

# Curaçao Ministry of Finance

CRS Seminar - New Guidance Notes

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## Chapter 1

# Introduction

**Runela Sillé**

**Head of Sector Fiscal Affairs and Competent Authority**

# With you today



**Lu-Shen Qua**

Head of Operational Tax  
Team EY NL  
lu-shen.qua@nl.ey.com

+31 6 21 25 21 05



**Max Wassenaar**

Sr. Consultant Operational  
Tax Team EY NL  
max.Wassenaar@nl.ey.com

+31 6 29 08 47 66

# Agenda

## 1

- Introduction

## 2

- Family funds / holdings revised CRS classification

## 3

- Undocumented accounts

## 4

- Controlling Persons of Partnerships

### Disclaimer

This presentation is provided solely for the purpose of enhancing knowledge on regulatory CRS updates.

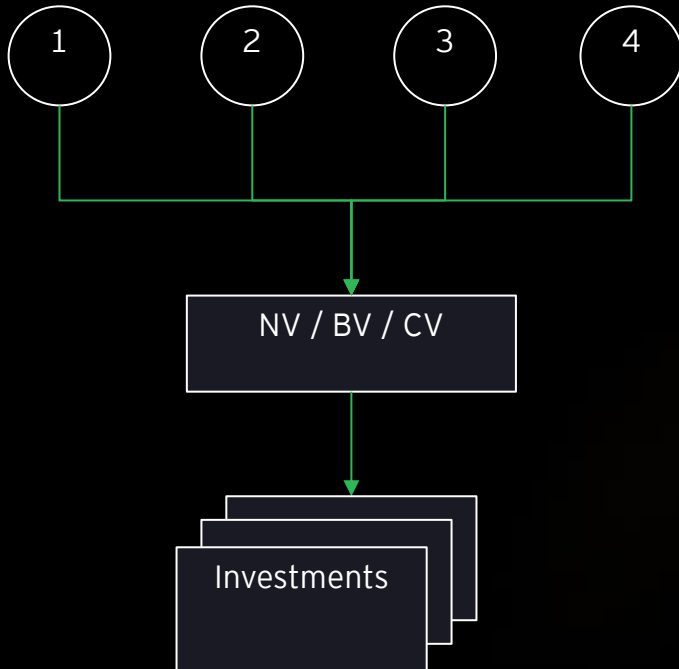
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Information within these slides is correct as of 23-10-2025. Regulations and guidance notes may change in the future.

# **Family funds / holdings revised CRS classification**

# Background

## Guidance on Family funds / holdings and CRS



### Previous FATCA-CRS Guidance on family funds / holdings (Section 1.33)

“Entities other than a trust whose assets consist of cash or investments - or a holding company thereof - with a (very) limited group of direct and indirect shareholders or participants belonging to a single family, which do not present themselves as an Investment Entity and have not raised, nor will raise, capital from the market, are not considered an Investment Entity within the meaning of Section VIII.A.6 of the CRS and Article 1, paragraph 1, subparagraph j, of the CUR-US IGA, even if their assets are managed by a Financial Institution.

Such an entity - or a holding company thereof - is classified as a **Passive NFE**, unless it opts to be treated as a Reporting FI, with all corresponding obligations.”

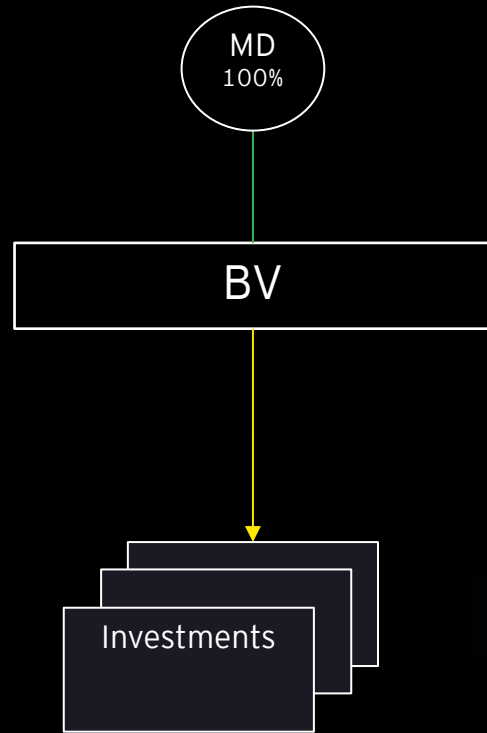
### Current FATCA-CRS Guidance on family funds / holdings

“Entities other than a trust whose assets consist of cash or investments - or a holding company thereof - are considered an **Investment Entity** within the meaning of Section VIII.A.6 of the CRS and Article 1, paragraph 1, subparagraph j, of the CUR-US IGA.

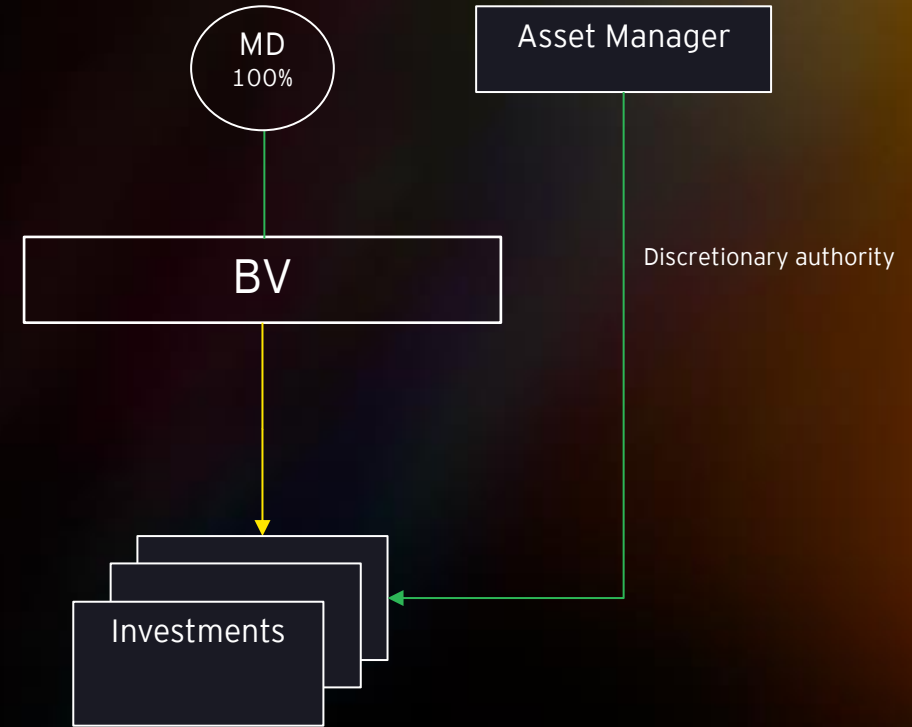
This also applies to such entities with a (very) limited group of direct and indirect shareholders or participants belonging to a single family, which do not present themselves as an Investment Entity and have not raised, nor will raise, capital from the market. This category includes, among others, certain holding companies with more than one shareholder and family funds. Entities that qualify as an Investment Entity are required to submit information themselves.

If you qualify as an Investment Entity, you must register with the Curaçao Tax Administration. This requirement also applies if you have no accounts that must be reported under FATCA and the CRS.”

# Case 1: Personal holdings with investments

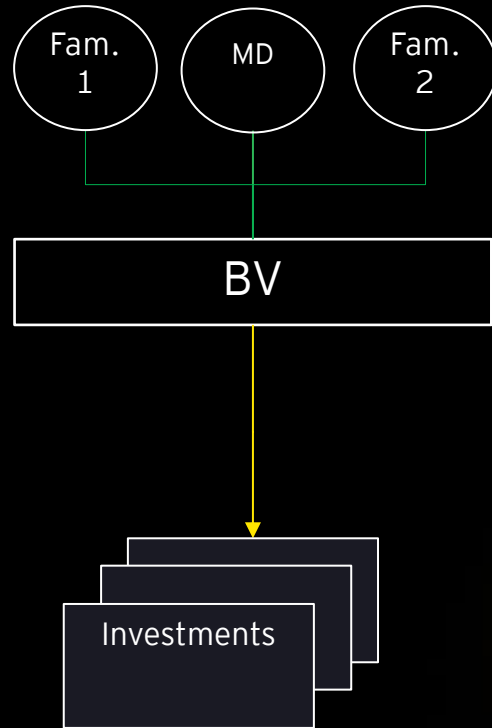


- ▶ BV manages investments
- ▶ Passive NFE following section 1.31 of the FATCA-CRS Guidance
- ▶ BV and Managing Director / sole shareholder are considered the same

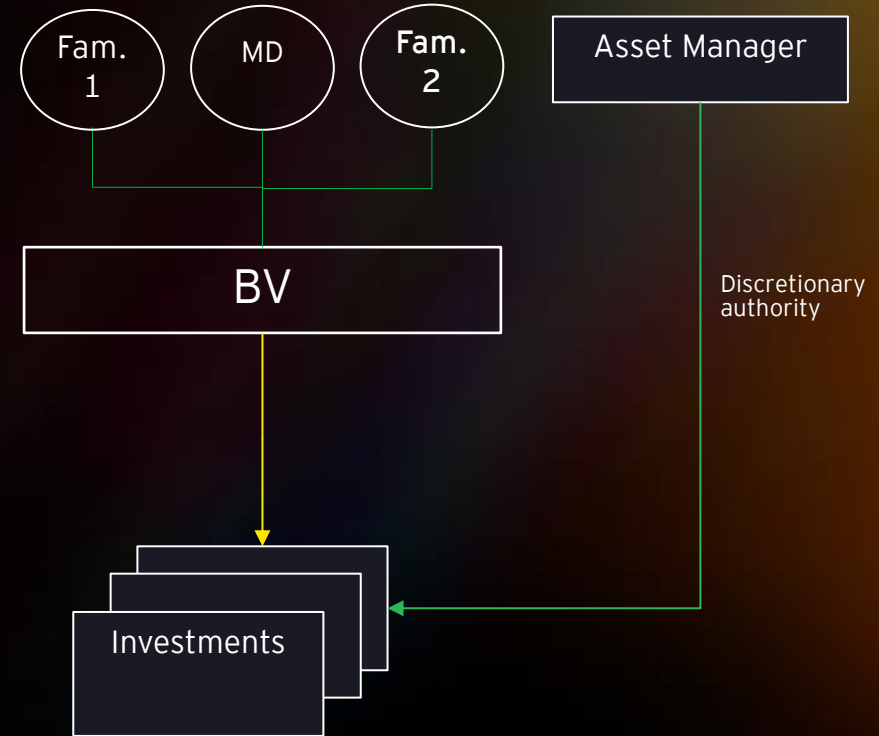


- ▶ Investments are being managed by an Asset Manager / FI
- ▶ 'Managed by' Investment Entity following section 1.31 of the FATCA-CRS Guidance
- ▶ BV and/or Managing Director is a customer of the Asset Manager / 'managing' Investment Entity

# Case 2: Family holdings with investments

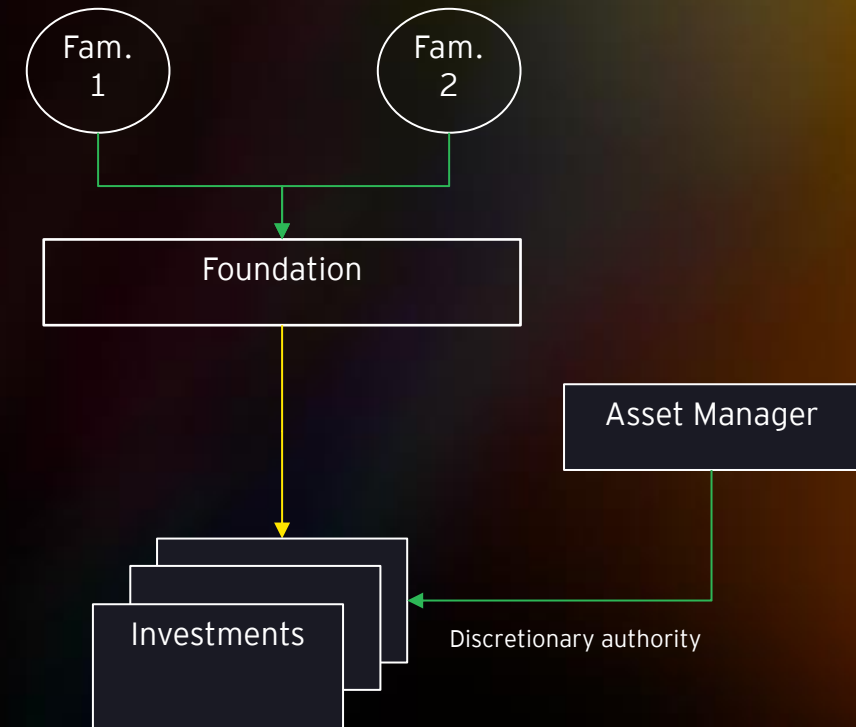
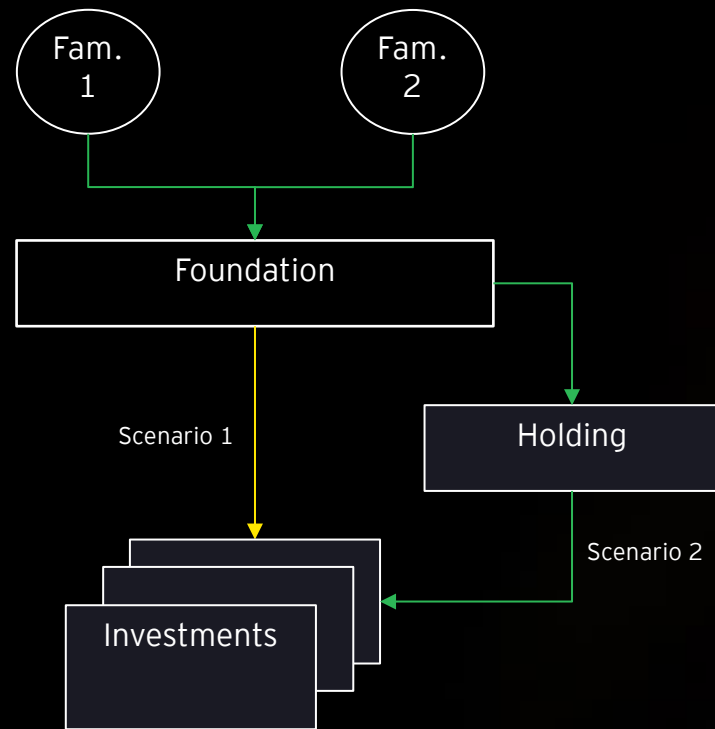


- ▶ BV manages investments
- ▶ Passive NFE following section 1.33 of previous the FATCA-CRS Guidance
- ▶ Managing Director and family members were not considered as customer of the BV
- ▶ New section 1.33: BV is a 'managing' Investment Entity



- ▶ Investments are being managed by an Asset Manager / FI
- ▶ Passive NFE following section 1.33. of the FATCA-CRS Guidance
- ▶ Irrespective of whether the Managing Director and family members are a customer of the Asset Manager/ 'Managing' Investment Entity
- ▶ New section 1.33: BV is a 'managed by' Investment Entity

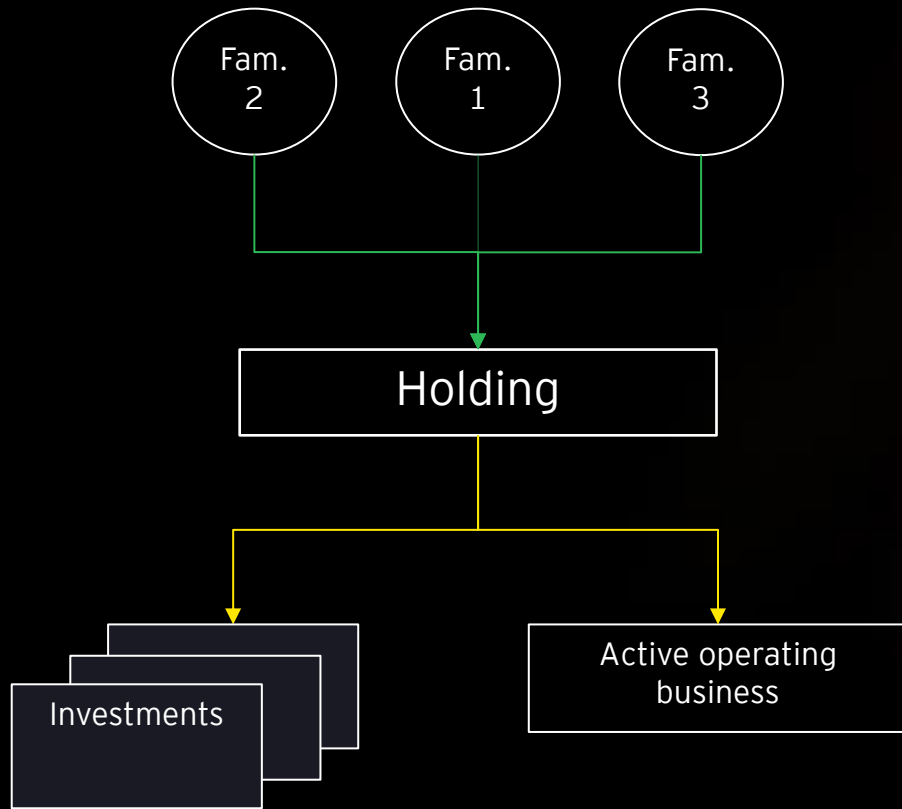
# Case 3: Foundation with investments - new section 1.33



- ▶ Scenario 1: If the foundation manages the investments  
Foundation = 'managing' Investment Entity
- ▶ Scenario 2: If the holding manages the investments:  
Foundation = Passive NFE, Holding = 'managing' Investment Entity

- ▶ Investments are being managed by the Asset Manager / FI  
Foundation = 'managed by' Investment Entity

# Case 4: Holding with investments and participation in an active operating business



- ▶ According to section 1.33 of previous the FATCA-CRS Guidance, the Holding would have been a Passive NFE
- ▶ Following the change in guidance notes, the Holding does not automatically qualify as an FI

The following criteria are important in determining, whether a holding entity qualifies as an FI:

- ▶ Activities ('managing' or 'managed by');
- ▶ Gross income test: 50% or more of the income is attributable to investment activities during the last three years or since incorporation.
- ▶ Exception: Active Holding NFE, if 80% or more of the entity's activities consist of holding outstanding stock of, or providing financing and services to subsidiaries that engage in trades or businesses other than the business of an FI.

# Takeaway

**Be mindful of and create awareness of family fund clients / account holders who could turn into RFIs**

# Undocumented accounts

# Undocumented accounts

## *In practice vs. CRS*

### In practice

The RFI may apply an internal definition to consider accounts as undocumented, such as:

- Accounts where AML/KYC information is missing
- Accounts where no valid self-certification has been obtained
- Accounts where a valid self-certification has been obtained, but followed by new indicia and no subsequent valid self-certification obtained
- Any other



### CRS

The RFI may only identify the following as undocumented:

- Preexisting Lower Value Accounts of individuals (e.g. with an aggregate balance or value as of 31 December 2016 that does not exceed USD 1 000 000)
- Preexisting Higher Value Accounts of individual (e.g. with an aggregate balance or value that exceeds USD 1 000 000 as of 31 December 2016 or any subsequent year)

# Undocumented accounts

## Requirements for an FI to treat an account as undocumented - Section III.B-C of the CRS

Due diligence requirements	Lower Value Accounts of Preexisting individuals	High Value Accounts of Preexisting individuals
	The FI may treat the account as undocumented, if:	
Procedure	The FI applied the <b>Electronic Record Search</b> instead of the Residence Address test.	The FI <b>must</b> apply the Electronic Record Search as part of its Enhanced Review Procedures for High Value Accounts.
Electronic Record Search	The FI has only discovered a “ <b>hold mail</b> ” instruction or “ <b>in-care-of</b> ” address <b>and no address and none of the following indicia are identified</b> for the Account Holder: <ul style="list-style-type: none"> <li>▪ identification of the Account Holder as a resident of a Reportable Jurisdiction;</li> <li>▪ current mailing or residence address (including a post office box) in a Reportable Jurisdiction;</li> <li>▪ one or more telephone numbers in a Reportable Jurisdiction and no telephone number in Curaçao;</li> <li>▪ standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;</li> <li>▪ currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction.</li> </ul>	
Paper Record Search	The FI has applied the Paper Record Search and discovered no self-certification or Documentary Evidence and fails to establish any other indicium as described above to establish the residence(s) for tax purposes of such Account Holder.	The FI has applied the Paper Record Search and discovered no self-certification or Documentary Evidence and fails to establish any other indicium as described above to establish the residence(s) for tax purposes of such Account Holder and <b>the Relationship Manager inquiry for Actual Knowledge provided no result either.</b>
Review of undocumented status	The FI is <b>not</b> required to re-apply the procedure set forth above to the same Lower Value Account in any subsequent year until there is a <b>change in circumstances</b> that results in one or more indicia being associated with the account, <b>or the account becomes a High Value Account.</b>	The FI should re-apply the above process <b>annually</b> until such account ceases to be undocumented.
Reporting	The FI must report the account as an undocumented account until such account ceases to be undocumented.	

# Undocumented accounts

## Exceptions

An RFI does not have to follow the due diligence requirements for undocumented accounts if:

- The RFI opted to apply the Residence Address Test for **Lower Value individual Account Holders**

*e.g.* treats the individual Account Holder as being a resident for tax purposes based on a current residence address in its records that is supported by Documentary Evidence

or

- The RFI chose to apply the due diligence procedures for New Accounts (e.g. opened on or later than 1 January 2017) to Preexisting Accounts

*e.g.* establishes the tax residence(s) of the preexisting Account Holder by obtaining a valid self-certification form

# Undocumented accounts

## Effective implementation

Paragraph 13-14 of the Commentary to Section IX of the CRS :

*“A jurisdiction must also have **procedures in place** to follow up with a Reporting Financial Institution when undocumented accounts are reported. An “undocumented account” generally arises when a Reporting Financial Institution is unable to obtain information from an Account Holder in respect of a Preexisting Account (see paragraphs 28-29, 45 and 48 of the Commentary on Section III). This could either be the result of **inadequate procedures being implemented** by a Reporting Financial Institution to obtain the necessary information or the Account Holder is **non-compliant**. Either case is a cause for concern.*

*It is expected that a jurisdiction would **follow up** with any Reporting Financial Institution that reports an undocumented account. In the case of a small number of undocumented accounts, a simple inquiry to the Reporting Financial Institution may be sufficient. However, if such a Reporting Financial Institution reports a larger than average number of undocumented accounts in any one year or the number of undocumented accounts reported continues to increase, a **full audit** of the Reporting Financial Institution’s due diligence procedures may be appropriate. In such a case, where possible and where feasible, it may be appropriate for the jurisdiction to advise the AML authorities in accordance with domestic law.”*

- RFI's are expected to have effective governance in place through policies and procedures to identify, monitor, and report undocumented accounts, ensuring compliance and enabling effective supervision by authorities.

# Takeaway

**Only apply CRS definition of 'undocumented' accounts to ensure correct reporting**

## Chapter 4

# Controlling Persons of Partnerships

# Controlling Persons of Partnerships

- RFIs should apply the due diligence procedures set out in the CRS

*Article 2a (3) Landsbesluit internationale bijstand bij de heffing van belastingen*

- “CRS” is including the OECD Commentary

*Article 1 (c) Landsbesluit internationale bijstand bij de heffing van belastingen*

# Controlling Persons of Partnerships

CRS Commentary = FATF 2012 Recommendations 10 and 25, incl. interpretative notes

## Legal person

- Natural person who exercises control through ownership with a controlling ownership interest (such as 25%)
- If not or when in doubt, natural person exercising control through other means
- If not, then senior managing official

## Legal arrangement - Trust

- the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control

No threshold

## Legal arrangement other than a trust

- Natural persons in equivalent or similar positions (as to a trust)

No threshold

## CRS Due diligence

Para. 137 CRS Commentary

Preexisting Account identification may be based on local AML/KYC

New Account identification based on local AML *only if* FATF 2012 consistent

# Controlling Persons of Partnerships

## Curaçao AML is currently not consistent with FATF 2012

Art. 1(1)(j) (3) *Landsverordening identificatie bij dienstverlening* (P.B. 2024-41):

1. Natural persons
  - who have direct or indirect rights to a share of 25% or more in the profits of the partnership;
  - who can exercise voting rights of 25% or more directly or indirectly in decision-making regarding amendments to the agreement underlying the partnership, or regarding the execution of that agreement other than through acts of management, provided that majority voting is prescribed in that agreement;
  - who have direct or indirect rights to a share of 25% or more in the community upon the dissolution of the partnership; *and*
  - who can exercise ultimate control over the partnership; or
2. Natural persons who belong to the senior management that can make binding decisions for the partnership
  - if based on the above no persons referred can be identified, or if there is any doubt as to whether a person referred to is the ultimate owner or has ultimate control, and
  - there is no person on whose behalf a transaction is conducted,
3. Natural persons who are members of the board or executive committee, if there is no senior management that can make binding decisions

For Preexisting Accounts: RFI's may identify CPs based on Curaçao AML/KYC

For New Accounts: RFI's cannot identify CPs based on Curaçao AML/KYC but should follow CRS

# Controlling Persons of Partnerships

Art. 23(1) *Landsverordening internationale bijstandverlening bij de heffing van belastingen* (compliance enforcement)

refers to Art. 45 *Algemene landsverordening Landsbelastingen* (ALL) on UBO definitions:

Para. 6: General

Para. 7: Entities with share capital

Para. 8: Partnerships - **no thresholds**

Para. 9: Associations

Para. 10: Foundations - **no thresholds**

Para. 11: Trusts - **no thresholds**

## Art. 45(8) ALL - Beneficial Owners of Partnerships (*vennootschap - Titel 13 Boek 7*)

### 1. Natural persons

- who have direct or indirect rights to a share in the profits of the partnership;
- who can exercise voting rights directly or indirectly in decision-making regarding amendments to the agreement underlying the partnership, or regarding the execution of that agreement other than through acts of management, provided that majority voting is prescribed in that agreement;
- who have direct or indirect rights to a share in the community upon the dissolution of the partnership; *and*
- who can exercise ultimate control over the partnership; or

### 2. Natural persons who belong to the senior management that can make binding decisions for the partnership

- if based on the above no persons referred can be identified, *or*
- if there is any doubt as to whether a person referred to is the ultimate owner or has ultimate control, and there is no person on whose behalf a transaction is conducted,

### 3. Natural persons who are members of the board or executive committee, if there is no senior management that can make binding decisions

# Takeaway

**Identify Controlling Persons  
of Partnerships for New  
Accounts without the 25%  
threshold**

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