

FINANCIAL INTELLIGENCE CENTRE AMENDMENT BILL, 2015

OECD Common Reporting Standard

Standing Committee on Finance
2 February 2016

The OECD Common Reporting Standard

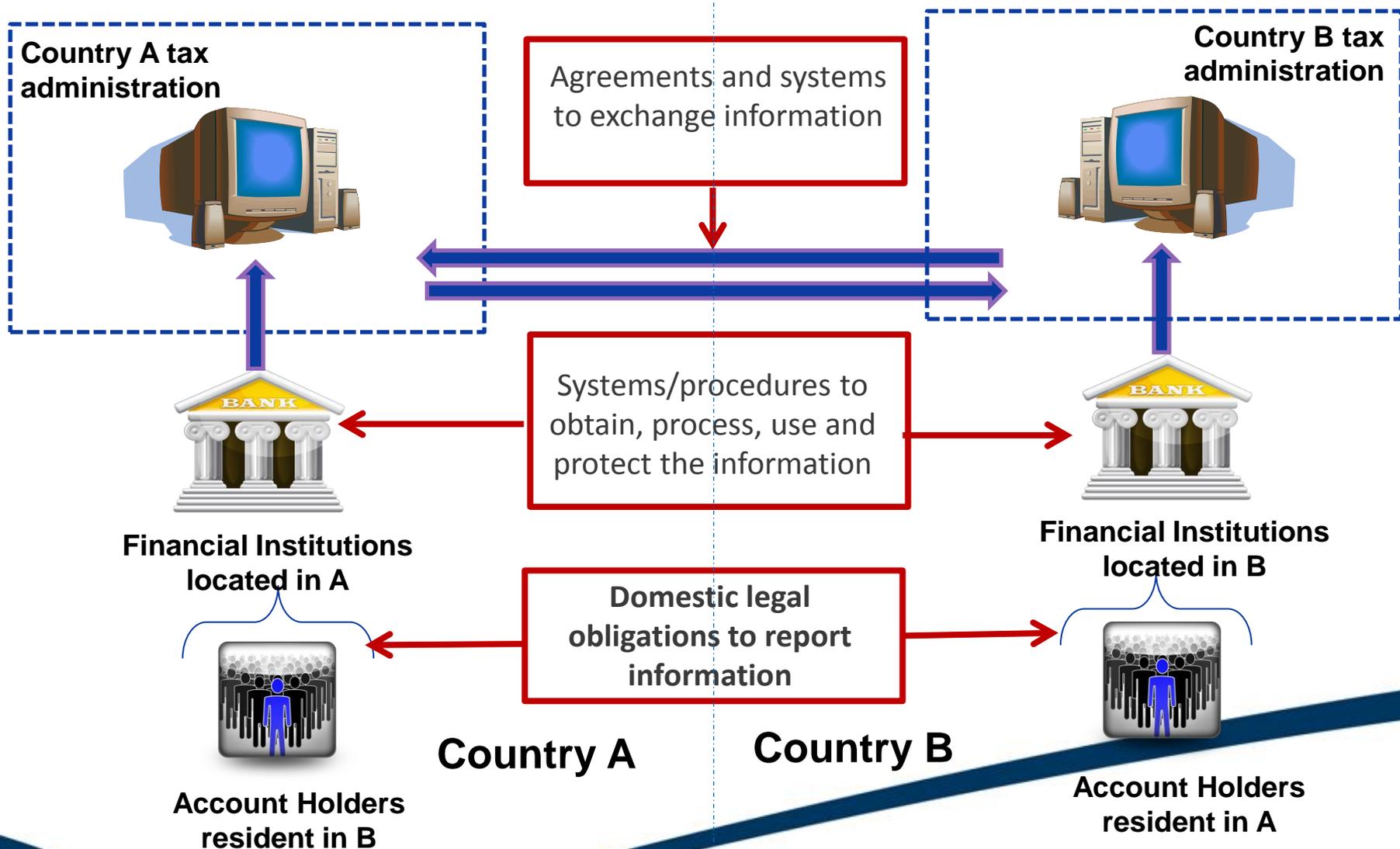
- Greater transparency and automatic exchange of information (AEOI) between tax administrations is an important step in **countering cross border tax evasion** and **aggressive tax avoidance**
- New international standard for exchange of information for tax purposes is AEOI and amendments to Tax Administration Act were effected in 2014 to improve the framework for AEOI
- South Africa is an **early adopter** of the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, which includes the Common Reporting Standard (CRS), so reporting on tax years from **1 March 2016** will begin in 2017
- Further amendments were effected to Tax Administration Act in 2015 to enable collection & reporting of information to SARS under the CRS, by introduction of a definition of “**international tax standard**” which provides for the issue of **regulations** by the Minister to implement the CRS in South Africa

Problem statement

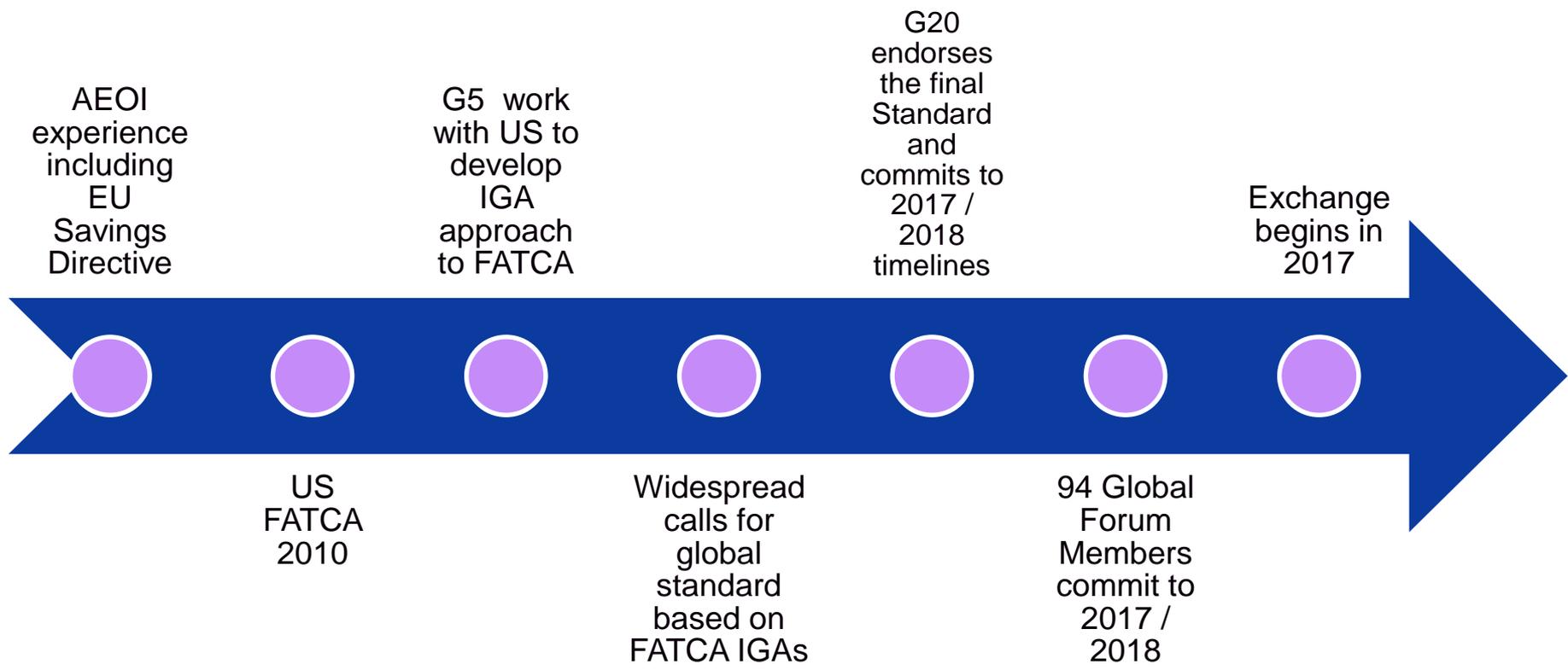
- **Identification of controlling person/s of entity account holders is a key aspect of the CRS**
- From 1 March 2016 Financial Institutions will be required to identify the “**controlling person**” of certain entities for reporting under the CRS
- SARS has highlighted the requirement in its engagements with Financial Institutions on the CRS over the past year
- In terms of the CRS Financial Institutions may rely on information collected through Anti-Money Laundering/Know Your Client (AML/KYC) procedures to meet the requirement
- Although the Amendment Bill will require Financial Institutions to enquire into beneficial ownership, the current procedures under the Financial Intelligence Centre Act do not
- This is a gap that must be addressed as soon as possible to ensure South Africa meets its international commitments

What is the CRS?

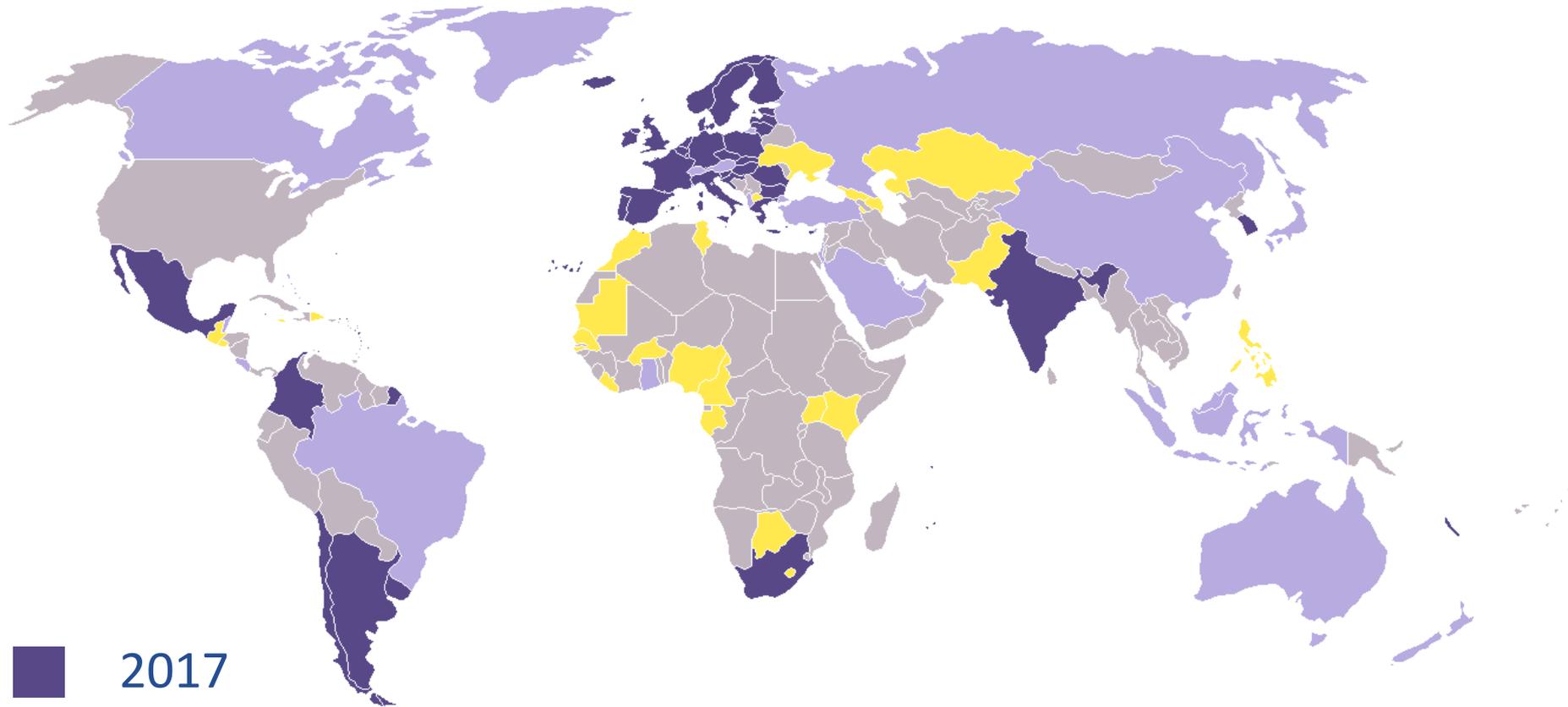
CRS: The basic framework



How did we get to the CRS?



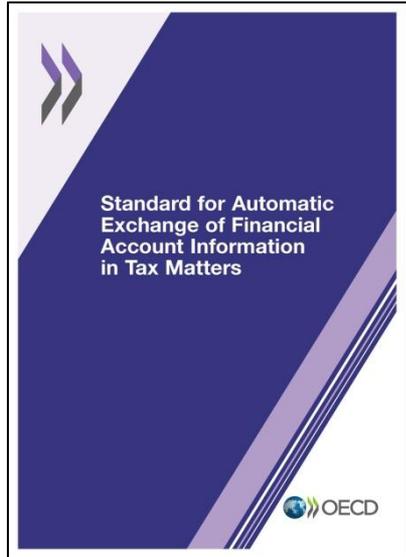
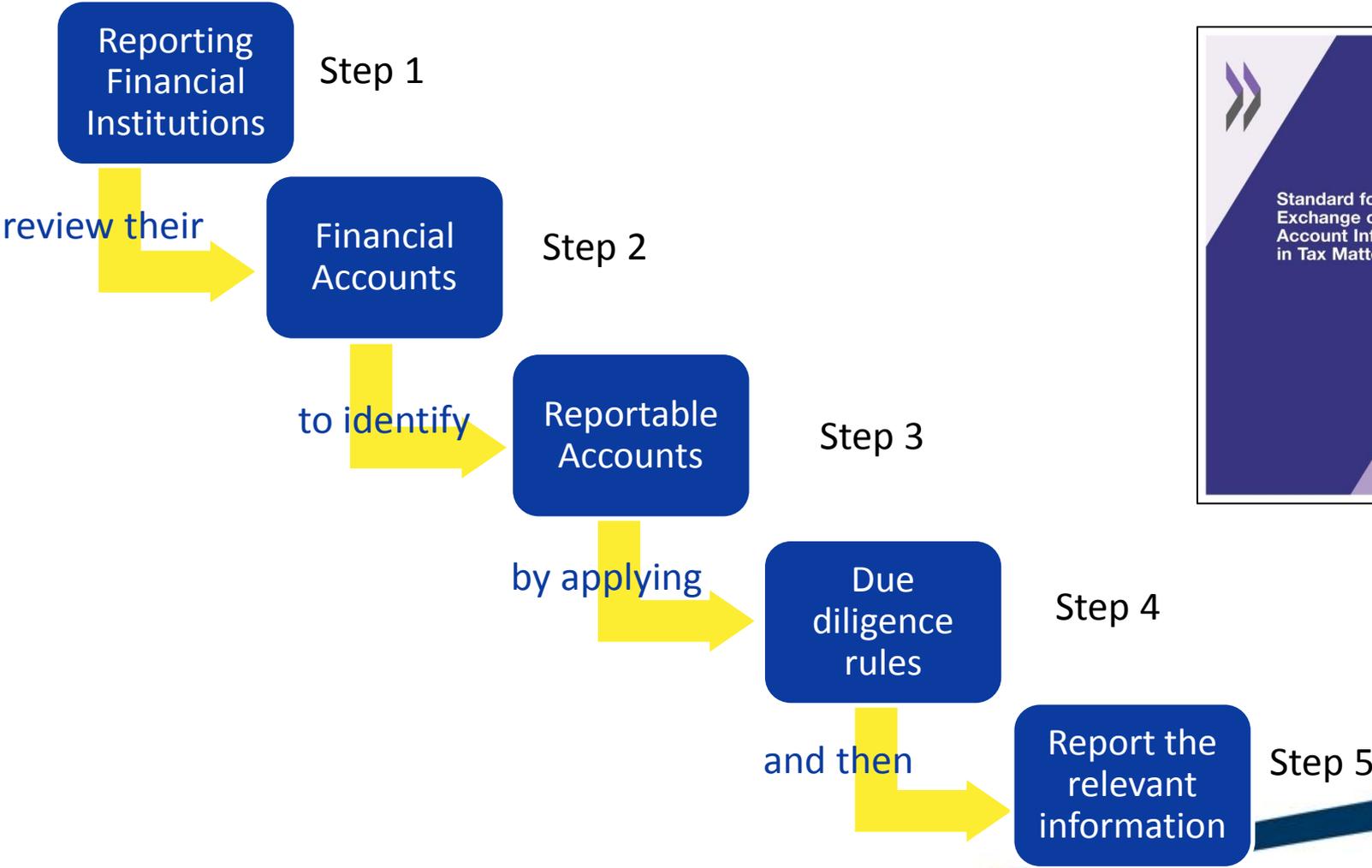
Jurisdictions committed to CRS



- 2017
- 2018
- Technical assistance offered

How are reportable accounts identified?

An overview of the CRS : 5 steps



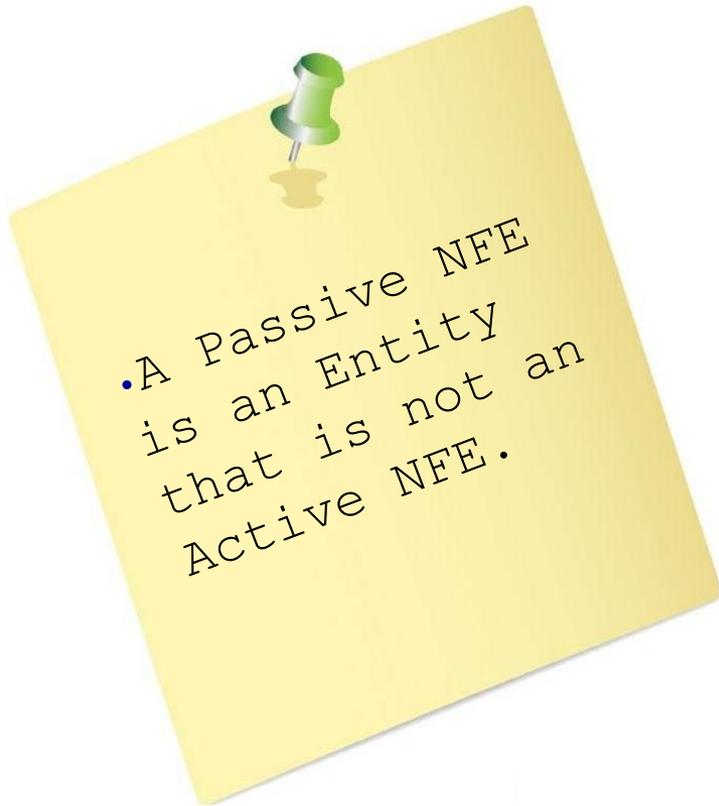
Reportable Accounts

An account held by ...

One or more Reportable
Persons

A Passive Non-Financial
Entity with one or more
Controlling Persons that
is a Reportable Person

Passive Non-Financial Entities



A Passive Non Financial Entity

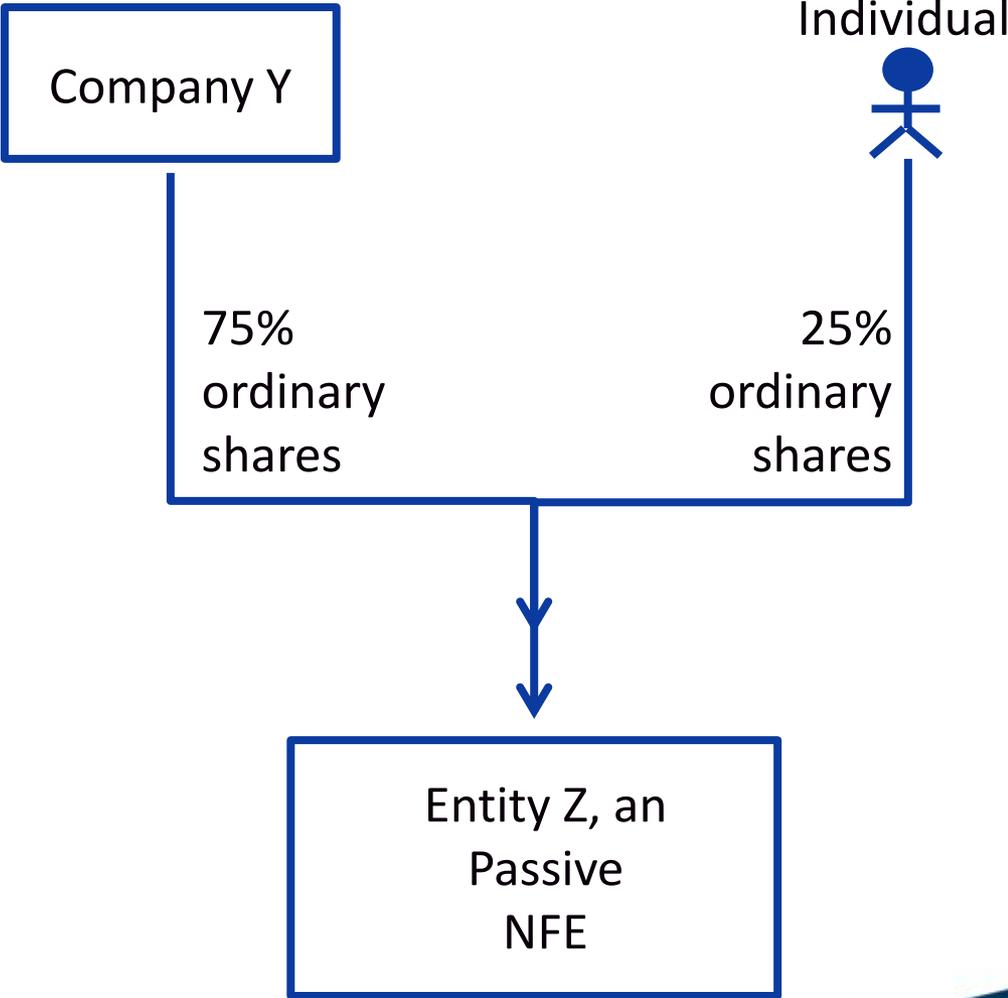
- Includes: Entities with $\geq 50\%$ of income which is passive income or $\geq 50\%$ of assets produce passive income (dividends, interest, rents, etc.)
- Includes: Certain Investment Entities located in non-Participating Jurisdictions
- Excludes: Publically traded Entities (and Entities related to them), Government Entities, holding NFEs of non-financial groups

“Look-through” to Controlling Persons



- **Corresponds to “beneficial owner” in the Financial Action Task Force Recommendations**
- “Look through” the entity to identify the natural person(s) who exercises control over the entity (generally controlling ownership interest in the entity - often interpreted $\geq 25\%$ ownership).
- For trusts (and equivalents), the settlor(s), trustee(s), protector(s), beneficiary(ies), and any other natural person(s) exercising effective control over the trust.

Controlling persons: Example



Q: Who does the CRS tell you to identify as the Controlling Persons of Entity Z?

A: The natural persons that indirectly control Entity Z through Company Y and the individual

CRS Definitions

The term “**AML/KYC Procedures**” means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject.

The term “**Controlling Persons**” means the natural persons who exercise control over an Entity The term “Controlling Persons” must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

Passive NFE: Due Diligence Obligation

Determine Whether Entity = Passive NFE with one/more Controlling Persons Who Are Reportable Persons.

1. The Reporting Financial Institution must determine whether the Account Holder = Passive NFE with one/ more Controlling Persons
2. If Controlling Persons = Reportable Persons, then the account = Reportable Account
3. Determining the Controlling Persons of an Account Holder
 - a) For purposes of determining the Controlling Persons, a Reporting Financial Institution **may rely** on information collected and maintained pursuant to AML/KYC Procedures
 - b) Current FICA AML/KYC requirements do not identify controlling person or beneficial owner
 - c) **Only FICA once amended will do so**

Risk to South Africa

- South Africa is an **early adopter** jurisdiction for the CRS, which the then Minister of Finance committed to in Berlin in 2014
- SARS has put in a lot of work towards AEOI and the CRS through the **Global Forum** and its structures, **consulting with industry** and getting SARS ready from a **legislative, operational** and **IT perspective**
- South Africa has been seen as one of the **leading countries** in this regard so far
- Failure to implement the CRS fully will mean that South Africa will not meet its **international commitments** and may be **downgraded** from its current Global Forum **peer review rating** of “Compliant”

Thank you