

**Guidance FATCA / CRS with technical
explanatory notes to the CUR IGA and the CRS
regulations**

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FATCA/CRS Guidance with technical explanatory notes on CUR IGA and CRS regulation

This guidance from the Ministry of Finance of Curaçao gives further details on the application of the CUR IGA and the CRS regulations and contains answers to questions raised in practice. This decree replaces the Guide more known as the FATCA Guidance of September 9, 2016.

PREFACE

1. CRS

The OECD was commissioned by the Finance Ministers of the G20 to develop a global standard for automatic exchange of data of financial accounts, very similar to the standard laid down in FATCA legislation and the resulting conventions, including the CUR IGA. That is the so-called ' Common Reporting Standard ' (CRS). A leading group of 53 countries, the so-called ' early adopters ' group, on 29 October 2014 has a ' Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information ' (MCAA) signed, in which they declare to start exchanging information with each other September 2017 at the latest regarding tax year 2016 on the basis of the CRS. The number of countries that the MCAA has signed since then has grown to approximately 101 countries. This also includes countries that will start exchanging from September 2018.

In order to be able to fulfill this obligation on the basis of the MCAA the committed countries must, among other things, comply with the requirements as referred to in section 7 of the MCAA. Curaçao however, did not fully meet the requirements as a result of which it has been decided in consultation with the Global Forum Transparency and Exchange of Information for Tax Purposes (GF) that Curaçao will continue as 2018 CRS country. This means that within 9 months of the end of the calendar year 2018 Curaçao starts exchanging data on the basis of the CRS.

There is also a group of countries that already has committed to Exchange by September 2018, but will sign the MCAA at a later time.

2. Law and regulations CRS

The CRS was implemented on June 29, 2017 in the (Landsbesluit uitvoering internationale bijstandsverlening or LB LIBB). The identification and reporting requirements for reporting financial institutions with regard to the automatic exchange of information on the basis of the CRS are already included in the LIBB. Finally, in a yet to be published National Decree, the countries that can be considered as participating jurisdictions for the application of the look-through obligation from the CRS will be designated. The so-called wider approach will be applied and the intention is that Curaçao will exchange with all countries that have signed the MCAA or have indicated to proceed on short term to the signing of the MCAA. This, however, with the exception of countries that, in addition to the signed MCAA, also require a separate bilateral agreement before exchanging data. The countries with which Curaçao will conclude a separate

agreement from which the duty to exchange information will result through a decision. More information about the CRS can be found on the website of the OECD, in the form of the OECD-comment on both the CRS and the Model Competent Authority Agreement (Model CAA), a handbook and the FAQ's (frequently asked questions) included in the handbook. In the FAQ's interpretation or explanation of the OECD-commentary is given to explain and clarify (the meaning of) commentary. The topics that are treated as FAQ generally do not appear in this guidance. See <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf>

3. FATCA

The FATCA preceded the development of the global standard, the CRS. The FATCA (Foreign Account Tax Compliance Act) is a US law requiring financial institutions (FI's) worldwide to report annually to the US tax authorities, the Internal Revenue Service (IRS), on accounts that may be taxable in the US outside The United States. US tax law obliges 'American persons', wherever they live in the world, to file tax returns in the US. The extraterritorial effect of FATCA prompted the Dutch Kingdom on behalf of Curaçao reason to conclude the CUR IGA with the US to make such information provision by FI's of financial data between the Curaçao and the US possible and mandatory. In the CUR IGA, Curaçao and the US have agreed that information on American and Curaçao taxpayers will be reported on a reciprocal basis by the Curaçao tax authorities and the IRS. The LIBB contains provisions intended to implement inter alia treaties to provide mutual assistance in the levying of taxes. This law contains a delegation basis that makes it possible to designate accounting authorities in lower regulations to provide the tax authorities with more detailed data and information. In order to facilitate the exchange of information on the grounds of the CUR IGA, the LIBB and the International Financial Decree for the levying of taxes (UB LIBB) will designate the Curaçao FI's described in the CUR IGA as accounting officers. The Competent Authority Arrangement (CAA) between the US and Curaçao is published in Stcrt. 2015, no. 48856. A number of practical agreements have been laid down for the implementation of the CUR IGA. The first automatic exchange of information on the basis of the CUR IGA took place in 2015 with regard to data about the tax year 2014.

Final Regulations

In Article 4, seventh paragraph, of the CUR IGA reference is made to the regulations of the American Ministry of Finance, the American implementation regulation, here called Final Regulations. The Final Regulations include definitions that may be more favorable than the definitions in the CUR IGA. Curaçao can use these definitions in the Final Regulations for the implementation of the CUR IGA and the Curaçao FI's can allow the use of these definitions. This possibility is elaborated in article 2, seventh paragraph, of the UB LIBB. The Curaçao FI's, referred to in the CUR IGA, are designated in the LIBB and the UB LIBB as accounting officers and the data and information to be supplied, mentioned in the CUR IGA. FAQ's are included on the website of the IRS, see: [http://www.irs.gov/Businesses / Corporations / Frequently-Asked-Questions-FAQs-FATCA - Compliance-Legal](http://www.irs.gov/Businesses/Corporations/Frequently-Asked-Questions-FAQs-FATCA-Compliance-Legal)

4. Guidance

Although the OECD has provided the CRS with an extensive commentary (CRS- commentary) and the LIBB and in particular the LB LIBB, questions have arisen in practice about the (implementation of the) CRS. This guide deals with these questions. The guidance published with technical explanatory notes to the treaty concluded on 16 December 2014 between the Curaçao and the United States for the improvement of international compliance with the tax obligation and the implementation of FATCA (FATCA – guidance), has served as the basis for this new guidance and will be discontinued as an independent guidance after publication in the of this guidance. This combined guidance follows in the first chapter the structure of the CRS, in which the corresponding CUR IGA application is discussed immediately. Subjects that are only relevant to the CRS are also covered in this chapter. The second chapter deals with topics that are only relevant to the CUR IGA and cannot occur in a CRS context. In this Chapter 2 the order of the CUR IGA is used. The topics from the FATCA guidance, as far as not yet covered in Chapter 1, will be revisited here while maintaining the structure and order of that guidance.

Attention

- The use of the term 'FI' refers to a reporting FI established in Curaçao unless stated otherwise.
- Where a self-certification form is used in this Guidance is also the digital version intended
- Where in this Guidance in Chapter 1 there is a Non-Financial Entity (NFE) in the context of the CRS, for the sake of readability is also meant a Non-Financial Foreign Entity (NFFE), which term is used in the context of the FATCA and is essentially the same.

List of abbreviations

CAA: Competent Authority Arrangement between the competent authorities of the United States of America and the Kingdom of the Netherlands with respect to Curaçao

CRS: Common Reporting Standard

CSA: Credit Support Annex

CSD: Central Securities Depository

FATCA: Foreign Account Tax Compliance Act *Final Regulations*: U.S. Treasury Regulations §1.1471-§1.1474 Incorporating Temporary & Final Regulations published 06 March 2014

FI: a reporting financial institution established in Curaçao

GMSLA: Global Master Securities Lending Agreement

IRS: Internal Revenue Service

ISDA: International Swaps and Derivatives Association

MCAA: Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information *Model*

MOU: Memorandum of Understanding

NFE: Non-Financial Entity

NFFE: Non-Financial Foreign Entity

CUR IGA: Intergovernmental Agreement between Curaçao and the US

QI: Qualified Intermediary

LIBB: Landsverordening international bijstandsverlening bij de heffing van belastingen

LB LIBB: Landsbesluit uitvoering international bijstandsverlening

US TIN: US Tax Identification Number

US: United States

Lbp: Landsverordening bescherming persoonsgegevens

Lvmot: Wet op de internationale bijstandsverlening bij de heffing van belastingen (Law on international assistance in the levying of taxes)

LID: Landsverordening identificatie bij de dienstverlening

CHAPTER 1 CLARIFICATIONS FOR THE CRS AND THE CUR IGA ADDITIONAL TO THE CRS- COMMENTARY

Section I. General reporting obligations

1.1. Balance of account lifted during the year

Article 2 (2) (a) (4) of the CUR IGA stipulates that for accounts that are canceled during the calendar year, the FI must report the balance of the account immediately before the cancellation in the regular annual report. This balance must be set on the last balance not being nil, unless the balance was nil in the previous year. For CRS, it is sufficient to report that the account has been canceled pursuant to Section IA4 of the CRS. (Section IA4 of the CRS and Article 2, second paragraph, under a, under 4, of the CUR IGA).

1.2. Clarification of the term 'interest'

On the basis of Section IA5.a and Section IA6 of the CRS and Article 2, second paragraph, subparagraphs a, under 5 and 6, of the CUR IGA, an FI with regard to a custody account and a deposit account must report the total gross amount of interest that has been deposited or credited to the account during the calendar year or any other relevant period to be reported on. The interest concept is linked to the interest concept in Curaçao tax legislation. The CRS and the CUR IGA therefore have no other interest definitions than those applied by the tax authorities (Section I.A.5.a of the CRS, and Article 2, second paragraph, part a, under 5 and 6, of the CUR IGA). Detailed explanation of the term 'gross proceeds' in relation to clearing organization.

1.3. Detailed explanation of the term 'gross proceeds' in relation to clearing organizations

The CRS comment and the Final Regulations have a special rule for a clearing organization that performs purchases and sales on a net basis, for example for forward contracts. In that case, the 'total gross proceeds' of the sale, repayment or redemption of assets are limited to the net amounts paid or credited to an account under the settlement procedures of clearing organizations. On the basis of the foregoing, clearing organizations may use 'net amounts' for the concept of 'total gross revenues'. The term "asset components" cannot be stated exhaustively, for further explanation reference is made to the CRS commentary (Section IA5.b of the CRS, the comments to Section IA, point 18 and Article 2, second paragraph, section a, under 5.B, of the NL IGA and §1.1473-1 (a) (3) (i) C of the Final Regulations)

Section II. General due diligence provisions

1.4. External service providers

Section II.D of the CRS and Article 5, third paragraph, of the CUR IGA state that FI's may be allowed to make use of external service providers in order to comply with the obligations

included in the CRS or in the CUR IGA, but that the FI's remain responsible for these obligations. This is allowed. (See also the comments on Section II, Section D, points 6 and 7 and Section IV, points 19 and 20.) Insurance companies can therefore rely on customer identification in accordance with the procedures set out in Annex I of the CUR IGA, which are carried out by intermediaries, but remain responsible for that. A notification of a new participant in a net pension scheme at a pension provider is made by the employer and not by the participant himself. In this case, the employer can be considered as the intermediary where the pension provider can rely on the customer identification. The employer / intermediary may pass on the self-certification form. The signing of the form can be done digitally (see also below under 1.15). The CRS does not require that the service provider is located in the same jurisdiction as the FI or obtains approval from that jurisdiction to act as such. Financial institutions can make the submission have data supplied by third parties, but they also remain responsible for the correct, timely and complete delivery of the data (Section II.D of the CRS, FAQ 14 and Article 5, third paragraph, of the CUR IGA)

1.5. Consequences no self-certification requested by an external service provider

If an external service provider to whom the customer identification has been outsourced has not, in practice, requested a self-certification form where this is necessary, either because the FI has not given the order for it, or because this external service provider has not carried out this assignment, then if there is an existing account, the FI does not fulfill its obligations for the CRS and / or the CUR IGA, unless the self-certification form is still requested, either by the service provider or by the FI. If there is a new account, the FI has not fulfilled its obligations for the CRS and / or the CUR IGA, unless the external service provider or the FI itself has obtained the completed self-certification form within 90 days of the opening of the new account or after the insurance has been completed or has withdrawn or canceled the recently opened account or insurance, provided that the self-certification form has not been obtained within that period (Section II.D of the CRS and Article 5, third paragraph, of the NL IGA)

1.6. Valuation of insurance policies with a monetary value

With due observance of the exception included in part II.A.3 of Annex I of the CUR IGA, which does not apply to the CRS, the value of insurance policies and unaccompanied annuities for the CRS and for the CUR IGA must be reported per the last day of a calendar year or any other relevant period of reporting. For this the value has to be taken into economic traffic. This is explained in more detail in the manual Data delivery of Insurance products (applicable from 1 January 2017). With regard to term life insurance policies, it is noted that 1-year term life insurance policies in this context are deemed to have no value. Regular term life insurance policies do have a value but are exempt from reporting when these insurance policies only pay out in the event of death (see Section VIII.C.8.a the CRS). This only applies to pure, separate insurance policies. In the situation in which both a death part and a part of life are insured (mixed insurance), it is no longer possible to speak of a benefit that will only be paid in the event of death. (Section II.B of the CRS and Section I.B.3 of Annex I of the CUR IGA)

1.7. Customer identification with more (sub) funds

An investment fund may consist of more sub-funds (independent FI's). Participants can participate in one or more sub-funds. Asset managers often use the same third party, such as the transfer agent, to identify new customers. Such a third party only needs to perform the customer identification process once per customer if that customer participates in those sub funds managed by the same asset manager. Existing customers who participate in one sub-fund and join the other sub-fund do not have to undergo the customer identification process again (filling in a self-certification form). The above also applies to funds with the same asset manager or whose asset manager has outsourced customer identification to the same third party. (Section II to VII of the CRS and Section I.A of Annex I of the CUR IGA)

Section III. Due diligence provisions regarding existing accounts of natural people

1.8. Residence- Address-test

Section III.B.1 of the CRS provides for the possibility for FI's to apply the so-called 'residence address test' to existing low-value accounts of individual persons. In the CRS commentary at Section III.B. point 5, it is indicated that governments can give their FI's the choice to either use the residence address test of Section III.B.1 or the 'indicia test' of Section III.B.2, or to only allow the 'indicia test' to be applied. In addition, the CRS commentary offers the possibility for governments to offer their FI's the choice to use the 'residence address test' for all low-value accounts or for a clearly defined group of such low-value accounts, such as the branch or place where the account. This possibility is offered: FI's are free to make such a choice. Thus, the FI's themselves can determine whether they wish to use the 'residence address test' or the 'indicia test' for low-value accounts of individual persons. In addition, the FI's may also decide for themselves whether they apply the 'residence address test' to all low-value accounts or to a clearly defined group of low-value accounts. (Section III.B.1 and the CRS commentary on Section III.B, point 5)

1.9. Penalty or perjury

The current address of an existing customer in the files of the FI's is based on supporting documents. The comment on Section III.B, point 10, deals with the documents that comply with this. In addition to an ID card, a passport, a driving license, or an official recent document issued by a government body on which the address is located, a statement from the relevant account holder of his current address is also sufficient, under penalty of perjury ('penalty of perjury'). We do not know the term 'penalty of perjury' used in the comment in Curaçao. The OECD has indicated in FAQ 16 (in Sections II-VII) that this term also includes the situation in which the legislation of a country provides for a criminal sanction for giving a false statement. This is why this guideline explicitly includes the fact that it is sufficient to issue an (address) statement on the falsely made of which

punishment is imposed in accordance with Curaçao criminal law. (CRS commentary on Section III.B, point 10)

1.10. Always offer counter-evidence to the account holder

Section III.B.4 of the CRS and Section II.B.3 of Appendix I of the CUR IGA state that, if an FI finds one or more American and / or CRS indicators with respect to an existing low-value account of a natural person in the electronic investigation or as a result of changed circumstances, the FI must treat the account as an (American) reportable account, unless the FI decides to carry out Section III.B.6 of the CRS or part II.B. 4 of Annex I of the CUR IGA and one of the exceptions listed there applies. Section III.B.6 does not therefore always require an FI to regard an account holder as a tax resident of a participating jurisdiction for which an indicator as referred to in section B.2, a to e, is found. Section III.B.6 offers a so-called 'curing procedure'. In the CRS commentary on Section III.B.6, this so-called 'curing procedure' is discussed under points 30 to 32. In view of the Lbp, the FI can be expected to - despite the fact that Section III.B.4 of the CRS and part II.B.3 of Annex I of the CUR IGA do not require this - always follow the procedure of Section III.B. .6 of the CRS or part II.B.4 of Appendix I of the CUR IGA and gives the account holder at least the opportunity, if one or more CRS and / or American indicators are involved, to provide forms of rebuttal referred to in Section III. B.6 of the CRS and in section II.B.4 of Annex I of the CUR IGA. The above also applies to Sections III.C.5.b. and III.C.8 of the CRS and the corresponding parts II.D.5.b and II.E.4 of Annex I of the CUR IGA for existing high-value accounts of natural persons, as well as for Section VD1.b of the CRS and for section IV.D.1.b of Annex I of the CUR IGA for existing accounts of entities where a CRS and / or US indicator is found and the FI can not reasonably establish that the account holder is not a reportable person on the basis of information available to it or that is publicly available. The above does not apply in the case of dormant accounts, because in that case it is certain in advance that the account holder does not respond. A dormant account is deemed to exist if the following cumulative conditions are met:

- there has been no account holder activity in the past three years;
- the account holder has not contacted the account or other accounts held with the FI in the past six years; and
- the account is not linked to a non-dormant account of the same account

With regard to the word "linked" in the latter condition, a guarantee for another non-sleeping account can be considered.

(Section III.B.4 and Section III.B.6 of the CRS and Section II.B.3 of Annex I of the CUR IGA)

1.11. Period of validity of the 'self-certification' form

For the application of the CRS identification of a customer or a person who wants to become a customer, the 'self-certification' form developed by the OECD is valid for an indefinite period, as long as there are no changed circumstances on the basis of which an FI knows or has to assume that the original 'self-certification' form is incorrect or

unreliable. A relevant change in circumstances can lead to (i) a person becoming a reportable person, (ii) a person no longer being a reportable person, (iii) a reportable person must from now on be reported to more countries, or (iv) a reportable person must from now on be reported to another country. For every relevant change of circumstances, the FI must send the concerned account holder a 'self-certification' form to have the (presumed) new CRS and / or FATCA status confirmed, or to have the current status reconfirmed. This applies both to natural persons and to entities. (Sections III.B.6, III.C.8, IV.C, V.E.3 and VI of the CRS)

1.12. Empty field in electronic database

If the FI has an electronic system that includes all the information described in Section III.C.3 of the CRS or in Section II.D.3 of Annex I of the CUR IGA, an examination of the paper files is not possible. necessary. This means that the FI's electronic database has fields that can contain the information in question and that can be searched electronically. If an empty field arises as a result of the FI policy and procedures, this means that the FI does not have this information in its electronic system or in the 'customer master file' containing the FI's primary files on the account holder, the FI does not have to carry out an examination of the paper files. However, this exception to the examination of the paper files does not apply when a field in deviation from the FI policy and procedures is left blank. (Section III.C.2 of the CRS and Annex II.D.3 of the CUR IGA)

1.13. Concept of relationship manager

It is possible that insurance companies use brokers with whom they contract or employ them to maintain customer relations. These brokers are not employed by the entity which manages the insurance policies, but can be employed by a related entity. Such a broker cannot be regarded as a relationship manager. (Section III.C.4 of the CRS, CRS commentary III.C (4), points 39 to 42 and Annex II.D.4 of the CUR IGA)

1.14. Special aggregation rule for relationship managers

It is required that, in addition to the examination of electronic and paper records for existing accounts of natural persons, the relationship manager is consulted in the case of a high-value account (including any aggregated accounts) that has been placed with the relationship manager. If the relationship manager has factual knowledge that the account holder is a reportable (US) person, the high-value account (including aggregated accounts) is a reportable account. There is a special aggregation rule for relationship managers for determining whether a financial account is a high-value account or not. This rule means that the FI is obliged to aggregate the balances of financial accounts if the relationship manager knows or has reason to know that these accounts are (in) directly in the possession of, or are managed or opened by the same person (other than as a proxy). The above leads to the application of the rule of section VI.C.3 of Annex I of the CUR IGA before the rule in part II.D.4 of Annex I can be applied, with the result that the relationship manager must be consulted if he knows or has reason to know that an account holder at an FI holds a custody account of US \$ 800,000 and a deposit account of US \$ 400,000. The same applies to the CRS, in which according to the CRS comment Section VII.C of the CRS

must be applied before Section III.C.4 of the CRS. A relationship manager is only a relationship manager within the meaning of Section III.C.4 if the account he manages has an (aggregate) balance of more than USD 1,000,000. If it is not yet certain whether an account is a high-value account, the administrator of that account is therefore not a relationship manager. Therefore, no use could be made of his knowledge to assess whether the account is a high-value account. By determining, that the relationship manager referred to in Section VII.C.3 is the employee who meets the definition of relationship manager in the comments on Section III.C.4, with the exception of condition (ii) of point 41, this dilemma is solved. (Section III.C.4 of the CRS, comment Section III.C.4, points 39 to 41, Section VII.C, point 16 and Section VI.C.3 of Annex I of the CUR IGA)

Section IV. Due diligence provisions regarding new accounts of natural Persons

1.15. The self-certification forms (general)

In the CRS commentary on Section IV, points 7 through 9, the self-certification forms are discussed. It has been indicated what these forms must meet in order to be legally valid. Section II.4.a.1 of Annex I of the CUR IGA states that an FI must obtain and maintain a statement from an account holder to establish that he is neither a citizen nor a fiscal resident of the US. An IRS form W-8 or a similar agreed form can be used for this declaration. For the Netherlands, various self-certification forms for the CRS and the FATCA have been developed by the NVB in close consultation with the Ministry of Finance. They can be found on the website of the NVB. It is advisable to use these forms because they aim to provide for all possible situations. However, it is not necessary for a self-certification to take the form of an NVB form. The self-certification forms developed by the OECD can also be maintained. In addition, the information can also be requested in an online form as part of the data when opening an account. Digital signing of the forms is allowed on the usual working method of the relevant FI. (CRS Commentary Section IV, points 7 to 18, as well as Section V, points 14 to 17 and 20 to 23, and in the CRS Comment Section VI, points 11 and 18 and section II.4. a.1 of Annex I of the CUR IGA)

1.16. Consequences if FI does not obtain a completed self-certification form

Section IV.A of the CRS and Section III.B of Appendix 1 to the CUR IGA require an FI to obtain a completed self-certification form from its account holder when a new account is opened by a natural person in order to determine whether the account holder is tax resident of a participating jurisdiction for the CRS (and for the CUR IGA a citizen or fiscal resident of the USA). If the FI has not yet obtained a completed self-certification form within 90 days of the opening of the account or taking out the insurance, on the basis of which it can be established whether the account must be reported or not, the FI must close the new account (or make it unusable until the self-certification form is received) or cancel the insurance. (Section IV.A of the CRS and Section III.B of Appendix 1 of the CUR IGA)

1.17. Requirements for self-certification forms

With regard to the new accounts of natural persons, the CRS commentary on Section IV, point 7 states that a self-certification form is only valid if it has been signed (see also the last sentence of 1.15) by the account holder, has been dated and at least includes: name, address, tax residence, TIN and date of birth. The obligation to include the address shall be deemed to be met if the FI already has the address details, which it has obtained from the account holder under the AML / KYC rules when the account was opened. (CRS commentary Section IV, point 7)

1.18. Shared account system

A FI may rely on documentation submitted by an account holder to another branch of the same FI or to a branch of a related entity within the group if:

- the FI treats all accounts for which documentation is shared, as consolidated accounts; and
- the FI and the other branch of the FI or of a related entity within the group, share an information system that may or may not be electronic that meets the following.

A shared accounting system should allow FI to easily find information about the nature of the documentation, the information that is part of the documentation (including a copy of the documentation itself) and the validity of the documentation. The system should also make it possible to easily store information if the FI becomes aware of any fact that may affect the reliability of that documentation. In addition, the FI must be able to demonstrate how and when it has entered information about such facts in the system and must be able to show that all information that it has entered into the system has been processed and that the validity of the documentation is subject to sufficient research. AN FI that chooses to rely on the account holder's qualification in the shared accounting system without obtaining and examining copies of the documentation to support that qualification must be able to provide, at the request of the Tax and Customs Administration, all documentation that is relevant to that qualification (or notes of the examined supporting documents if the FI is not obliged to keep copies in the context of AML regulations). (CRS Commentary Section IV, points 18, 19 and 20 and section VI.A of Annex I of the CUR IGA)

Section V. Due diligence provisions with respect to existing entity accounts

1.19. Use of SBI codes

For determining whether an existing or new account holder is an active or passive NFE, the FI can reasonably base itself on publicly available information. According to the CRS commentary, this can be done using the standardized industry code system. Examples that are mentioned are the International Standard Industrial Classification (ISIC) of the United Nations, the statistical classification of economic activities in the European Union (NACE), and the North American Industry Classification System (NAICS). For both the CUR IGA and the CRS, the so-called 'Standard Business Classification' (SBI) codes + additional code can

be used here. (Section VD2.a and VI.2.a of the CRS and part IV.D.4. b of Appendix 1 of the CUR IGA)

1.20. Identification of passive NFE (presumption rule)

For the identification of an account holder, the FI may - except on the basis of the information available to the FI itself- also determine on the basis of publicly available information whether there is an FI or an active NFE. If this is not possible on the basis of the available information, the FI must send a self-certification form to the account holder. If the account holder does not return his self-certification form to the FI after repeated request, the account holder is deemed to be a passive NFE and the FI must qualify the account holder as such and the ultimate stakeholder (s) (Controlling Persons) to be identified on the basis of section IV.D.4.c.1 of Annex I of the CUR IGA and to report the required data if an ultimate beneficiary is an American person. The same applies to the CRS based on the CRS commentary on Section V.D (2), points 20 and 24. This means that the ultimate stakeholder (s) must be identified on the basis of Section III.B.2 of the CRS. For the CRS it is possible that there are indicators to more than one country. In the event that an account holder does not submit self-certification after repeated requests, he and / or his ultimate stakeholders will be reported to the countries in respect of which there are indicators. (Section V.D.2.a CRS and part IV.D.3.a, 4.b and c.1 of the CUR

Section VI. Due diligence provisions regarding new entity accounts

1.21. Consequences if an FI does not receive a completed self-certification form

Section VI.A.1.a of the CRS and Section V.B.3 of Annex I of the CUR IGA require an FI to obtain a completed self-certification form from its account holder when a new account is opened by an entity to determine what the status is of the entity and its ultimate stakeholders. However, a self-certification form need not be requested if the FI can reasonably establish on the basis of publicly available information, or information already in its possession that it concerns one of the six entities included in Section VIII, D.2. of the CRS. If the FI has not yet obtained a completed self-certification form within 90 days of the opening of the account on the basis of which it can be established whether the account must be reported or not, the FI must close the new account (or make it unusable) until the self-certification form is received). (Section VI.A.1.a of the CRS and part V.B.3 of Appendix 1 of the CUR IGA)

Section VII. Special due diligence provisions

1.22. Explanation of the concept 'reason to assume that'

AN FI may not rely on statements or documentary evidence if it is aware of or there is reason to believe that these statements or documentary evidence are incorrect or unreliable. The concept of 'reason to assume that' is a translation of the concept of 'reason to know'. For the interpretation of this concept, the application of the FATCA is aligned with points 2 to 9 of Section A of Section VII of the CRS comments. Point 10 of Section A of Section VII of that comment does not apply to CUR IGA, because the US also assumes US citizenship. If there are one or more (American) indicators, this may be a reason to assume that the previous statements or supporting documents are incorrect or unreliable. This will depend on the nature of the indicator and its repair options. (CRS Commentary Section VII, A.3 and Section VI.A of Appendix 1 of the CUR IGA)

1.23. Application of aggregation rules

Section VII.C. of the CRS and part VI.C of Appendix I of the CUR IGA contain the rules for the aggregation of balances. As far as the CUR IGA is concerned: it may be that an account holder / natural person at an FI has different amounts outstanding on different types of accounts such as a savings account and a custody account, but with one and the same account number. In that case, all amounts will have to be added up, because Section VI.C.1 of Annex I of the CUR IGA does not distinguish according to the type of financial account. If there is a savings balance of US \$ 30,000 on the same account number and an investment balance of US \$ 40,000, then both accounts will have to be reported. This is because the total of the balances is higher than US \$ 50,000. (Section VII.C of the CRS and Section VI.C of Annex I of the CUR IGA)

1.24. Exchange rate as at 31 December of a year

Pursuant to Section VII.C.4 of the CRS, for the US dollar amounts used, an equivalent amount can be taken in a different exchange rate as determined under the national law of a country. For Curaçao, however, it has been decided that the FI's relating to non-US dollar amounts must be converted into US dollar amounts prior to reporting to the tax authorities. For this purpose, the exchange rate published on the website of the Central Bank of Curaçao and Sint Maarten on 31 December of each year must be used. This exchange rate must also be used annually for the conversion of the US dollar amounts used in the Implementation Decree on Identification and Reporting Regulations Common Reporting Standard. According to section VI.C.4 of Annex I of the CUR IGA, the exchange rate of 31 December of the previous calendar year must be used to convert the account amounts to a currency other than the US dollar. Part I.B.3. of Annex I of the CUR IGA determines for reporting that in the case of a financial year that deviates from the calendar year, the balance of an account is not taken at the end of the calendar year, but the balance is taken at the end of another relevant period to be reported on. In the latter case, the

conversion rate must be used on the last day of that other period. (Section VII.C.4 of the CRS, CRS commentary Section VII, C (4), points 20 and 21 and parts I.B.3 and VI.C.4 of Appendix 1 of the CUR IGA)

Section VIII. Definitions

1.25. (Double) resident status of an FI and de facto management

Based on the CRS comments to Section VIII.A 2, an FI falls under the jurisdiction where it is tax-based. The national law of a jurisdiction determines when there is tax residence. Based on the criteria in Article 4 of the (Algemene Landsverordening Landsbelastingen or the ALL), it is assessed whether an FI resident is of Curaçao and thus falls within the scope of application of the CRS. With regard to the trust, specific provisions have been included in paragraph 3 of Article 4 of the ALL. For CUR IGA, this has been included in the Memorandum of Understanding (MoU) for clarification. The 'vestigingsplaatsfictie' (or place of establishment fiction) of Article 1, paragraph 2 of the Profit Tax Ordinance (PTO) of corporation tax 1940 is not applicable. For a Curaçao branch of a foreign bank, it must comply with the reporting requirements in Curaçao. For an FI, pursuant to Article 4 of the ALL, it will be determined where the actual management of that FI is located.

AN FI may be a resident of more jurisdictions for tax purposes. In another jurisdiction, criteria other than the place of de facto management may also be used, for example if an FI is incorporated under the law of that jurisdiction. As a result, there may be double residency of the FI. The CRS commentary on Section VIII states in paragraph A, point 5, that an FI (other than a trust) that is a resident of two or more participating jurisdictions is subject to the identification and reporting requirements of that participating jurisdiction in which they keeps accounts. FAQ 15 is also relevant here (in Sections II-VII) which describes the situation of an FI that is a resident of both a jurisdiction that does not and a jurisdiction that has implemented the CRS. The rules of the jurisdiction in which the financial accounts are held then determine the status of the entity as an active or a passive NFE. The jurisdiction in which the financial accounts are held may, however, allow the rules of the jurisdiction of which the entity is a resident to be applied, provided that the latter jurisdiction has implemented the CRS. (CRS commentary on Section VIII.A.2, points 4 and 5, FAQ 15 to Sections II-VII and Article 1, first paragraph, part I, of the CUR IGA and the MoU that belongs to the CUR IGA)

1.26. Insurance company

For further details of the term 'insurance company', reference is made to the CRS commentary on Section VIII, paragraph A, points 26 to 29. This comment applies in addition to the Final Regulations, also for the application of the FATCA. An insurance company that is supervised by De Centrale Bank van Curaçao and Sint Maarten and does not meet the qualification of 'defined insurance company' (such as a non-life insurance company) is an active NFE. (Section VIII, A.8., The CRS commentary on Section VIII, Section A, points 26 through 29 and Article 1, first paragraph, section k of the CUR IGA)

1.27. International organization

In Section VIII, B.3 of the CRS, and in Annex II.I.C of the CUR IGA, international organizations are referred to as non-reporting FI's (Section VIII, B.3 and Section I.C of Annex II of the CUR IGA). This refers to the international institutions to which an exemption is granted pursuant to Article 60 of the ALL, according to the stated manner in the quoted article.

1.28. Explanation of the term 'passive income': definition from CRS commentary.

In section VI.B.4.a of Appendix 1 of the CUR IGA the term 'passive income' is used for the application of the income test if an entity is an active NFE. Although there is a definition of 'passive income' in the Final Regulations, it cannot be applied in the Curaçao situation. The CUR IGA does not contain a definition of this term, so that in view of the wording of Article 4, seventh paragraph, of the CUR IGA, no use can be made of the definition in the Final Regulations. A definition of the term 'passive income' has been included in the CRS commentary, see point 126 of the commentary on Section VIII. D.6 to 9. This corresponds almost entirely to that in the Final Regulations. For both the CUR IGA and the CRS, the term 'passive income' must be interpreted in accordance with its explanation in the CRS commentary. (CRS commentary on Section VIII, D.6 to 9, point 126 and section VI.B.4.a of Annex I of the CUR IGA)

1.29. Explanation of the concept of 'a substantial part of the activities'

Section VIII.D.9.d of the CRS, the CRS commentary on Section VIII.D.9.d, point 130, and Section VI.B.4 of Annex I of the CUR IGA, specifies the criteria that active (for the CUR IGA: non-US) entity that is not FI, must comply in order to qualify as active NFE. One of the criteria is that a substantial part of the activities of the NFE consists of (fully or partially) holding the issued shares in, or providing financing or services to (...). In this context, a 'substantial part of the activities' means that 80% or more of the activities of the NFE must consist of the subsection (d) of Section VIII.D.9 (as far as the CRS is concerned) and under point e of Section VI.B.4 of Annex I of the CUR IGA activities described by the NFE. If the holding activities and / or the provision of financing or services of the NFE to (small) subsidiaries involve less than 80%, but the NFE does get active income from other source (s), then the NFE can still be qualified as active. NFE, provided that the total activities comply with the 'substantial part' test. To determine whether activities other than holding or financing activities may qualify the NFE as an asset, the test referred to in Section VIII.D.9.a (for the CRS) or in Section VI.B.4.a of Annex I of the CUR IGA. For example, if an NFE performs holding activities and / or provides funding and services for 60% and at the same time functions for 40% as a group distribution center and the income from it is operating pursuant to Section VIII.D.9.a of the CRS and Section VI.B.4 .a of Annex I of the CUR IGA, then there is an active NFE even though less than 80% of the activities consist of holding activities and / or providing financing and services to one or more (small) subsidiaries. (Section VIII.D.9.d of the CRS and the CRS commentary on Section VIII.D.6 to 9, point 130 and Section VI.B.4.e of Annex I of the CUR IGA)

1.30. Treasury center within a (non-) financial group

A Treasury center in a non-financial group is an active NFE for both CUR IGA and CRS. Section VI.B.4.h of Appendix I of the CUR IGA qualifies an excepted NFE as described in the Final Regulations as an active NFE. §1.1472-1 (c) (1) (v) of the Final Regulations includes a holding company and a Treasury center within a non-financial group within the meaning of §1.1471-5 (e) (5) (i) (B) classified as an excluded NFE, and thus an active NFE for the application of the CUR IGA. For the CRS, a Treasury center in a non-financial group is an active NFE under Section VIII.D.9.g. (Section VIII.D.9.g of the CRS, the CRS commentary on Section VIII.A, point 19, and section VI.B.4.h of Annex I of the CUR IGA). A holding company or a Treasury center within a financial group has the status of an FI if it complies with the definition of an FI as included in Section VIII.A.3 of the CRS. It depends on the facts and circumstances and the activities that the entity undertakes, even if those activities are exercised exclusively for related entities or for its shareholders. (For more detailed commentary, please refer to FAQ 2 in Section VIII.A.) The status according to the CRS corresponds to the definition in the Final Regulations. (Section VIII of the CRS and FAQ 2 of Section VIII.A)

1.31. Activity test for an investment entity

In view of article 4, seventh paragraph, of the CUR IGA, an FI is free to opt for the definition of 'investment entity' from the Final Regulations. This instead of the definition in Article 1.j of the CUR IGA. If an FI does so, it opts for the integral application of the definition of 'investment entity' as described in §1.1471-5 (e) (4) so that in accordance with §1.1471-5 (e) (4) (i) (B) the definition, rather than on the basis of the definition in the CUR IGA, is an investment entity if its activities are managed by another investment entity, an institution that takes deposits, a depository as referred to in Article 1, first paragraph, part h, of the CUR IGA, or an insurance company or holding company as described in §1.1471-5 (e) (1) (iv) of the Final Regulations. The managed investment entity must then comply with the income test of §1.1471-5 (e) (4) (iv) (A). The definition of investment entity as included in Section VIII.A.6 of the CRS is identical to the integral FATCA definition described above, including the supplement to the Final Regulations. An investment entity may adhere to the definition of the CUR IGA for the application of FATCA. The result may be that an entity is not an FI for application of the CUR IGA, but for the CRS it does. Therefore, it is recommended to use the CRS definition / integral FATCA definition. The following text is based on the CRS and the integral FATCA definition. An entity that, in the context of the business operations for or on behalf of a client, issues one or more of the items referred to in Section VIII.A.6.a.i-iii of the CRS or Article 1.1.j. 1-3 of the CUR IGA activities is considered as an investment entity. An entity that, for its own account and risk, has set itself the objective of maintaining stock exchange trading in options or other financial instruments is generally not considered to be acting for or on behalf of a client. If an investment company invests with a director-major shareholder as sole shareholder in shares, then there is no client relationship between the private limited company and the director/ majority shareholder so that the company is not an investment entity.

However, if the investment activities are carried out by a professional third party, then there is a client relationship between that third party and the company or the DGA. In that case, that professional third party is an investment entity; in the system of the CRS and the CUR IGA, the investment company itself is therefore also an investment entity. See also 1.33 (shareholders from one family). With regard to the term "execution in the context of business operations", in §1.1471-5 (e) (4) (i) (A) of the Final Regulations (and in Section VIII.A.6.b of the CRS) indicated that there is an investment entity if the business is predominantly ('primarily') consists of the investment activities as stated in Article 1, first paragraph, subsection j of the CUR IGA. According to §1.1471-5 (e) (4) (iii) (A) of the Final Regulations, this means that it is only possible to speak of an investment entity if an income test is satisfied which means that the gross income from investment activities must be at least 50% of the total gross income during:

- a period of three years ending on 31 December of the year preceding the year in which the assessment takes place; or
- the entity's period of existence if it is shorter than those three years.

The definition of investment entity in the Final Regulations also refers to the concept of 'financial assets' that does not occur in CUR IGA but is defined in §1.1471-5 (e) (4) (ii) (and in Section VIII.A. 7 of the CRS) and to which immovable property does not belong. Entities directly holding real estate are therefore only an investment entity according to the Final Regulations if the income test of §1.1471-5 (e) (4) (iii) is met for a self-managing entity or §1.1471-5 (e) (4) (iv) (A) for a managed entity. This means that the gross income from investment activities (excluding gross income from (re) investment and trading in real estate) must be at least 50% of the total gross income of the entity during:

- a period of three years ending on 31 December of the year preceding the year in which the assessment takes place; or
- the entity's period of existence if it is shorter than those three years.

(Section VIII.A.6 and 7 of the CRS and Article 1, first paragraph, subsection j of the CUR IGA)

1.32. Activity test for an institution that takes deposits

Under the expression 'an institution that takes deposits' the CUR IGA means an entity that accepts deposits in the context of the ordinary course of a banking or similar business. The assessment of whether there is an institution that accepts deposits in the ordinary course of a banking or similar business done on the basis of the actual activities of that institution and not on the basis of its articles of association. For the explanation of the terms deposits and banking or similar business, in accordance with Article 4, paragraph 7, of the CUR IGA, an FI may opt to make use of the definitions in the Final Regulations and the exceptions contained therein. The Final Regulations and the CRS contain an exception for certain leasing companies for the qualification of a banking or similar business'. This is the case if the entity only accepts deposits from persons as collateral or security in the context of a sale or lease of goods or in the context of a comparable financing transaction between the

entity and the person who places the deposit. On the basis of a few examples, it can be assessed whether there is an entity that accepts deposits in the context of the ordinary course of a banking or similar business and thus becomes an FI or not:

Examples

- A concern issues a bond loan through a Curaçao BV. The funds are collected outside the group and are then used to provide loans to affiliated entities within a non-financial group. The issue of the bond loan is not considered to be 'accepting deposits'.
- All surplus liquid assets of the companies of a non-financial group are deposited at a treasury center (cash pool). Since the entity only performs the cash pooling activities on behalf of affiliated entities and not for third parties, there is no question of the exercise of a banking business or a similar business. The treasury center is an active NFE.

- A leasing company is exclusively involved in leasing to third parties. It obtains a non-repayable loan from a group company for the benefit of its business activities. Obtaining a (group) loan does not in itself constitute a deposit account, so there is no question of accepting a deposit. The leasing company is not an institution that accepts deposits if it only accepts deposits as collateral or security in the context of a sale or lease of goods or in the context of a similar financing transaction between the entity and the person who places the deposit.
- An entity within a non-financial group obtains an irrecoverable loan from a related entity and a bank loan and lends these amounts to other group companies (back-to-back loans within the group). Again, non-repayable loans are obtained and there is no question of 'accepting deposits'.
- A non-life insurance company or a custodian of a mutual fund shall receive collateral in cash (eg cash collateral) under, for example, a GMSLA, an ISDA swap contract, a CSA, a clearing agreement relating to the clearing of derivatives or futures -agreement. The money is credited to a bank account of an institution that accepts deposits and forms a deposit account with this institution, which must be investigated, identified and possibly reported. The non-life insurance company or the custodian of a mutual fund does not itself become an institution that accepts deposits, if obtaining collateral in money is the only deposit activity for them. (Section VIII.A.5, 6 and D.9.g of the CRS, CRS commentary on Section VIII.A. (3) - (8), points 12-14 and D. (6) - (9) , item 129 and FAQs 1 and 2 to Section VIII and Article 1, first paragraph, part i, of the CUR IGA)

1.33. Shareholders, participants or stakeholders from one family or a very limited group
Entities whose assets consist of cash or investments - or a holding company thereof - with a (very) limited group of immediate and indirect shareholders or participants or stakeholders belonging to one family, who do not present themselves as an investment entity and who have not attracted capital from the market or will not attract, are not an investment entity within the meaning of Section VIII.A.6 of the CRS and Article 1, first paragraph, part j, of the CUR IGA, even if the assets are managed by an FI . Such an entity - or a holding company - is considered a passive NFE. For the sake of completeness, it should be noted in this connection that entities are also understood to mean the private foundation (Stichting Particulier Fonds or SPF) and the trust. This regardless of whether these entities are managed by a financial institution. In this connection, it should be noted that if "a (very) limited group", as indicated in the first sentence of this article, is also considered one natural person who also meets the other conditions mentioned. (Section VIII.A.6 of the CRS and Article 1, first paragraph, subsection j of the CUR IGA)

1.34. Investment institutions

The scope of Section VIII.A.6 of the CRS and Article 1, first paragraph, subsection j of the CUR IGA are collective investment institutions, private equity funds, hedge funds, mutual funds, exchange traded funds, venture capital funds, leveraged companies buyout funds and similar investment entities. This also applies to a special purpose vehicle in a securitization structure or in a Collateral Loan Obligations / Collateral Debt Obligations structure, for treasury centers within a group of FI's, fiscal investment institutions (unless they are not an FI under the Final Regulations and the CRS definition in connection with the holding of immovable property), exempt investment institutions, unit-linked funds and holding companies as part of a private equity structure. However, a holding company as part of a private equity or other investment structure is not an investment entity but a passive NFE, if all shares are held immediately and indirectly by the private equity or other investment fund itself. After all, it is already reported at the level of the fund (s). (Section VIII.A.6 of the CRS and Article 1, first paragraph, subsection j of the CUR IGA)

1.35. Investment advisors and (asset) managers

An investment entity that is a resident of Curaçao has no reporting obligations under certain circumstances. Then its activities will have to consist exclusively of providing investment advice to, or acting on behalf of, a client, or managing portfolios for a client on the basis of a proxy or similar instrument. (CRS commentary on Section V.I. (1) point 60 and section IV.D of Annex II of the CUR IGA)

1.36. 'Qualified credit card issuers'

According to Section VIII.B.8.b of the CRS and part VA of Annex I of the CUR IGA, a credit card account or a revolving credit facility that is treated as a new account of an entity need not be checked, identified or reported, provided that the reporting FI managing such an account implements policies and procedures to prevent the balance due to the account holder from exceeding US \$ 50,000. Under Article 1 (1) (q) of the CUR IGA, in addition to the operation of section V.A of Annex I of the CUR IGA, certain credit card companies may

also qualify as non-reporting FI because certain credit card companies ('Qualified credit card' issuers ') in §1.1471-5 (f) (1) (i) (E) of the Final Regulations can be qualified as 'Registered deemed-compliant FFI'. The Final Regulations contain in §1.1471-5 (f) (1) (i) (E) and the CRS commentary on Section VIII.C (17) contains in paragraph 95 two cumulative requirements for being a Qualified Credit Card Issuer. First of all, it must be an FI that is only classified as such because it offers credit cards (services), and that only accepts deposits if the customer makes a payment higher than the due account balance and does not immediately return this surplus to the account holder. The second requirement implies that the FI policies and procedures are aimed at preventing the balance of an account from exceeding US \$ 50,000, or that the surplus exceeding US \$ 50,000 within 60 days (after when the balance exceeds US \$ 50,000) is returned to the account holder. The second requirement is also fulfilled if only the surplus above US \$ 50,000 is repaid, insofar as this surplus is still present after 60 days from the moment the balance first exceeds US \$ 50,000. (Section VIII.B.8.b of the CRS, the CRS commentary on Section VIII.C (17) and Section V.A of Annex I of the CUR IGA)

1.37. Swap agreement and securities lending agreement (no debt interest in investment entity)

An ISDA swap agreement or a GMSLA does not constitute a financial account for an investment entity. The receivable arising from these framework agreements cannot be regarded as debt interest on an investment entity because the claim does not relate to the invested capital or the investment results of the investment entity. A debt interest must also be issued by the fund, of which there is no question in these cases. (Section VIII.C.1 of the CRS and Article 1, first paragraph, part s, of the CUR IGA)

1.38. Collateral account

In Section VIII.C.3 of the CRS and in Article 1, first paragraph, subsection u, of the CUR IGA is defined what is meant by 'a custody account'. It concerns an account held in favor of a third party holding a financial instrument or an agreement on participation rights units, for example shares or interests in an enterprise, securities, bonds or other debt instruments. The definition of custody account applies to all accounts held for the benefit of third parties, including the keeping of collateral for another, unless it is money as collateral. Indeed, collateral in the form of money forms a deposit account (see Section VIII.C.2 of the CRS and Article 1, first paragraph, part t, of the CUR IGA). The exact terms of the agreement are decisive for the question whether there is collateral or not. If in a securities lending transaction, the FI as a lending party has obtained the legal ownership of the collateral, the collateral obtained does not constitute a custody account with the FI itself. After all, the acquisition of the legal ownership does not involve the holding in favor of a third party. This also applies to comparable cash collateral obtained in the context of, for example, a GMSLA, an ISDA swap agreement, a CSA, a clearing agreement relating to the clearing of derivatives or a futures- agreement. (Section VIII.C.3 of the CRS and Article 1, first paragraph, section u, of the CUR IGA)

1.39. Existing account holder with a new account

A new account that is opened by an existing account holder can still be regarded as an existing account for the CRS, provided that:

- (i) the account holder is also with the FI (or with an entity affiliated with the FI in the same country as the FI) a financial account that is already held on 31 December 2015;
- (ii) the FI (and, where applicable, the related entity in the same country as the FI) treats both aforementioned financial accounts and other financial accounts of the account holder treated as existing accounts as a single financial account to meet the standards of knowledge requirements in Section VII.A of the CRS, and considering the determination of the balance or value of each of the financial accounts when applying one of the account thresholds;
- (iii) in relation to a financial account subject to the AML / KYC procedures, the reporting FI can meet such AML / KYC procedures for the financial account by relying on the AML / KYC procedures that have been followed for the existing account already held at the FI on 31 December 2015, and
- (iv) the account holder does not have to provide new, supplementary or changed customer information for opening the financial account in addition to the information required for the purposes of this directive.

In FAQ No. 12 (in Sections II-VII, CRS) it is stated that if the opening of a new account does not require new, additional or changed customer information, the new account of an existing customer may be considered as an existing account. In that case, an FI has the choice of whether or not to obtain a self-certification at the opening of a new account of an existing customer. For the CUR IGA, the same can apply according to Article 4, seventh paragraph, of the CUR IGA and the Final Regulations, in which the same conditions must be fulfilled as for the CRS with the exception of the fourth condition. This is the condition that the account holder does not have to provide new, additional or changed customer information for opening the financial account. In order to avoid that the same account for the CUR IGA is an existing account and at the same time for the CRS a new account for which different procedures will have to apply to an FI, an FI may choose to apply the definition of an existing account from the Final Regulations for the application of the FATCA, because that definition corresponds to the CRS definition. (Section VIII.C.9 of the CRS, FAQ 12 to Sections II-VII, and Article 4, seventh paragraph, of the CUR IGA)

1.40. Existing account

If an account holder with an existing account opens a new account with the same bank, that second account may, under certain conditions, be regarded as an existing account. There is no self-certification to be issued (but it is allowed). An account that has been considered as an existing account remains the same if the customer later cancels the first invoice. (CRS Commentary to Section VIII.C., point 82 of the CRS and FAQ 12 to Sections II-VII)

1.41. Existing accounts insurance products

For existing life insurance policies that have been taken out before 30 June 2014 (important for the CUR IGA) and 31 December 2015 (which is important for the CRS) and on which adjustments are made to existing life insurance policies or supplementary payments on terminated insurance policies after that date, then it applies that those life insurances that have been taken out can be qualified as existing accounts. Adjustments or supplementary payments are without prejudice to the applicable exception of part II.A.3 of Annex I of the CUR IGA, unless the nature of the life insurance policy changes so that it is no longer covered by the exception because the conditions are no longer met. (Section VIII.C.9 of CRS and CRS comments Section VIII, C, No. 82 and Section VI.B.5 of Annex I of the CUR IGA)

1.42. Exceptions to the term 'financial account'

For the CRS, the categories 'excepted accounts' (accounts that are not a financial account and therefore excluded from reporting) are regulated in Section VIII.C.17 and the related comments. In order to determine whether an account meets the requirements of a category 'excluded account', the FI may rely on the information available to it or that is publicly available. In the CUR IGA the term 'financial account' is defined in Article 1, first paragraph, subsection s. However, according to §1.1471-5 (b) (2), the definition of the term 'Financial Account' in §1.1471-5 (b) of the Final Regulations contains a number of exceptions that are not included in the definition used in the CUR IGA. In addition to the definition of the term "financial account" used in the CUR IGA and in addition to the excluded products listed in Annex II, section III of the CUR IGA, FI's may invoke the exceptions that are part of the term 'Financial Account' from the Final Regulations, provided that the requirements stated therein are met. An integral choice for the definition from the Final Regulations is not necessary in this specific case. This means that an FI does not have to perform research, identification and reporting with regard to these products. This concerns certain types of (tax-assisted) savings accounts, whether or not for pension purposes, certain life insurance contracts (until the insured person reaches the age of 90), accounts belonging to an estate, court arrangements, certain escrow accounts (including certain escrow accounts related to leasing), and certain annuity insurance policies for retirement purposes (see also section 2.16 of Annex II, Exempt insurance products and legal predecessors). (Section VIII.C.17, the CRS commentary to Section VIII.C.17, points 86-103 and Article 4, seventh paragraph, and Annex II of the CUR IGA)

1.43. Deceased account holder

If an account holder dies, the account does not have to be qualified as reportable in the year of death if the account or the insurance contract is part of a not yet completed succession. This is not necessary in the following years if the legacy has not yet been settled. It is required that the FI has a copy of the death certificate, a copy of the will or a certificate of inheritance. The moment of death is, for the application of this provision, equated with the moment at which the FI first becomes aware of the death of the account holder. Only after distribution of the estate and if the account has not been canceled will

the due diligence procedures apply again. This way it can be assessed whether the account is again a reportable account. (Section VIII.C.17.d of the CRS, the CRS comments to Section VIII, C (17) (d), point 92, and section II.C.3 of Annex I of the CUR IGA)

1.44. 'Recognized stock exchange'

Pursuant to article 2a paragraph 1 of the UB LIBB which refers to section VIII, part A (2) of the CRS, a 'person to be reported' is defined as a person from a participating jurisdiction, not being: a company whose shares are regularly traded on one or more recognized stock exchanges; (...). The CRS comment and the Final Regulations elaborate on the terms 'recognized stock exchange' and 'regularly traded' (1.45). In the CRS commentary on Section VIII.D, point 112 and in Article 1, first paragraph, part s, final paragraph, of the CUR IGA, the term 'regularly traded' has been defined. This is the case if a significant volume of shares is constantly traded on a recognized stock exchange. A recognized stock exchange is understood to mean a stock exchange that is officially recognized and supervised by an accredited supervisor, such as the Dutch AFM or the Curacao DCSX or another government body of the jurisdiction in which the stock exchange is located, and where a significant value of shares is traded annually. A recognized stock exchange also includes the NYSE Euronext Amsterdam and the Euronext Fund Services platform. (Section VIII.D.2.i of the CRS, the CRS commentary on Section VIII.D, point 112 and Article 1, first paragraph, part s, of the CUR IGA)

1.45. 'Frequently traded'

The Final Regulations state that there are tradable shares in a calendar year if one or more categories of shares of an entity were listed on a recognized stock exchange during the past calendar year and these categories of shares together account for more than 50% of the total voting rights and represent the total value of the shares. Furthermore, for each of these categories of shares which together represent more than 50% of the total voting rights and of the total value of the shares, the requirement shall be that:

1. trading of this category of shares takes place at least 60 days in the previous calendar year at one or more recognized stock exchanges, and
2. the total number of shares traded in this category in that preceding calendar year is at least 10% of the average total number of outstanding shares in that category during that year.

With regard to the CRS, the same two requirements are set in the comments on Section VIII.D.2, point 113 as in the Final Regulations. The difference is that according to the Final Regulations these two requirements only apply to the categories of shares that together represent more than 50% of the total voting rights and of the total value, and that the CRS comment requires that these two requirements apply to each category of shares. The CRS is therefore stricter. Listed companies may have a category of shares that are never traded, such as priority shares and preference shares. Even if all other shares of such a company are listed on the stock exchange, the company is still not a non-reportable person according to the CRS. AN FI and the account holder themselves cannot therefore

automatically assume that an entity that has been designated as a non-reportable person for the purposes of the IGA is also a non-reportable person for the CRS. (CRS Commentary on Section VIII.D.2, point 113 and Article 1, first paragraph, subsection s, of the CUR IGA).

1.46. Stichting administratiekantoor (STAK)

The CUR IGA states in the Memorandum of Understanding that an Stichting Administratiekantoor (STAK) established in Curaçao is treated as an NFE. There is an active NFE only if the certificates of the STAK are regularly traded on a recognized stock exchange. In all other cases, the STAK is a passive NFE. The same applies to the application of the CRS. For FATCA, when determining the substantial US owners of a STAK that is a Passive NFE, the certificate holders with an interest of more than 10% must be taken into account. For the CRS, when determining Controlling persons of a STAK that is a passive NFE, the certificate holders with an interest of more than 25% must be taken into account. This, of course, insofar as the certificates of the STAK are not regularly traded on a recognized stock exchange (CRS p.57, article 1 paragraph 1 part mm CUR IGA).

1.47. Holding managed by a trust office

A holding company that can be designated as active NFE under Section VIII.D.9.d of the CRS and Section VI.B.4 of Appendix I of the CUR IGA, will also retain that qualification if that holding company is managed by a (employee of a) trust office that is an FI. (Section VIII.D.9.d of the CRS, CRS commentary VIII.D.9.d, point 129 and section VI.B.4 of Appendix 1 of the CUR IGA)

1.48. Detailed explanation of the term 'affiliated entity'

In Section VIII.E.4 of the CRS and in Article 1, first paragraph, subsection jj of the CUR IGA, the expression 'affiliated entity' is explained in more detail. There is a related entity for the CRS if one of the entities manages the other or if both entities are under common control. Control is also taken to mean the direct or indirect ownership of more than 50% of the voting rights and the capital /interest (value) in an entity. This corresponds to the Final Regulations for the FATCA. If there is a company with a capital divided into shares, in this context 'capital' means the issued and paid-up share capital. In Article 1, first paragraph, subsection jj of the CUR IGA, control means the direct or indirect ownership of more than 50% of the voting rights or the capital / interest (value) in an entity. FI's can also use the definition from the Final Regulations, which is in line with the CRS, for the CUR IGA, thereby reducing the size of the group of affiliated entities. (Section VIII.E.4 of the CRS and Article 1, first paragraph, part jj of the CUR IGA)

1.49. Driving license can be a valid documented evidence

Section VIII.E.6 of the CRS and in section VI.D of Annex I of the CUR IGA specify the acceptable supporting documents for the application of due diligence procedures. For natural persons, a valid proof of identity is included in the acceptable supporting documents, if issued by a competent government body and bearing the name of the natural person. For the client investigation that FI's have to carry out on the basis of the Lvmot and LID, a driving license can serve as proof of identity. Condition is that there is a valid Curaçao driver's license or a valid driving license issued by the competent authority in another country and provided with a passport photo and the name of the holder. (Section VIII.E.6 of the CRS and section VI.D.2 of Appendix 1 of the CUR IGA)

1.50. Detailed explanation of the term 'legal person'

For both FATCA and CRS, an entity is not only understood as a legal entity, such as a limited liability company, private company, foundation or private foundation (SPF), but also a trust (Section VIII of the CRS and Article 1, gg of the CUR IGA).

1.51. Further explanation of the concepts of 'Controlling Person' and 'Substantial US Owner' in relation to a trust

For FATCA purposes the term 'Controlling Person' in relation to the trust is defined in Article 1 paragraph 1 subsection mm of the CUR IGA. For CRS the term 'Controlling Person' in relation to the trust is defined in section VIII-D-6 of the CRS. For both FATCA and CRS, the definition of the FATF is used for the interpretation of the term "Controlling Person".

Pursuant to Article 4 paragraph 7 of the CUR IGA and Article 2 paragraph 3 of the UB LIBB, the definitions of the US regulations may be applied to FATCA insofar as the CUR IGA objective is not frustrated.

With regard to the trust, §1.1473-1 (b) (1) (iii) of the US Regulations indicates when there is a 'substantial US owner'. With regard to a US person to be reported who holds an interest of more than 10% directly or indirectly in a trust, this is worked out in § 1.473-1 (b) (3) (i) and (ii) of the US Regulations. This is generally the case if the beneficiary is entitled to or receives non-compulsory benefits whose value exceeds 10% of the value of the Trust's assets or of the benefits in the preceding year. This article also indicates how this should be calculated. On the basis of the IGA, a threshold of 25% may be used instead of the aforementioned percentage of 10%.

With a trust, in principle there is a reporting obligation with respect to the adjuster, the trustee, the protector, the beneficiaries and any other person who exercises actual authority over the trust. In general, according to the US Regulations, there will be a reporting obligation in the event that a US citizen or US fiscal resident:

(a) receives non-compulsory benefits in the preceding calendar year that exceed 25% of the value of the payments made in that year or of the total value of the assets of the trust;

b) is entitled to mandatory payments from the trust and this entitlement amounts to more than 25% of the value of the trust's assets at the end of the previous calendar year; or
(c) is entitled to compulsory benefits and receives unpaid benefits and the aggregate amount of the non-compulsory benefits for the preceding calendar year and the value of the entitlement to compulsory benefits at the end of that year exceeds 25% of the value of the total payments made in that year or the value of the trust's assets at the end of the year.

In § 1.1473-1 (b) (4) of the US Regulations, it is stated that reporting is not mandatory in case the economic value of the payments in a year does not exceed USD 5,000 and the economic value of the payments in a year do not exceed USD 50,000.

A beneficiary who is entitled to payments from the trust will in principle always be regarded as an account holder. A beneficiary who receives unpaid payments from the trust is in principle only considered as an account holder if he receives such a payment in the previous calendar year. In addition, the account holder is the person or persons who effectively control the trust. Depending on the circumstances and the contents of the trust deed, this may be the adjuster, the trustee, the protector and / or one or more other natural persons.

1.52. Further explanation of the concepts of 'Controlling Person' and 'Substantial US Owner' in relation to a Stichting Particulier Fonds

Although the Stichting Particulier Fonds shows similarities with the trust, an important difference is that the Stichting Particulier Fonds, in contrast to the trust, is a legal entity. The Stichting Particulier Fonds cannot therefore be fully equated with the trust. However, to determine when there is a 'Substantial US Owner' or a 'Controlling Person', the same rules that apply to the trust must be applied to the Stichting Particulier Fonds.

1.53. Circumstances under which a holding company qualifies as an A-NFE

Based on the CRS comment, a holding company whose activities consist for 80% or more of receiving active income (thus income that is not passive) qualifies as an A-NFE. The question arose when a subsidiary or sub-subsidiary of the holding company is involved. This is the case if the holding company can exercise more of 50% of the voting rights or appoint more than half of the directors of the subsidiary or sub-subsidiary.

Chapter 2 Exclusively FATCA Specific Subject

2.1. Qualifying holding and treasury center as (lead) FI instead of NFF

In §1.1471-5 (e) (1) (v) of the Final Regulations, an entity that is a holding company or a treasury center is classified as an FI, provided that it is part of the same extended group of affiliated companies (Expanded Affiliated Group ') to which at least one FI belongs, or is formed or used by certain investment vehicles. However, on the basis of Sections VI. B. 4 e and h of Annex I of the CUR IGA, such a holding company or treasury centre qualifies,

in principle, as an active NFFE for the purposes of the CUR IGA, provided that the requirements are met, and if this is not the case as a passive NFFE. Each holding company and each treasury center can use the definition of FI from the Final Regulations to opt for the status of FI instead of active or passive NFFE, despite the fact that the holding company or treasury center is not an FI according to the CUR IGA. . The result of the choice to apply the definition of FI from the Final Regulations is that such a holding company or treasury center must register with the 'IRS registration portal' and report the relevant data to the Tax Authorities. For the CRS, these entities will always be an active or passive NFE, but never an FI. (Article 1.1.g of the CUR IGA)

2.2. The concept of 'American person' in relation to American territories

In Article 1, first paragraph, part ee, of the CUR IGA the term "American person" is defined. A natural person born in one of the American territories is American citizen and thus an American person, with the exception of persons born on the Northern Mariana Islands before November 4, 1986 or born on American Samoa. The American territories are defined in Article 1, first paragraph, under b, of the CUR IGA. Also a natural person who was not born in American territories but is a resident and has a green card, is an American person. However, a natural person who was not born in American territories, is a resident there, but does not have a green card, is not an American person. An entity is an American person if it is incorporated under US law. An entity established under the law of one of the American territories is not an American person. (Article 1.1. ee of the CUR IGA)

2.3. Period of validity of the W8 and W9 forms

For the application of the CUR IGA identification of an existing customer or a person who wants to become a customer, the 'self-certification' form developed by the OECD and the US W8 and W9 forms are valid for an indefinite period, provided that these forms contain a US Tax Identification Number (US TIN) if this is required based on the account holder's qualification.

According to the general rule, the self-certification form and the W8 and W9 forms are valid until there is a change of circumstances that affects, or may affect, the FATCA status as evidenced by the account holder's self-certification form or the account holder's W8 or W9 form.

In addition, the following rules apply:

- W8 and W9 forms that do not include a US TIN, while this is required by the status of the account holder, will no longer be valid from 1 January 2017.
- If it is an existing account of an American natural person and the FI does not have the US TIN, then the self-certification form is only valid until 1 January 2017 if it contains the date of birth of the account holder.

- After 1 January 2017, each self-certification form of a US taxpayer shall be provided with a US TIN, even if it already contains a date of birth instead of a US TIN.

(Article 3, fourth paragraph, and Article 6, fourth paragraph, of the CUR IGA)

Article 4 CUR IGA

2.4. Interpretation of the term 'payment'

Article 4 (1) (b) of the CUR IGA specifies the obligation for FI's to report the names of each non-participating FI to which the FI has made payments over the years 2015 and 2016, as well as the total amount of payments made to each non-participating financial institution. The term 'payments' basically includes any payment of US FDAP income (Fixed, Determinable, Annual or Periodical income). Due to the extensive nature of this concept and the limited years for which reporting is required, the US has discussed that the data to be reported on payments to non-participating financial institutions for application of Article 4, first paragraph, part b, of the CUR IGA, are the same data as mentioned in Article 2, second paragraph, part a, subsections 5 up to and including 7, of the CUR IGA. As a result, an FI is not required to report on payments to non-participating financial institutions, irrespective of the form of provision of services, but it is sufficient that the data that an FI should normally report on an account holder, also reports on the accounts held by a non-participating financial institution at the FI. In the case of an insurance company, this does not result in reporting on the payment to a beneficiary who holds an account with a non-participating financial institution. The FI must annually report the total amount of values and income per each non-participating financial institution. (Article 4.1-b of the CUR IGA)

2.5. (No) registration obligation for non-reporting financial institutions

Article 4, first paragraph, under c, of the CUR IGA stipulates that FI's must register with the 'IRS registration portal'. This obligation does not apply to non-reporting FI's that are exempted from reporting pursuant to Article 1, first paragraph, under q, of the CUR IGA unless the FI:

- opts for the status of Qualified Intermediary, Withholding Foreign Partnership or Withholding Foreign Trust, or
- acts as a 'sponsoring entity' or a 'lead FI' for one or more connected entity (s), or
- is described in the CUR IGA as non-reporting but has (at a given time) an American reportable account, as referred to in Article 1, first paragraph, part cc, of the CUR IGA. This concerns the FI included in section II.A.1 of Appendix II of the CUR IGA with a local client base.

For the sake of completeness it is noted that entities that are sponsored - by a sponsoring entity - do not have to register independently with the IRS. This is because these and other obligations of the sponsored entity are performed by the sponsoring entity for the benefit of the sponsored entity.

2.6. No legal basis for withholding by Primary Withholding Qualified Intermediary (QI)

Article 4 (1) (d) of the CUR IGA provides that an FI who has decided to accept the primary withholding obligation ('Primary Withholding QI') pursuant to Chapter 3 of the Internal Revenue Code, or who has a Withholding Foreign Partnership or Withholding Foreign Trust, must withhold 30% withholding tax on any U. S. originated payment subject to retention to a non-participating FI. The deduction prescribed in this article follows from the amended QI agreement with the IRS, which is published on the website of the IRS. (Article 4.1.d of the CUR IGA)

2.7. Obligations of FI's that are not Primary Withholding Qualified Intermediary

Article 4 (1) (e) of the CUR IGA provides that if an FI makes a payment or acts as an intermediary for payments to a non- participating FI originating from the US and subject to withholding tax, this FI must provide the necessary information to the direct payer of this payment ('withholding agent'), who can then deduct the withholding tax on the basis of that information and report on the payment to the non-participating FI. The question arose as to what this provision means in connection with Article 5, third paragraph, of the CUR IGA for a Central Securities Depository (CSD). It was also asked how the withholding tax should be deducted if payments are made to an FI that does not act as Primary Withholding QI. With regard to CSD organizations that are in all likelihood still active on Curaçao, but which may possibly be set up in Curaçao in the future, the following is noted; In principle, members of a CSD are responsible for reporting to the tax authorities about American persons for documents held by the CSD. The CSD does not have to report on these documents. However, pursuant to Article 5, third paragraph, of the CUR IGA, the CSD may report as an external service provider for members or FI's who have access to the CSD. Responsibility for the obligations under the Convention, as stated in Article 5, third paragraph, of the CUR IGA, remains with the FI's. For members of the CSD who do not act as Primary Withholding QI and for which the CSD has taken over the reporting obligation towards the tax authorities on the basis of Article 5, third paragraph, of the CUR IGA, pursuant to Article 4, first paragraph, subsection e of the CUR IGA remains in principle obliged to provide FATCA information to the withholding agent. Article 5, third paragraph, of the CUR IGA, however, allows the CSD to also take this reporting obligation to the withholding agent over. The ultimate responsibility for reporting under Article 4, first paragraph, under e, of the CUR IGA then also remains with the members or FI's who have access to the CSD and do not act as Primary Withholding QI. (Article 4.1.e of the CUR IGA)

2.8. Ultimate stakeholder of a passive NFFE with balance or value higher than USD 1.000.000

If an FI has an account holder that is an entity, the FI must determine whether the entity is an active or passive NFFE and whether the ultimate stakeholders are US persons. In the case of an existing account with a balance or value of more than USD 1.000.000 of a passive NFFE, the FI may rely on a statement from the account holder or his ultimate stakeholder (s) ('Controlling Person (s)') on his reportable or non-reportable US ultimate stakeholder. If the passive NFFE or the ultimate beneficial owner (s) does not send a statement to the FI after repeated requests, then if there is an American indication, the FI must report the account as an American Reporting account. The FI must inform the account holder about this before the data are reported to the tax authorities.

- 2.9. Two indicators for identifying existing accounts of entities as American person
Section IV.D.1.a of Annex I states that for the question of whether an entity can be considered as a to be reported US legal entity, the FI must first check whether the existing account holder who is an entity is established in, or has incorporated (incorporated) under the law of the US or has an address in the US. The FI does not need to investigate other indicators as mentioned in section II.B.1 of Appendix 1.
- 2.10. Rely on the qualification of acquired accounts
If an FI acquires accounts from another reporting agent located in Curaçao or abroad as part of a merger, business acquisition or demerger, that FI can rely on the FATCA qualification of the acquired accounts allocated by the merged, acquired or demerged institution. The above can only be done if the following conditions are met:
1. the acquired FI or the demerged FI has allocated the FATCA qualification to the acquired accounts on the basis of the applicable customer identification rules;
 2. the acquiring FI or demerged FI has all relevant documentation of the acquired FI or the FI to be demerged as part of the merger, business acquisition or demerger;
 3. the acquiring FI or demerged FI re-identifies a customer if there is reason to believe that the relevant supporting documents are incorrect or unreliable ('reason to know'); and
 4. due diligence procedures are followed again in the event of changing circumstances.
- 2.11. NFFE with the intention to become an FI
Section VI.B.4 of Annex I indicates which entities can qualify as an active NFFE and under which circumstances. It is possible that an entity meets all the requirements of one of the types of active NFFEs described in section VI.B4 of Appendix I of the CUR IGA at the time of filling in the self-certification form, but that there is also the intention to become an FI at that time. In that case, the entity in the 'self-certification' form must be qualified as an active NFFE. When the entity has become an FI, it must report this as a change of circumstances to the FI as soon as the entity holds an account, with the purpose that the FI can change the entity's qualification. In addition, the entity that has become an FI arises the obligation to investigate, identify and report American persons, unless an exemption for this applies.
- 2.12. Different accounts with the same number
It is possible that an FI has different amounts outstanding on different types of accounts, such as a savings and an investment account, but with one and the same account number. In that case, both cases will have to be added together, because Section VI.C.I of Annex I does not distinguish according to the type of financial account. If there is a savings balance of USD 30,000 on the same account number and an investment balance of USD 40,000, then both accounts will have to be reported (via the product label).

ANNEX I

Part I. General

2.8. Date of the threshold exemption

Section IB3 of Appendix I of the CUR IGA provides that the balance or value of an account in relation to the threshold exemption is determined as per 30 June 2014, or per the last day of the reporting period that ends before 30 June 2014. For the year 2014, instead of the value as at 30 June 2014, FI's may also take the value as at the last day of the last financial year ending before 30 June 2014. The date chosen by the FI applies to all accounts within the business units of the FI. (Annex I, section I.B.3 of the CUR IGA)

2.9. More favorable identification procedures from the Final Regulations

FI's may choose pursuant to Article 2, fifth paragraph 5 to apply the UB LIBB for the identification of accounts. If this choice is made for the identification of new accounts of individuals and / or entities, this means that the FI first requests evidence showing the permanent address of the account holder / natural person or the country of which the account holder / natural person is a resident or citizen, or in which the account holder / entity is established or the law of which country the account holder / entity is established. The 'reason to know test' must also be complied with, on the basis of which the FI may no longer be able to trust on the correctness of the supporting documents if there is one of the American indicators mentioned in section II.B.1 of Annex I. In that case, the FI must issue a self-certification form to the new account holder to determine his FATCA status. The application of the Final Regulations then ensures that the FI can request the supporting documents in the context of the normal procedures for opening an account on the basis of the Lvmot and the LID, and then only requests a self-certification form from the account holders if an American indicator is found that gives rise to this. If the FI does not receive a self-certification form within 90 days after an American indicator has been found, the account must still be reported.

Part II. Existing accounts of natural persons

2.10. Explanation of the term 'reporting or withholding'

Section II.A.3 of Appendix I of the CUR IGA provides that an FI does not have to investigate, identify and report existing capital or annuity insurance if the FI does not have the required registration under US law to offer such insurance to residents from the US, and there is also reporting or withholding of such insurances if held by residents of Curaçao. Life insurance policies and similar (banking) products on which wage tax deductions must be levied in the event of (a) one-off or periodic payment (s), thus meet the reporting or deduction requirement set out in section II.A.3 of Appendix I. (Annex I, section II.A.3 of the CUR IGA)

2.11. Request US TIN for self-certification

Part III.B.1 of Annex I stipulates that in the case of a new account that is opened on or after 1 July 2014, the FI must obtain a self-certification form containing a US TIN. In that situation, it would not be sufficient for the self-certification form to contain a date of birth instead of a US TIN until 1 January 2017. In case of opening a new account there is the possibility to enter a US TIN. Article 3, fourth paragraph, of the CUR IGA stipulates that until 1 January 2017 it is sufficient to state a date of birth if the US TIN is not available in the FI file. This article, however, only applies to existing accounts (from before 1 July 2014) and not to new accounts. Given the problems that US-persons face in obtaining an American TIN, for new accounts in 2016 it is allowed (by the US) that the TIN does not have to be filled in if the (new) account holder does not yet have one. The FI can fill in 9xnu instead of a US TIN. As of 1 January 2017, every US person must have a US TIN and have passed it on to the relevant FI. (Annex I, section) III.B.1 of the CUR IGA)

2.13. Taking into account Annex II status in FATCA partner state (identification of account holders with foreign exempt status)

Based on section IV.D.3 of Annex I of the CUR IGA, each FI must investigate the FATCA status of an existing account holder that is an entity. If such an account holder is an FI that falls within the scope of an IGA of another FATCA partner jurisdiction (because of the location, the laws for incorporation, or the address), then the FI can identify this account holder as a FATCA- partner-FI. If the relevant FATCA- partner- FI is exempt on the basis of Appendix II of that IGA, then the FI follows that qualification. However, if the account holder is located in another country without an IGA being applicable, and the account holder is exempted as FI under the Final Regulations (as 'Exempt Beneficial Owner', 'Registered Deemed Compliant' or 'Certified Deemed -Compliant '), then the FI must use that (exempted) qualification provided the account holder can provide the necessary supporting documents. (Annex I, section IV.D.3 of the CUR IGA)

2.14. Direct Reporting NFFE

According to the Final Regulations, a Direct Reporting NFFE is an 'Excepted NFFE'. A Direct Reporting NFFE also receives a GIIN after registration. A passive NFFE established in Curaçao, which is also a Direct Reporting NFFE, is not qualified as an active NFFE for the purposes of the CUR IGA within the meaning of section VI.B.4.i of Appendix I of the CUR IGA. For the application of section IV.D.4 of Annex I of the IGA, an FI must apply the prescribed customer identification rules for a passive NFFE established in Curaçao, even if it is a Direct Reporting NFFE. If the account holder is a passive NFFE not established in Curaçao and is also a Direct Reporting NFFE, then the FI does not have to identify and report details of the persons in control. The information about the Direct Reporting NFFE established abroad is reported directly to the IRS by that body. (Annex I, section IV.D.4 of the CUR IGA)