assist clients to close their accounts and open new accounts in a related FI in Non-Participating Jurisdiction. (Morris; 2017:16)

The chief culprits FIs shifting clients to Non-Participating Jurisdictions are the global trust companies who have recently obtained trust licenses in the USA, with South Dakota being the most popular location. The FI, in cahoots with the client, ignores the CRS anti-avoidance guideline of not adopting procedures and practises to circumvent reporting, under the legal consensus that anti-avoidance is not effective before a competent authority arrangement (CAA) is implemented. Banks have covertly followed the same strategy as trust companies in getting clients to close their accounts and open an account with the bank's related US bank. (Morris; 2017:16)

Tax evaders seek alternate asset classes

The OECD Standard excludes certain Financial Accounts from review because ostensibly they possess low-risk characteristics for being used for tax evasion. Elsewhere the Standard does not cover certain assets or payments as reportable. These chinks in the armour are being exploited and thus have transformed from being low-risk to high risk products used for tax evasion (Morris; 2017:24). This is achieved in the following way:

The OECD Standard includes only financial assets. Therefore, tax evaders seek alternate asset classes which emulate Financial Assets. The two most common asset substitutes are gold and real estate (Morris; 2017:28). It has also been noted by (Morris; 2017:29) that there has been an increase in companies established in tax havens which store gold for clients as well as a large number of clients having liquidated their undeclared financial assets and have bought property.

Late adopter shopping

Tax evaders are flowing to jurisdictions that have indicated they will not be signing CAAs in the near term due to fabricated excuses such as confidentiality or other pre-conditions. (Morris; 2017:40)

Creation of an additional year for due-diligence on low value accounts

The OECD gave early adopters an extra year to do due diligence on low value accounts. Yet some late adopter countries have abused the extra year rule, to sneak in an extra year for due diligence on low value accounts. This is in effect a two-year delay or a late-late adopter for low value accounts. (Morris; 2017:44)

Confidentiality

Tax havens abuse the bilateral option using subjective, fabricated and fallacious data security concerns, or impose irrelevant preconditions. Switzerland, Bahamas, Singapore, Panama, undertake their own subjective confidentiality and data security assessment of potential partner jurisdictions. (Morris; 2017:44)

Preconditions for signing a CAA

Switzerland (for example) is demanding potential partners agree to unrelated conditions before considering a CAA. The two most important demands are:

(i) the partner country grant access to Switzerland's banks to local markets and,

(ii) an amnesty be in place for residents with undeclared accounts.

Although the OECD encourages tax amnesties, this is not a pre-requisite requirement for CAAs. (Morris; 2017:46)

USA voids the CRS

Morris estimates that over 80% of persons wishing to avoid the Common Reporting Standard simply move their accounts to a USA Financial Institution, whether it be a bank, Custodial Institution, trust or fund. The OECD closing the Standard's loopholes identified in this report will merely cause an expedited flow of undeclared assets to the USA. FIs subject to the CRS have a legitimate gripe that the USA is not subject to equivalent reciprocal automatic exchange of information. Consequently, the CRS is chasing untaxed money to US FI. The CRS FIs rightly complain that eventually when or if the USA reciprocates equivalent information, the fleeing accounts will remain in the USA as the last stop. Therefore, the CRS is unfairly causing permanent loss of business for CRS FIs because the USA is the last adopter of AEOI. (Morris; 2017:2)

Fortunately from a South African perspective, a signed CAA is in place with the United States of America (which was achieved through the implementation of FATCA reporting in South Africa) and it is therefore submitted that this will help mitigate the risk of South African tax evaders wishing to hide undeclared assets in the United States going undetected. Work however will still need to be done to put in place information sharing agreements between other late and non-adopters of the CRS some of which are referred to above.

Chapter Eight: Conclusion

Based on the discussion above the following is an executive summary of the key findings of this report:

A significant amount of effort is required on the part of the FI in first interpreting and understanding the requirements of the Standard and its applicability to the various product types and service offerings within a FI. Any matters unique to a product category that has not been explicitly covered in the Standard should be raised with the relevant industry bodies like SARS and the Banking Association of South Africa for further clarity and guidance.

Once this has been done it will be necessary for the FI to design and develop a standard operating procedure that will need to be rolled out into business to ensure the relevant due diligence procedures of the Standard are complied with. An understanding of the SARS reporting BRS will also be required as this will provide the FI with an appropriate guideline for system development, the report submission to SARS as well the design of the tax residency self-certification forms.

The importance of creating staff and customer awareness around the requirements and implications of being non-compliant with CRS cannot be underestimated. Failure to address either of these areas will result in the FI facing a daunting task in addressing any shortcomings of staff in applying the correct due diligence procedures and will not create the urgency required on the part of account holders providing the required information. Needless to say these then have potential to create avoidable financial and reputational risks for the FI.

The FI will also need to ensure that all the relevant areas of both internal and external governance processes have been addressed. A full risk assessment together with the identification of risk mitigation mechanisms should also be designed and documented and all data used, validated. Privacy and the protection of account holder data is of the utmost importance and extra care should be taken by the FI to ensure that is has played its part in keeping this data confidential and in line with requirements of POPI.

Costs associated with the implementation of CRS should also be measured and regularly scrutinized. Some organisations adopt an attitude of paying no or very little regard to cost implications when it comes to the implementation of compliance related projects. Whilst the financial penalties associated with non-compliance will probably outweigh the costs of implementation, failure to

adequately plan and budget creates significant delays in implementation and fail to highlight the need for additional resources if required. Thought should also be given to ways and means to reduce costs and whether or not it may be possible to provide other value added services to customer in order to recoup some of these costs.

The planning around a remediation exercise for the pre-existing account holder and controlling persons is key. This needs to be completed with minimal impact on customers of a FI. The FI will also need to ensure that the customer data that will be used is accurate and can be relied on. Decisions as to whether to make use of service providers to conduct this exercise should also be made after the relevant due diligence procedures have been carried out on these service providers and as early on in the process as possible.

It is quite clear that implementing CRS involves much more than just the collating of account holder information and reporting it to SARS. The FI faces numerous other interpretative and operational challenges to ensure that it has ticked all the relevant boxes before the first round of reports are submitted to SARS in May 2017. Ultimately this leaves the FI with a lot to do in a very short space of time. Whilst this is no doubt a challenge for FIs, the benefits to be derived from the implementation of CRS in a developing country like South Africa are apparent. One of the aims of National Treasury is to combat tax evasion through tax dodging citizens hiding wealth offshore, thereby creating additional tax contributions to the fiscus. Given the current state of economic affairs, the threats of a ratings downgrade and the sudden need to make additional funding available for tertiary education, it is necessary that the Treasury explore every avenue possible in order to maximise collections. If the CRS proves fruitful in identifying South African taxpayers who are not paying taxes on foreign assets and result in increased collections of revenue through interest, penalties and taxes this may alleviate the immediate need for further hikes in personal income tax rates. These sorts of tax rate hikes place additional burdens on the South African middle class, the majority of whom are compliant with their tax affairs.

To conclude, it is submitted that South Africa's decision to sign on as early adopters to the Standard is based on the perceived benefits described in chapter six above as well as the alignment of other tax evasion combating strategies such as the SVDP. It is hoped however that the information received from other early adopter jurisdictions is of the required quality which will allow the SARS to utilise it to make informed decisions resulting in the desired outputs and benefits to be realised.

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Appendix A

These definitions have been taken directly from the Standard as contained in *the Government Gazette, Republic of South Africa, No 10573, Vol. 609, 2 March 2016, The OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters* (with the relevant section numbers included) unless otherwise stated.

TIN	Tax Identification Number. The term TIN means Taxpayer Identification Number or a functional equivalent in the absence of a TIN. (s.8, Para. E, ss.5)
Financial Institution	The term financial institution means a custodial institution, a depository institution, an investment entity, or a specified insurance company. (s.8, Para. A, ss.3)
Participating Jurisdiction Financial Institution	The term 'Participating Jurisdiction Financial Institution' means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction. (s.8, Para. A, ss.2)
Reporting financial Institution	Any South African Financial institution that is not a non-reporting Financial Institution. The term South African Financial institution means (i) any Financial institution that is resident in South Africa, but excludes any branch of the Financial Institution that is located outside of South Africa; and (ii) any branch of a Financial institution that is not resident in South Africa, if that branch is located in South Africa. (s.8, Para. A, ss.1)
Non-Reporting Financial Institution	A Non-Reporting Financial Institution' means any Financial Institution that is: a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution; b) a Broad Participation Retirement Fund; a Narrow Participation

	Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer; c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b), and is included in the list of Non Reporting Financial Institutions referred to in Annex I to these Regulations as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Common Reporting Standard; d) an Exempt Collective Investment Vehicle; or e) A Trust established under the laws of a Reportable Jurisdiction to the extent that the trustee of the Trust is a Reporting Financial institution and reports all information required to be reported with respect to all Reportable Accounts of the Trust. (s.8, Para. B, ss.1(a-e))
NFE	Non-Financial-Entity (s.8, Para. D, ss.7)
Passive NFE	Under the CRS a 'Passive NFE' means any: (I) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A (6) (b) Section 8 of the CRS that is not a participating jurisdiction financial institution. (s.8, Para. D, ss.8)
Active NFE	An Entity will be classified as an ACTIVE NFE if it meets any of the following criteria: a) less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income; b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related entity of an entity the stock of which is regularly traded on established securities market. c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;

	d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes; e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE; f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution; g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or h) the NFE meets all of the following requirements: i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare; ii) it is exempt from income tax in its jurisdiction of residence;

	iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets; iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and v) The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof. (s. 8, Para. D, ss. 9(a-h))
Settlor	One who establishes a trust, a right of property, real or personal, held and administered by a trustee for the benefit of another (West's Encyclopaedia of American Law, 2008).
Controlling person(s)	Controlling persons means the natural person(s) who exercise control over an entity. In the case of a trust, the controlling person may be the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary/ies or class/es of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a Trust, such term means persons in equivalent or similar positions. The term Controlling persons must be interpreted in a manner consistent with the Financial Action Task Force recommendations. (s. 8, Para. D, ss. 6)
Entity	The term entity means a legal person or a legal arrangement, such as a corporation, organisation, partnership, trust or foundation. (s. 8, Para. E, ss. 3)
Account holder	The account holder is the person listed or identified as the holder of a financial account by the financial institution that maintains the account. (s. 8, Para. E, ss. 1)
Financial account	A financial account is an account maintained by a financial institution and

	includes the following: Depository Accounts; Custodial Accounts; Equity and debt interest in certain Investment Entities; Cash Value Insurance Contracts; and Annuity Contracts. (s. 8, Para. C, ss. 1(a-c))
Reportable Account	A financial account that is maintained by a Reporting financial institution and is held by one or more reportable persons or by a Passive NFE with one or more controlling persons that is a reportable person provided it has been identified as such pursuant to the due diligence procedures described in sections 2 to 7 of the Standard. (s. 8, Para. D, ss. 1)
Reportable person	A reportable jurisdiction person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a related entity of a corporation described in clause (i); (iii) a governmental entity; (iv) an international organisation; (v) a central bank; or (vi) A financial institution. (s. 8, Para. D, ss. 2)
Reportable jurisdiction	A Reportable jurisdiction is any jurisdiction other than the United States of America or South Africa. (s. 8, Para. D, ss. 4)
Reportable jurisdiction Person	A reportable jurisdiction Person is an individual or Entity that is resident in a Reportable jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated. (s. 8, Para. D, ss. 3)
Excluded Accounts	(a) A retirement or pension account that satisfies the following requirements: (i) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits); (ii) The account is tax-favoured (i.e., contributions to the account that

	would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate); (iii) Information reporting is required to the tax authorities with respect to the account; (iv) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and (v) Either (i) annual contributions are limited to $50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of $1,000,000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. A Financial Account that otherwise satisfies the requirements of subparagraph C(17)(a)(v) will not fail to satisfy such requirements solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7). (b) An account that satisfies the following requirements: (i) The account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement; (ii) The account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

	(iii) Withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and (iv) Annual contributions are limited to $50,000 or less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. A Financial Account that otherwise satisfies the requirements of subparagraph C(17)(b)(iv) will not fail to satisfy such requirements solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7). (c) A life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements: (i) Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter; (ii) The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract; (iii) The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and (iv) The contract is not held by a transferee for value. (d) An account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate. (e) An account, which includes a trust account, established in connection

	with any of the following: (i) A court order or judgment. (ii) A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements: (aa) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property; (bb) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease; (cc) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates; (dd) The account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and (ee) The account is not associated with an account described in subparagraph C(17)(f). (iii) An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time. (iv) An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time. (f) A Depository Account that satisfies the following requirements: (i) The account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and (ii) Beginning on or before 1 March 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of $50,000, or to ensure that any

	customer overpayment in excess of $50,000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns. (g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) through (f), and included in the list of Non-Reporting Financial Institutions referred to the Regulations as an Excluded Account, provided that the status of such account as an Excluded Account does not frustrate the purposes of the Common Reporting Standard. (s. 8, Para. C, ss. 17(a-g))
Lower Value accounts	A Low Value account is defined as a pre-existing individual financial account with an aggregate balance or value as of 29th February 2016 that does not exceed $1,000,000. (s. 8, Para. C, ss. 14)
High Value accounts	A High Value account means a pre-existing individual financial account with an aggregate balance or value that exceeds $1,000,000 as of 29th February 2016 or the last day of February of any subsequent reporting period. (s. 8, Para. C, ss. 15)
Pre-existing account	A financial account maintained by a reporting financial institution as of 29th February 2016. (s. 8, Para. C, ss. 9)
New account	A financial account maintained by a reporting financial institution opened on or after 1 March 2016. (s. 8, Para. C, ss. 10)
Pre-existing individual account	A pre-existing account held by one or more individuals. (s. 8, Para. C, ss. 11)
Pre-existing Entity account	A pre-existing account held by one or more Entities. (s. 8, Para. C, ss. 13)
New entity account	A new account held by one or more entities. (s. 8, Para. C, ss. 16)
Change in	Includes any change that results in the addition of information relevant

circumstances	to a person's status or otherwise conflicts with such a person's status. (s. 9, Para. A, ss. 1)
Documentary evidence	This includes the following: a) A certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident. b) With respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes. c) With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised. d) Any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report. (s. 8, Para. E, ss. 6(a-d))
Documentary evidence of pre-existing entity accounts	With respect to a pre-existing entity Account, an FI may use as documentary evidence any records with respect to the entity that was 1) determined based on a standardised industry coding system; 2) recording by the FI consistent with its normal business practices for purposes of anti-money laundering (AML)/know your client (KYC) procedures or another regulatory purposes (other than for tax purposes); and 3) implemented by the reporting financial institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the FI does not know or does not have reason to know that such classification is incorrect or unreliable. The term 'standardised industry coding system' means a coding system used to classify establishments by business type for purposes other than tax purposes. (s. 9, Para. G, ss. 1-3)
Trustee	A trustee-documented trust is a trust that is a financial institution where

Documented Trust	the trustee of the trust is itself a reporting financial institution and reports all the information required in respect of the Reportable Accounts of the trust. The trustee in such a case must report the information that the trustee-documented trust would have reported but for its status as a Non-reporting Financial Institution and must identify, when reporting, the trustee-documented trust in respect of which it fulfils the reporting and due diligence obligations. (RMB, n.d)
Trustee	The Trust property Control Act no 57 of 1998 defines a Trustee as any person (including the founder of a Trust) who acts as trustee by virtue of an authorisation granted by the Master of the high court and includes any person whose appointment as trustee is already of force and effect prior to the commencement of the Trust Property Control Act.
Natural Person	A human being, as opposed to an artificial or legal person like a company (Collins Dictionary of Law, 2006).
Incapacity	The absence of legal ability, competence, or qualifications (West's Encyclopaedia of American Law, 2008).
Juristic Person	A body recognized by the law as being entitled to rights and duties in the same way as a natural or human person, the common example being a company (Collins Dictionary of Law, 2006).
Activity Based Costing	Cost accounting approach concerned with matching costs with activities (called cost drivers) that cause those costs (Business dictionary, (n.d)).
Opportunity Cost	A benefit, profit, or value that must be given up to acquire or achieve something else. Since every resource (land, money, time, etc.) can be put to alternative uses, every action, choice, or decision has an associated opportunity cost (Business dictionary, (n.d)).