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# **Explanatory Notes Relating to the Income Tax Act and Income Tax Regulations**

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## **Preface**

These explanatory notes describe proposed amendments to the *Income Tax Act* and *Income Tax Regulations*. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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## Legislative Proposals Relating to the Implementation of the OECD's Common Reporting Standard

### Amendments to the Income Tax Act

#### Penalty

In addition to the amendments described below, it is proposed that the *Income Tax Act* (the Act) be amended to introduce a \$500 penalty where a reportable person fails to provide their TIN on request to a reporting financial institution that is required under new Part XIX to make an information return requiring the TIN.

#### Clause 1

##### Automatic Exchange of Financial Account Information in Tax Matters

The following new Part implements the reporting and due diligence standards of the Common Reporting Standard (CRS) developed by the Organisation for Economic Co-operation and Development that underpins the automatic exchange of financial account information. Implementation of the CRS entails the introduction of rules that require financial institutions to report certain information to the Canada Revenue Agency and to follow due diligence procedures as set out in this Part.

New Part XIX of the Act comes into force on July 1, 2017.

#### Definitions

ITA  
270

Section 270 defines certain terms for purposes of Part XIX of the Act, and sets out certain rules relating to the interpretation and application of the provisions in this Part.

ITA  
270(1)

Subsection 270(1) sets out a number of definitions for the purposes of this Part.

#### “account holder”

An “account holder” means

- the person listed or identified as the holder of a financial account by the financial institution that maintains the account other than a person (other than a financial institution) holding a financial account for the benefit of, or on behalf of, another person as agent, custodian, nominee, signatory, investment advisor or intermediary; and

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- in the case of a cash value insurance contract or an annuity contract,
    - any person entitled to access the cash value or change the beneficiary, and
    - if no person can access the cash value or change the beneficiary,
      - any person named as the owner in the contract,
      - any person with a vested entitlement to payment under the terms of the contract, and
    - upon maturity of the cash value insurance contract or annuity contract, each person entitled to receive a payment under the contract.

### **“active NFE”**

An “active NFE” is a non-financial entity that meets any of the following criteria at any time:

- less than 50% of the its gross income for the preceding fiscal period is passive income and less than 50% of the assets that it held during the preceding fiscal period are assets that produce or are held for the production of passive income;
- either interests in the NFE are regularly traded on an established securities market or the NFE is a related entity of such an entity;
- the NFE is
  - a governmental entity,
  - an international organization,
  - a central bank, or
  - an entity wholly owned by a governmental entity, international organization or central bank;
- both
  - all or substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more of its subsidiaries that engage in trades or businesses other than the business of a financial institution, and
  - the NFE does not function as (and is not represented or promoted to the public as) an investment fund, including
    - a private equity fund,
    - a venture capital fund,
    - a leveraged buyout fund, and
    - an investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- the NFE
  - is not yet operating a business,
  - has no prior operating history,
  - is investing capital into assets with the intent to operate a business other than that of a financial institution, and
  - was initially organized no more than 24 months prior to that time;

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- the NFE has not been a financial institution in any of the past five years and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a financial institution;
  - the NFE primarily engages in financing and hedging transactions with, or for, related entities that are not financial institutions, and does not provide financing or hedging services to any entity that is not a related entity, provided that the group of those related entities is primarily engaged in a business other than that of a financial institution; and
  - the NFE meets all of the following requirements:
    - it
      - is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic or educational purposes, or
      - is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labour organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare,
    - it is exempt from income tax in its jurisdiction of residence,
    - it has no shareholders or members who have a proprietary or beneficial interest in its income or assets,
    - the applicable laws of the NFE’s jurisdiction of residence or the NFE’s formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the NFE’s charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
    - the applicable laws of the NFE’s jurisdiction of residence or the NFE’s formation documents require that, upon the NFE’s liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFE’s jurisdiction of residence or any political subdivision thereof.

### **“anti-money laundering and know your customer procedures” or “AML/KYC procedures”**

The terms “Anti-money laundering and know your customer procedures” and “AML/KYC procedures” refer to the record keeping and verification of identity procedures that are required of a reporting financial institution under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. These procedures include identifying and verifying the identity of the customer (including the beneficial owners of the customer), understanding the nature and purpose of the account and on-going monitoring.

### **“broad participation retirement fund”**

A “broad participation retirement fund” is a fund that is established to provide retirement, disability or death benefits to beneficiaries that are current or former employees (or persons

designated by those employees) of one or more employers in consideration for services rendered, provided that the fund

- does not have a single beneficiary with a right to more than 5% of the fund’s assets;
- is subject to government regulation and provides information reporting to the Minister of National Revenue; and
- satisfies at least one of the following requirements:
  - the fund is generally exempt from tax on investment income, or taxation of investment income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan,
  - the fund receives at least 50% of its total contributions (other than transfers of assets from broad participation retirement funds, narrow participation retirement funds or from retirement and pension accounts described in paragraph (a) of the definition “excluded account”) from the sponsoring employers,
  - distributions or withdrawals from the fund are
    - allowed only upon the occurrence of specified events related to retirement, disability or death (except rollover distributions to broad participation retirement funds, narrow participation retirement funds and pension funds of a governmental entity, international organization or central bank or retirement and pension accounts described in paragraph (a) of the definition “excluded account”), or
    - subject to penalties if they are made before such specified events, and
  - contributions (other than permitted make-up contributions) by an employee to the fund
    - are limited by reference to the employee’s remuneration, or
    - may not exceed 50,000 USD annually, applying the rules set forth in subsection 277(3).

### **“Canadian financial institution”**

A “Canadian financial institution” is a financial institution that is

- either
  - resident in Canada, but excluding any branch of the financial institution that is located outside Canada, or
  - a branch of a financial institution that is not resident in Canada, if the branch is located in Canada; and
- a listed financial institution as defined in subsection 263(1) of the Act.

The requirement that a financial institution be a listed financial institution, as defined for the purposes of Part XVIII, is intended to restrict the types of financial institutions that are subject to the reporting and due diligence rules under this Part.

### **“cash value”**

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The “cash value” of a contract held by a policyholder is the greater of the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan) and the amount the policyholder can borrow under or with regard to (for example, by pledging as collateral) the contract, but does not include an amount payable under an insurance contract

- solely by reason of the death of an individual insured under a life insurance contract;
- as a personal injury or sickness benefit or other benefit that provides indemnification of an economic loss incurred upon the occurrence of an event insured against;
- as a refund of a previously paid premium (less any cost of insurance charges whether or not actually imposed) under an insurance contract (other than an investment-linked life insurance or annuity contract) due to the cancellation or termination of the contract, a decrease in risk exposure during the effective period of the contract or arising from the correction of a posting or similar error with regard to the premium for the contract;
- as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are personal injury or sickness benefits or other benefits that provide indemnification of an economic loss incurred upon the occurrence of an event insured against,
  - and for this purpose, the reference to “other benefits” does not include any benefit payable under an investment-linked insurance contract, which is an insurance contract under which benefits, premiums or the period of coverage are adjusted to reflect the investment return or market value of assets associated with the contract; or
- as a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually, if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

### **“cash value insurance contract”**

A “cash value insurance contract” is an insurance contract (other than an indemnity reinsurance contract between two insurance companies) that has a cash value.

### **“central bank”**

A “central bank” is an institution that is, by law or government sanction, the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution is generally the custodian of the banking reserves of the jurisdiction under whose law it is organized. This term may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.

### **“controlling persons”**

The “controlling persons” in respect of an entity are the natural persons (i.e., individuals other than trusts) who exercise control over the entity, and includes



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- in the case of a trust,
    - its settlors,
    - its trustees,
    - its protectors (if any),
    - its beneficiaries (for this purpose, a discretionary beneficiary of a trust will only be considered a beneficiary of the trust in a calendar year if a distribution has been paid or made payable to the discretionary beneficiary in the calendar year), and
    - any other natural persons exercising ultimate effective control over the trust; and
  - in the case of a legal arrangement other than a trust, persons in equivalent or similar positions to those described above.

This definition is intended to correspond to the term “beneficial owner” as described in “Recommendation 10” and the “Interpretative Note on Recommendation 10” of the Financial Action Task Force Recommendations (as adopted in February 2012 - *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*, The FATF Recommendations, FATF/OECD, Paris), and is to be interpreted in a manner consistent with such Recommendations, with the aim of protecting the international financial system from misuse, including with respect to tax crimes.

#### **“custodial account”**

A “custodial account” is an account (other than an insurance contract or annuity contract) that holds one or more financial assets for the benefit of another person.

#### **“custodial institution”**

A “custodial institution” is an entity, if the entity’s gross income attributable to the holding of financial assets for the account of others and related financial services equals or exceeds 20% of the entity’s gross income during the shorter of

- the three-year period that ends at the end of the entity’s last fiscal period; and
- the period during which the entity has been in existence.

#### **“depository account”**

A “depository account” includes

- any commercial, chequing, savings, time or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness or other similar instrument maintained by a financial institution in the ordinary course of a banking or similar business; and
- an amount held by an insurance company under a guaranteed investment contract or similar agreement to pay or credit interest on the contract.

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An account that is evidenced by a passbook would generally be considered a depository account. Negotiable debt instruments that are traded on a regulated market or over-the counter market and distributed and held through financial institutions are financial assets that would not generally be considered depository accounts.

### **“depository institution”**

A “depository institution” is any entity that accepts deposits in the ordinary course of a banking or similar business.

### **“documentary evidence”**

“Documentary evidence” includes

- a certificate of residence issued by an authorized government body (such as a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident;
- with respect to an individual (other than a trust), any valid identification issued by an authorized government body that includes the individual’s name and is typically used for identification purposes;
- with respect to an entity, any official documentation issued by an authorized government body that includes the name of the entity and either the address of its principal office in the jurisdiction in which it claims to be resident or the jurisdiction in which the entity was incorporated or organized; and
- any audited financial statement, third-party credit report, bankruptcy filing or securities regulator’s report.

### **“dormant account”**

A “dormant account” is an account (other than an annuity contract) that meets all of the following conditions:

- the balance or value of the account does not exceed 1,000 USD;
- the account holder has not initiated a transaction with regard to the account, or any other account held by the account holder with the reporting financial institution, in the previous three years;
- the account holder has not communicated with the reporting financial institution regarding the account, or any other account held by the account holder with the reporting financial institution, in the previous six years;
- the account is treated as a dormant account under the reporting financial institution’s normal operating procedures; and
- in the case of a cash value insurance contract, the reporting financial institution has not communicated with the account holder regarding the account, or any other account held by the account holder with the reporting financial institution, in the previous six years.

### **“entity”**

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An “entity” is a person (other than a natural person) or arrangement, including a corporation, a partnership, a trust, an association, a fund, a joint venture, an organization, a syndicate and a foundation.

The definition of entity is meant to be broad in scope and includes, for instance, a unit, business or office of a financial institution that is treated as a branch under the regulatory regime of a jurisdiction, or that is otherwise regulated under the laws of a jurisdiction as separate from other offices, units or branches of the financial institution. For this purpose, all units, businesses or offices of a reporting financial institution in a single jurisdiction are to be treated as a single branch.

### **“equity or debt interest”**

An “equity or debt interest” includes, in the case of a partnership that is a financial institution, either a capital or profits interest in the partnership. In the case of a trust that is a financial institution, an equity interest is deemed to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust, and a reportable person will be treated as being a beneficiary of a trust if the reportable person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution from the trust or may receive, directly or indirectly, a discretionary distribution from the trust.

### **“established securities market”**

An “established securities market” is a stock exchange that

- is officially recognized and supervised by a governmental authority in which the market is located; and
- has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding one billion USD during each of the three calendar years immediately preceding the calendar year in which the determination is being made. For this purpose, if a stock exchange has more than one tier of market level on which stock may be separately listed or traded, each of those tiers must be treated as a separate stock exchange.

### **“excluded account”**

An “excluded account” is

- a **retirement or pension account** that satisfies the following requirements:
  - the account is
    - subject to regulation as a personal retirement account, or
    - part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits),
  - the account is tax-favoured in that

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- contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or
    - taxation of investment income within the account is deferred or investment income within the account is taxed at a reduced rate,
  - information reporting to the Minister of National Revenue is required with respect to the account,
  - withdrawals are
    - conditioned on reaching a specified retirement age, disability or death, or
    - subject to penalties if made before retirement age, disability or death, and
  - after applying the aggregation rules in subsection 277(3) to all similar accounts, annual contributions to the account are limited to 50,000 USD or less or there is a maximum lifetime contribution limit to the account of 1,000,000 USD or less (and an account that otherwise satisfies this requirement will not fail to satisfy this requirement solely because the account may receive assets or funds transferred from one or more accounts that meet the requirements of a retirement or pension account described above, or a non-retirement tax-favoured account described immediately below or from one or more broad participation retirement funds, narrow participation retirement funds or pension funds of a governmental entity, international organization or central bank);
  - a **non-retirement tax favoured account** that satisfies the following requirements:
    - the account is
      - subject to regulation as an investment vehicle for purposes other than for retirement and regularly traded on an established securities market, or
      - subject to regulation as a savings vehicle for purposes other than for retirement,
    - the account is tax-favoured in that
      - contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or
      - taxation of investment income within the account is deferred or investment income within the account is taxed at a reduced rate,
    - withdrawals are
      - conditioned on meeting specific criteria related to the purpose of the investment or savings account (including the provision of educational or medical benefits), or
      - subject to penalties if made before the specific criteria related to the purpose of the investment or savings account are met (including the provision of educational or medical benefits), and
    - annual contributions are, after applying the rules in subsection 277(3) to all similar accounts, limited to 50,000 USD or less (and an account that otherwise satisfies this requirement will not fail to satisfy this requirement solely because the account may receive assets or funds transferred from one or more accounts that meet the requirements of a retirement or pension account, or a non-retirement tax-favoured account described above, or from one or more broad participation

retirement funds, narrow participation retirement funds or pension funds of a governmental entity, international organization or central bank);

- a **term life insurance contract** with a coverage period that ends before the insured individual attains age 90, provided that the contract satisfies the following requirements:
  - periodic premiums, which do not decrease over time, are payable at least annually until the earlier of
    - the end of the period in which the contract is in existence, and
    - the date that the insured attains age 90,
  - the contract has no contract value that any person can access (by withdrawal, loan or otherwise) without terminating the contract,
  - the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the amount determined by the formula

$$A - (B + C)$$

where

- A is the aggregate premiums paid for the contract,
- B is the total of all mortality, morbidity and expense charges (whether or not actually imposed) for the period or periods of the contract's existence, and
- C is the total of all amounts paid prior to the cancellation or termination of the contract, and

- the contract has not been acquired by a transferee for value;
- an **estate account** held solely by an estate of a deceased individual, if the documentation for the account includes a copy of the will or death certificate of the individual;
- an **escrow account** established in connection with any of the following:
  - a court order or judgement,
  - a sale, exchange or lease of property, provided that the account satisfies the following requirements:
    - the account is funded
      - solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction or a similar payment, or
      - with a financial asset that is deposited in the account in connection with the sale, exchange or lease of the property,
    - the account is established and used solely to secure the obligation of
      - the purchaser to pay the purchase price for the property,
      - the seller to pay any contingent liability, or
      - the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease,
    - the assets of the account, including the income earned on the account, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor or lessee (including to satisfy such person's obligation) when the property is sold, exchanged or surrendered or the lease terminates,

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- the account is not a margin or similar account established in connection with a sale or exchange of a financial asset, and
      - the account is not associated with a depository account due to not-returned overpayments described below,
    - an obligation of a financial institution servicing a loan secured by real or immovable property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the property at a later time, or
    - an obligation of a financial institution solely to facilitate the payment of taxes at a later time;
  - a **depository account due to not-returned overpayments** that satisfies the following requirements:
    - the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer, and
    - after June 2017, policies and procedures are in effect relating to overpayments (for this purpose, a customer overpayment does not include credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns) to either
      - prevent a customer from making an overpayment in excess of 50,000 USD, or
      - ensure that any customer overpayment in excess of 50,000 USD is refunded to the customer within 60 days; and
  - the following accounts that are prescribed in section 9006 of the *Income Tax Regulations* to be excluded accounts:
    - a registered retirement savings plan;
    - a registered retirement income fund;
    - a pooled registered pension plans;
    - a registered pension plan;
    - a registered disability savings plan;
    - a registered education savings plan;
    - a deferred profit sharing plan;
    - a net income stabilization account, including a NISA Fund No. 2;
    - an eligible funeral arrangement; and
    - a dormant account.

### **“exempt collective investment vehicle”**

An “exempt collective investment vehicle” is an investment entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or entities (other than a passive NFE with a controlling person who is a reportable person) that are not reportable persons.

The term collective investment vehicle is used to describe funds that are widely-held, hold a diversified portfolio of securities and are subject to investor-protection regulation in the country in which they are established. The term would include “master” and “feeder” funds that are part

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of “funds of funds” structures where the master fund holds a diversified portfolio of investments. However, for example, private equity funds and hedge funds would generally not fall within the definition of collective investment vehicle.

### **“financial account”**

A “financial account” is an account (other than an excluded account) maintained by a financial institution, and includes

- a depository account,
- a custodial account,
- in the case of a financial institution that is an investment entity, any equity or debt interest in the financial institution, except that it does not include any equity or debt interest in an entity that is an investment entity solely because it (for the purpose of investing, managing, or administering financial assets deposited in the name of the customer with a financial institution other than such entity)
  - renders investment advice to, and acts on behalf of, a customer, or
  - manages portfolios for, and acts on behalf of, a customer,
- equity or debt interests in a custodial institution, depository institution, investment entity (other than an investment advisor or an investment manager), or specified insurance company, that were established with a purpose of avoiding reporting,
- any cash value insurance contract and any annuity contract issued or maintained by a financial institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is an excluded account, and
- an account that is a client name account maintained by a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments, or to provide portfolio management or investment advising services.

### **“financial asset”**

The definition “financial asset” is intended to encompass any assets that may be held in an account maintained by a financial institution, and includes

- a security, such as
  - a share of the capital stock of a corporation,
  - an income or capital interest in a widely held or publicly traded trust, or
  - a note, bond, debenture or other evidence of indebtedness,
- a partnership interest,
- a commodity,
- a swap (such as interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps and similar agreements),
- an insurance contract or annuity contract, and

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- any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, insurance contract or annuity contract.

A financial asset, however, does not include a non-debt, direct interest in real or immovable property.

Negotiable debt instruments that are traded on a regulated market (or on an over-the-counter market and distributed and held through financial institutions) and shares or units in a real estate investment trust, would generally be considered financial assets.

### **“financial institution”**

A “financial institution” is a custodial institution, a depository institution, an investment entity or a specified insurance company. Each of these is defined in this subsection.

### **“governmental entity”**

A “governmental entity” is the government of a jurisdiction, any political subdivision of a jurisdiction (which, for greater certainty, includes a state, province, county or municipality), a public body performing a function of government in a jurisdiction (i.e. an aboriginal government) or any agency or instrumentality of a jurisdiction wholly owned by one or more of the foregoing, unless it is not an integral part or a controlled entity of a jurisdiction (or a political subdivision of a jurisdiction) and for these purposes

- an integral part of a jurisdiction means any person, organization, agency, bureau, fund, instrumentality or other body, however designated, that constitutes a governing authority of a jurisdiction, and where the net earnings of the governing authority are credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person, except that an integral part does not include any individual who is a sovereign, official or administrator acting in a private or personal capacity; and
- a controlled entity means an entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that
  - the entity is wholly owned and controlled by one or more governmental entities directly or indirectly through one or more controlled entities,
  - the entity’s net earnings are credited to its own account or to the accounts of one or more governmental entities, with no portion of its income inuring to the benefit of any private person, and
  - the entity’s assets vest in one or more governmental entities upon liquidation and dissolution.

For the purposes of this definition, income is not considered to inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of government.



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However, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business that provides financial services to private persons.

**“group annuity contract”**

A “group annuity contract” is an annuity contract under which the obligees are individuals who are associated through an employer, trade association, labour union or other association or group.

**“group cash value insurance contract”**

A “group cash value insurance contract” is a cash value insurance contract that

- provides coverage on individuals who are associated through an employer, trade association, labour union or other association or group; and
- charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender and smoking habits of the member (or class of members) of the group.

**“high value account”**

A “high value account” is a preexisting individual account with an aggregate balance or value that exceeds 1 million USD on June 30, 2017 or on December 31 of any subsequent year.

Once an account becomes a high value account, it maintains such status until the date of its closure and, therefore, can no longer be considered a lower value account.

**“insurance contract”**

An “insurance contract” is a contract (other than an annuity contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability or property risk.

**“international organization”**

An “international organization” is any intergovernmental organization (or wholly-owned agency or instrumentality thereof), including a supranational organization,

- that is comprised primarily of governments;
- that has in effect a headquarters or substantially similar agreement with a jurisdiction; and
- the income of which does not inure to the benefit of private persons.

**“investment entity”**

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Generally, an “investment entity” means an entity the business of which is primarily comprised of carrying on investment activities or operations on behalf of other persons

Specifically, an “investment entity” is any entity (other than an entity that is an “active NFE” because of any of paragraphs (d) to (g) of that definition)

- that primarily carries on as a business one or more of the following activities or operations for or on behalf of a customer
  - trading in money market instruments (such as cheques, bills, certificates of deposit and derivatives), foreign exchange, transferable securities or commodity futures, exchange, interest rate and index instruments,
  - individual and collective portfolio management, or
  - otherwise investing, administering or managing financial assets or money on behalf of other persons; or
- the gross income of which is primarily attributable to investing, reinvesting or trading in financial assets, if the entity is managed by another entity that is
  - a depository institution,
  - a custodial institution,
  - a specified insurance company, or
  - an entity that primarily conduct as a business investment activities or operations on behalf of other persons.

The definition “investment entity” is to be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations (FATF/OECD (2013), *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*).

#### **“lower value account”**

A “lower value account” is a preexisting individual account with an aggregate balance or value as of June 30, 2017 that does not exceed 1 million USD.

#### **“narrow participation retirement fund”**

A “narrow participation retirement fund” is a fund that is established to provide retirement, disability or death benefits to beneficiaries who are current or former employees (or persons designated by those employees) of one or more employers in consideration for services rendered, provided that

- the fund has fewer than 50 participants;
- the fund is sponsored by one or more employers that are not investment entities or passive NFEs;
- the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in paragraph (a) of the definition “excluded account”) are limited by reference to the employee’s remuneration;

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- participants that are not resident in Canada are not entitled to more than 20% of the fund's assets; and
  - the fund is subject to government regulation and provides information reporting to the Minister of National Revenue.

**“natural person”**

A “natural person” is an individual other than a trust.

**“new account”**

A “new account” is a financial account maintained by a reporting financial institution opened after June 2017.

**“new entity account”**

A “new entity account” is a new account held by one or more entities.

**“new individual account”**

A “new individual account” is a new account held by one or more individuals (other than trusts).

**“non-financial entity” or “NFE”**

An entity is a “non-financial entity” or “NFE” if

- in the case of an entity that is resident in Canada, it is not a Canadian financial institution; and
- in the case of a non-resident entity, it is not a financial institution.

An NFE can be either a passive NFE or an active NFE.

**“non-reporting financial institution”**

A “non-reporting financial institution” is a Canadian financial institution that is

- the Bank of Canada;
- a governmental entity or international organization, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution;
- a broad participation retirement fund, a narrow participation retirement fund, a pension fund of a governmental entity, international organization or central bank, or a qualified credit card issuer;
- an exempt collective investment vehicle;

- 
- a trust if a trustee of the trust is a reporting financial institution and reports all information required to be reported under this Part with respect to all reportable accounts of the trust; or
  - a prescribed entity (which are prescribed under section 9005 of the *Income Tax Regulations*).

### **“participating jurisdiction”**

The term “participating jurisdiction” is used in respect of jurisdictions where there is an information agreement in place to share the information that is collected pursuant to the Common Reporting Standard. In Part XIX, a “participating jurisdiction” means Canada and each jurisdiction that will be identified by the Minister of National Revenue on the Internet website of the Canada Revenue Agency ([cra-arc.gc.ca](http://cra-arc.gc.ca)) or by any other means that the Minister considers appropriate.

### **“participating jurisdiction financial institution”**

A “participating jurisdiction financial institution” is either

- a financial institution that is resident in a participating jurisdiction, but excludes a branch of that financial institution that is located outside a participating jurisdiction; or
- a branch of a financial institution that is not resident in a participating jurisdiction, if that branch is located in a participating jurisdiction.

### **“passive NFE”**

A “passive NFE” is

- a non-financial entity that is not an active NFE; and
- an entity that is
  - any entity (other than an entity that is an “active NFE” because of any of paragraphs (d) to (g) of that definition) the gross income of which is primarily attributable to investing, reinvesting or trading in financial assets, if the entity is managed by another entity that is
    - a depository institution,
    - a custodial institution,
    - a specified insurance company, or
    - an entity that primarily conduct as a business investment activities or operations on behalf of other persons, and
  - not a participating jurisdiction financial institution.

### **“pension fund of a government entity, international organization or central bank”**

A “pension fund of a government entity, international organization or central bank” is a fund that is established by a governmental entity, international organization or central bank to provide retirement, disability or death benefits to beneficiaries or participants

- 
- that are current or former employees (or persons designated by those employees), or
  - that are not current or former employees, if the benefits provided to them are in consideration of personal services performed for the governmental entity, international organization or central bank.

### **“preexisting account”**

A “preexisting account” is either

- a financial account maintained by a reporting financial institution on June 30, 2017, or
- any other financial account of an account holder, regardless of the date the financial account was opened, if
  - the account holder also holds with the reporting financial institution (or with a related entity within Canada) a financial account maintained by the reporting financial institution on June 30, 2017,
  - the reporting financial institution (and, as applicable, the related entity within Canada) treats both the financial accounts maintained by the reporting financial institution on June 30, 2017, and any other financial accounts of the account holder that benefit from this additional inclusion as preexisting accounts despite being opened after June 30, 2017, as a single financial account for the purposes of satisfying the standards and knowledge requirements set forth in subsection 277(1), and for the purposes of determining the balance or value of any of the financial accounts, when applying any of the account thresholds (such as the determination of whether the account is a high value account after applying the account aggregation rules),
  - with respect to a financial account that is subject to AML/KYC procedures, the reporting financial institution is permitted to satisfy those AML/KYC procedures for the financial account by relying upon the AML/KYC procedures performed for the pre-existing account maintained by the reporting financial institution on June 30, 2017, and
  - the opening of the financial account does not require the provision of new, additional or amended customer information by the account holder other than for purposes of this Part.

### **“preexisting entity account”**

A “preexisting entity account” is a preexisting account held by one or more entities.

### **“preexisting individual account”**

A “preexisting individual account” is a preexisting account held by one or more individuals.

### **“qualified credit card issuer”**

A “qualified credit card issuer” is a financial institution that satisfies the following requirements:

- 
- the financial institution is a financial institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
  - the financial institution has policies and procedures either to prevent a customer from making an overpayment in excess of 50,000 USD or to ensure that any customer overpayment in excess of 50,000 USD is refunded to the customer within 60 days, in each case applying the rules set forth in subsection 277(3) for account aggregation, and for the purposes of this definition, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

### **“related entity”**

An entity is a “related entity” in respect of another entity if either entity controls the other entity or the two entities are under common control. In the case of two investment entities described under paragraph (b) of the definition “investment entity”, the two entities are “related entities” if they are under common management and such management fulfils the due diligence obligations of the investment entities). For this purpose, control includes direct or indirect ownership of

- in the case of a corporation, shares of the capital stock of a corporation that
  - give their holders 50% or more of the votes that could be cast at the annual meeting of the shareholders of the corporation, and
  - have a fair market value of 50% or more of the fair market value of all the issued and outstanding shares of the capital stock of the corporation;
- in the case of a partnership, an interest as a member of the partnership that entitles the member to 50% or more of
  - the income or loss of the partnership, or
  - the assets (net of liabilities) of the partnership if it were to cease to exist; and
- in the case of a trust, an interest as a beneficiary under the trust with a fair market value that is not less than 50% of the fair market value of all interests as a beneficiary under the trust.

### **“reportable account”**

A “reportable account” is an account held by one or more reportable persons or by a passive NFE with one or more controlling persons that is a reportable person, provided it has been identified as such pursuant to the due diligence procedures described in sections 272 to 277.

### **“reportable jurisdiction”**

A “reportable jurisdiction” is a jurisdiction other than Canada and the United States of America.

### **“reportable jurisdiction person”**

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A “reportable jurisdiction person” is a natural person or entity that is resident in a reportable jurisdiction under the tax laws of that jurisdiction or an estate of an individual who was a resident of a reportable jurisdiction under the tax laws of that jurisdiction immediately before death. For this purpose, an entity that has no residence for tax purposes is deemed to be resident in the jurisdiction in which its place of effective management is situated.

### **“reportable person”**

A “reportable person” is a reportable jurisdiction person other than

- a corporation the stock of which is regularly traded on one or more established securities markets;
- any corporation that is a related entity of a corporation the stock of which is regularly traded on one or more established securities markets;
- a governmental entity;
- an international organization;
- a central bank; or
- a financial institution.

### **“reporting financial institution”**

A “reporting financial institution” is a Canadian financial institution that is not a non-reporting financial institution.

### **“specified insurance company”**

A “specified insurance company” is any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, cash value insurance contracts or annuity contracts.

### **“TIN”**

A “TIN” is a unique combination of letters or numbers, however described, assigned by a jurisdiction to an individual or an entity and used to identify the individual or entity for purposes of administering the tax laws of such jurisdiction.

In particular, a TIN is

- in respect of Canada, the number used by the Minister of National Revenue to identify an individual or entity, including
  - a social insurance number,
  - a business number, and
  - an account number issued to a trust; and
- in respect of a jurisdiction other than Canada, a taxpayer identification number used in that jurisdiction to identify an individual or entity (or a functional equivalent in the absence of a taxpayer identification number).

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## USD

In Part XIX, various thresholds and limits are described in USD, which is defined to mean dollars of the United States of America.

### *Interpretation*

ITA  
270(2)

Subsection 270(2) provides an interpretive rule that applies for the purposes of Part XIX. This Part is drafted in a manner that is intended to be generally consistent with the model Common Reporting Standard. This forms the context in which the text of the provisions is to be interpreted.

This rule clarifies that taxpayers should interpret the provisions of Part XIX, unless the context otherwise requires, consistently with the model Common Reporting Standard and associated commentary that was published by the Organisation for Economic Co-Operation and Development (and as amended from time to time), available at <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>. These are relevant in addition to the guidance to be published by the Canada Revenue Agency.

### *Interpretation – investment entity*

ITA  
270(3)

Subsection 270(3) provides an interpretive rule that applies for the purposes of the definition of “investment entity”.

Specifically subsection 270(3) provides that an entity will be considered to primarily carry on as a business one or more of the activities described in paragraph (a) of the definition “investment entity”, or an entity’s gross income will be considered to be primarily attributable to investing, reinvesting, or trading in financial assets for the purposes of paragraph (b) of that definition, if the entity’s gross income attributable to the relevant activities equals or exceeds 50% of the entity’s gross income during the shorter of

- the three-year period that ends at the end of the entity’s last fiscal period; and
- the period during which the entity has been in existence

### *Equity or debt interest – deeming rule*

ITA  
270(4)



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Subsection 270(4) provides a deeming rule that applies to a trust that is a financial institution for the purposes of determining whether an equity or debt interest is held in the trust. Specifically, it provides that

- an equity interest is deemed to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust, and
- a reportable person is treated as a beneficiary of a trust if the reportable person has the right to receive directly or indirectly (such as through a nominee) a mandatory distribution from the trust or may receive, directly or indirectly, a discretionary distribution from the trust.

### **General reporting requirements**

ITA

271

Section 271 contains the general reporting requirements applicable to reporting financial institutions. Subsections (1) and (2) specify the information to be reported as a general rule, while subsections (3) and (4) provide a series of exceptions.

ITA

271(1)

Subject to subsections 271(3) and (4), subsection 271(1) requires that each reporting financial institution report the following information to the Minister with respect to each of its reportable accounts:

- the name, address, jurisdiction of residence, TIN and date of birth (in the case of an individual) of each reportable person that is an account holder of the account;
- in the case of any entity that is an account holder of the account and that, after applying the due diligence procedures in sections 275 to 277, is identified as having one or more controlling persons that is a reportable person,
  - the name, address, jurisdiction of residence and TIN of the entity, and
  - the name, address, jurisdiction of residence, TIN and date of birth of each of those controlling person;
- the account number (or functional equivalent in the absence of an account number) of the account;
- the name and identifying number (if any) of the reporting financial institution;
- the account balance or value (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value)
  - at the end of the relevant calendar year or other appropriate reporting period, or
  - if the account was closed during the relevant calendar year or period, on closure of the account;
- in the case of any custodial account,

- 
- the total gross amount of interest, the total gross amount of dividends and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period, and
  - the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the reporting financial institution acted as a custodian, broker, nominee or otherwise as an agent for the account holder;
  - in the case of any depository account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
  - in the case of any account other than a custodial account or a depository account, the total gross amount paid or credited to the account holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the calendar year or other appropriate reporting period.

ITA  
271(2)

Subsection 271(2) provides that the information reported must identify the currency in which each amount is denominated.

ITA  
271(3)

Subsection 271(3) provides an exception to the reporting requirements in paragraphs (1)(a) and (b) for preexisting accounts that the TIN or date of birth is not required to be reported if the TIN or date of birth (as appropriate)

- are not in the records of the reporting financial institution, and
- are not otherwise required to be collected by the reporting financial institution under the Act.

However, even if the exception provided in this subsection applies, a reporting financial institution is required to use reasonable efforts to obtain the TIN and date of birth with respect to a preexisting account by the end of the second calendar year following the year in which the pre-existing account is identified as a reportable account.

ITA  
271(4)

Subsection 271(4) provides an exception that a TIN of a reportable person is not required to be reported if the relevant reportable jurisdiction does not issue TINs.

**General due diligence rules**

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ITA  
272

Section 272 contains general rules relating to the due diligence procedures in this Part.

ITA  
272(1)

Subsection 272(1) provides that an account is treated as a reportable account beginning as of the date it is identified as a reportable account under the due diligence procedures in sections 272 through 277.

ITA  
272(2)

While the balance or value of an account is part of the information to be reported, it is also relevant for other purposes, such as the due diligence procedures for preexisting entity accounts and the account balance aggregation rules. Subsection 272(2) provides that the balance or value of an account is determined on the last day of the calendar year or other appropriate reporting period.

ITA  
272(3)

Subsection 272(3) provides that for the purpose of determining whether the balance or value of an account exceeds a particular threshold on the last day of a calendar year, the balance or value must be determined on the last day of the last reporting period that ends on or before the end of the calendar year.

ITA  
272(4)

Subsection 272(4) provides that while a reporting financial institution may use service providers to fulfil its reporting and due diligence obligations imposed, these obligations shall remain the responsibility of the reporting financial institution.

ITA  
272(5)

Subsection 272(5) provides that a reporting financial institution may apply the due diligence procedures for new accounts to preexisting accounts (with the other rules for preexisting accounts continuing to apply).

ITA

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272(6)

Subsection 272(6) requires that a reporting financial institution establish, maintain and document its due diligence procedures.

### **Due diligence procedures for pre-existing individual accounts**

ITA  
273

This section contains the due diligence procedures for the purposes of identifying reportable accounts among preexisting individual accounts. It distinguishes between lower value accounts and high value accounts, with enhanced due diligence procedures provided for the latter.

ITA  
273(1)

Subsection 273(1) provides that a preexisting individual account that is a cash value insurance contract or an annuity contract is not required to be reviewed, identified or reported, provided the reporting financial institution is effectively prevented by law from selling those contracts to residents of a reportable jurisdiction.

#### *Lower value accounts*

ITA  
273(2)

Subsection 273(2) provides the review procedures that apply with respect to lower value accounts that are preexisting individual accounts.

#### *Residence address test*

Paragraph 273(2)(a) provides an alternate test for determining the jurisdiction of residence of an individual account holder if the reporting financial institution has in its records the address of the individual account holder's current residence (in this section, their "current residence address"). Specifically, it provides that a reporting financial institution may treat an individual as being a resident for tax purposes of the jurisdiction in which an address is located if:

- the reporting financial institution has in its records a residence address for the individual account holder;
- the residence address is current; and
- the residence address is based on documentary evidence.

#### *Electronic record search*

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Paragraph 273(2)(b) provides that if the reporting financial institution does not rely on a current residence address as described in paragraph (a), the reporting financial institution must review electronically searchable data maintained by the reporting financial institution for any of the following indicia and apply paragraphs (c) through (f):

- identification of the account holder as a resident of a reportable jurisdiction,
- current mailing or residence address (including post office box) in a reportable jurisdiction,
- one or more telephone numbers in a reportable jurisdiction and no telephone number in the jurisdiction of the reporting financial institution,
- standing instructions (other than with respect to a depository account) to transfer funds to an account maintained in a reportable jurisdiction,
- currently effective power of attorney or signatory authority granted to a person with an address in a reportable jurisdiction, and
- a hold mail instruction or in-care-of address in a reportable jurisdiction if the reporting financial institution does not have any other address on file for the account holder.

#### *Effect of finding indicia*

Paragraph 273(2)(c) provides that if none of the indicia listed in paragraph (b) are discovered in the electronic search, then no further review is required until the earlier of:

- a change in circumstances that results in one or more of the indicia referred to in paragraph (b) being associated with the account, or
- the account becomes a high value account.

Paragraph 273(2)(d) provides that if any of the indicia listed in paragraph (b) (except for a hold mail instruction or in care of instruction described in subparagraph (b)(vi)) are discovered in the electronic search or if there is a change in circumstances that results in one or more of the indicia in paragraph (b) being associated with the account, then the reporting financial institution must treat the account holder as a resident for tax purposes of each reportable jurisdiction for which an indicium is identified, unless one of the exceptions in paragraph (f) applies with respect to that account.

A “change in circumstances” includes any change that results in the addition of information relevant to a person’s status or otherwise conflicts with such person’s status. In addition, a “change in circumstances” includes any change or addition of information to the account holder’s account (including the addition, substitution, or other change of an account holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules) if such change or addition of information affects the status of the account holder.

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Paragraph 273(2)(e) provides a special rule in case a hold mail instruction or in-care-of address is discovered in the electronic search and none of the other indicia and no other address (within such indicia) are identified for the account holder in the electronic search.

Paragraph 273(2)(e) provides that if a hold mail instruction or in-care-of address in a reportable jurisdiction is discovered in the electronic search and no other address and none of the other indicia listed in subparagraphs 273(2)(b)(i) to (v) are identified for the account holder, then

- the reporting financial institution must do one (if the relevant information is obtained, then there is no need to do both) or both (in the order most appropriate to the circumstances) of the following:
  - apply the paper record search described in paragraph 273(3)(b) (which applies for high value accounts), and
  - seek to obtain from the account holder a self-certification or documentary evidence to establish the residence for tax purposes of the account holder, and
- if the paper record search fails to establish an indicium and the attempt to obtain the self-certification or documentary evidence is not successful, then the reporting financial institution must report the account as an undocumented account.

#### *Procedure for curing a finding of indicia*

Paragraph 273(2)(f) contains a procedure for curing a finding of indicia under paragraph 273(2)(b). Specifically, it provides that notwithstanding the discovery of indicia under paragraph 273(2)(b), a reporting financial institution is not required to treat an account holder as a resident of a reportable jurisdiction if

- both
  - the account holder information contains
    - a current mailing or residence address in the reportable jurisdiction,
    - one or more telephone numbers in the reportable jurisdiction (and no telephone number in the jurisdiction of the reporting financial institution), or
    - standing instructions (with respect to financial accounts other than depository accounts) to transfer funds to an account maintained in a reportable jurisdiction, and
  - the reporting financial institution obtains, or has previously reviewed and currently maintains a record of,
    - a self-certification from the account holder of the jurisdictions of residence of the account holder that does not include the reportable jurisdiction, and
    - documentary evidence establishing the account holder's non-reportable status in relation to that jurisdiction, or
- both
  - the account holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the reportable jurisdiction, and

- 
- the reporting financial institution obtains, or has previously reviewed and currently maintains a record of,
    - a self-certification from the account holder of the jurisdictions of residence of the account holder that does not include the reportable jurisdiction, or
    - documentary evidence establishing the account holder's non-reportable status.

A self-certification or documentary evidence that has been previously reviewed may be relied upon for purposes of the curing procedure unless the reporting financial institution knows or has reasons to know that the self-certification or documentary evidence is incorrect or unreliable.

#### *Enhanced review procedures – high value account*

ITA  
273(3)

Subsection 273(3) contains the enhanced review procedures that apply with respect to high value accounts. These procedures are the electronic record search, the paper record search and the relationship manager inquiry.

#### *Electronic record search*

Paragraph 273(3)(a) provides that a reporting financial institution must review electronically searchable data maintained by the reporting financial institution for any of the indicia described in paragraph 273(2)(b).

#### *Paper record search*

Paragraph 273(3)(b) provides that, subject to paragraph (c), the reporting financial institution must review for any of the indicia described in paragraph (2)(b)

- the current customer master file, and
- the following documents associated with the account, and obtained by the reporting financial institution within the last five years, to the extent that they are not contained in the current customer master file:
  - the most recent documentary evidence collected with respect to the account,
  - the most recent account opening contract or documentation,
  - the most recent documentation obtained by the reporting financial institution pursuant to AML/KYC procedures or for other regulatory purposes,
  - any power of attorney or signature authority forms currently in effect, and
  - any standing instructions (other than with respect to a depository account) to transfer funds currently in effect.

Paragraph 273(3)(c) provides that a reporting financial institution is not required to perform the paper record search described in paragraph (b) to the extent that the reporting financial institution's electronically searchable information includes the following:

- 
- the account holder's residence status,
  - the account holder's residence address and mailing address currently on file with the reporting financial institution,
  - the account holder's telephone number currently on file, if any, with the reporting financial institution,
  - in the case of financial accounts other than depository accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the reporting financial institution or another financial institution),
  - whether there is a current in-care-of address or hold mail instruction for the account holder, and
  - whether there is any power of attorney or signatory authority for the account.

#### *Relationship manager inquiry*

Paragraph 273(3)(d) provides that in addition to the electronic and paper record searches described above, the reporting financial institution must treat as a reportable account any high value account assigned to a relationship manager (including any financial accounts aggregated with that high value account pursuant to the rules in section 277) if the relationship manager has actual knowledge that the account holder is a reportable person.

A "relationship manager" is an officer or other employee of a reporting financial institution who is assigned responsibility for specific account holders on an on-going basis (including as an officer or employee that is a member of a reporting financial institution's private banking department), advises account holders regarding their banking, investment, trust, fiduciary, estate planning, or philanthropic needs, and recommends, makes referrals to, or arranges for the provision of financial products, services, or other assistance by internal or external providers to meet those needs.

#### *Effect of finding indicia*

Paragraph 273(3)(e) provides that with respect to the enhanced review of high value accounts described above

- if none of the indicia listed in paragraph (2)(b) are discovered in the enhanced review and the account is not identified as being held by a reportable person in paragraph (d), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account,
- if any of the indicia listed in subparagraphs (2)(b)(i) through (v) are discovered in the enhanced review, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the reporting financial institution must treat the account as a reportable account with respect to each reportable jurisdiction for which an indicium is identified unless one of the exceptions in paragraph 2(f) applies with respect to that account,



- 
- if a hold mail instruction or in care of address is discovered in the enhanced review and no other address or other indicia listed in (2)(b)(i) through (v) are identified for the account holder, then the reporting financial institution must
    - obtain from the account holder a self-certification or documentary evidence to establish the residence for tax purposes of the account holder, and
    - if the reporting financial institution cannot obtain a self-certification or documentary evidence, report the account as an undocumented account.

An indicium discovered in one review procedure, such as the paper record search or the relationship manager inquiry, cannot be used to cure an indicium identified in another review procedure such as the electronic record search. For example, a current residence address in a reportable jurisdiction within the knowledge of the relationship manager cannot be used to cure a different residence address currently on file with the reporting financial institution discovered in the paper record search.

#### *Additional procedures*

Paragraph 273(3)(f) provides that if a preexisting individual account is not a high value account on June 30, 2017, but becomes a high value account as of the last day of a subsequent calendar year,

- the reporting financial institution must complete the enhanced review procedures for high value accounts described in subsection 273(3) with respect to the account within the calendar year following the year in which the account becomes a high value account, and
- if, based on this review, the account is identified as a reportable account, the reporting financial institution must report the required information about the account with respect to the year in which it is identified as a reportable account (and subsequent years on an annual basis, unless the account holder ceases to be a reportable person).

Paragraph 273(3)(g) provides that if a reporting financial institution applies the enhanced review procedures described in this subsection to a high value account in a year, then the reporting financial institution is not required to re-apply those procedures – other than the relationship manager inquiry described in paragraph (d) – to the same high value account in any subsequent year unless the account is undocumented, in which case the reporting financial institution must re-apply them annually until the account ceases to be undocumented.

Paragraph 273(3)(h) provides that if there is a change of circumstances with respect to a high value account that results in one or more indicia described in paragraph (2)(b) being associated with the account, then the reporting financial institution must treat the account as a reportable account with respect to each reportable jurisdiction for which an indicium is identified unless

- the reporting financial institution applies paragraph (2)(f), and
- one of the exceptions in paragraph (2)(f) applies with respect to that account.

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Finally, paragraph 273(3)(i) provides that a reporting financial institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account.

#### *Timing of review*

ITA  
273(4)

Subsection 273(4) provides a rule governing the timing of the review procedures for identifying reportable accounts among preexisting individual accounts.

Specifically, each preexisting individual account must be reviewed in accordance with subsection 273(2) or (3) before

- 2019, if the account is a high value account; or
- 2020, if the account is a lower value account.

#### *Reportable pre-existing individual accounts*

ITA  
273(5)

Subsection 273(5) provides that any preexisting individual account that has been identified as a reportable account under this section must be treated as a reportable account in all subsequent years, unless the account holder ceases to be a reportable person.

#### **Due diligence procedures for new individual accounts**

ITA  
274

Section 274 contains the due diligence procedures for new individual accounts and provides for the collection of a self-certification (and confirmation of its reasonableness).

ITA  
274(1)

Subsection 274(1) provides that upon opening a new individual account, the reporting financial institution must obtain a self-certification (which may be a part of the account opening documentation) that allows the reporting financial institution to

- determine the account holder's residence for tax purposes; and
- confirm the reasonableness of the self-certification taking into account information obtained by the reporting financial institution in connection with the opening of the account, including any documentation collected pursuant to the AML/KYC procedures.

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ITA  
274(2)

Subsection 274(2) provides that if the self-certification for a new individual account establishes that the account holder is resident for tax purposes in a reportable jurisdiction, then

- the reporting financial institution must treat the account as a reportable account; and
- the self-certification must also include the account holder's TIN with respect to the reportable jurisdiction (subject to subsection 271(4)) and date of birth.

ITA  
274(3)

Subsection 274(3) provides that if there is a change in circumstances with respect to a new individual account that causes the reporting financial institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, then the reporting financial institution

- cannot rely on the original self-certification; and
- must obtain a valid self-certification that establishes the residence for tax purposes of the account holder.

### **Due diligence procedures for pre-existing entity accounts**

ITA  
275

This section describes the due diligence procedures for preexisting entity accounts.

ITA  
275(1)

Subsection 275(1) provides that unless the reporting financial institution elects otherwise — either with respect to all preexisting entity accounts or, separately, with respect to any clearly identified group of those accounts — a preexisting entity account with an aggregate account balance or value that does not exceed 250,000 USD on June 30, 2017 is not required to be reviewed, identified or reported as a reportable account until the aggregate account balance or value exceeds 250,000 USD on the last day of any subsequent calendar year.

ITA  
275(2)

Subsection 275(2) provides that the review procedures set forth in subsection (4) apply to a preexisting entity account if it has an aggregate account balance or value that exceeds 250,000 USD on

- 
- June 30, 2017; or
  - the last day of any subsequent calendar year.

ITA  
275(3)

Subsection 275(3) provides that with respect to preexisting entity accounts described in subsection (2), the only accounts that shall be treated as reportable accounts are accounts that are held by

- one or more entities that are reportable persons; or
- passive NFEs with one or more controlling persons who are reportable persons.

*Review procedures*

ITA  
275(4)

Subsection 275(4) contains the review procedures to identify reportable accounts among preexisting entity accounts. Specifically, it requires that a reporting financial institution must apply the following review procedures to determine whether the account is held by one or more reportable persons or by passive NFEs with one or more controlling persons who are reportable persons:

- review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC procedures) to determine whether the information indicates that the account holder is resident in a reportable jurisdiction, and if so, the reporting financial institution must treat the account as a reportable account unless it
  - obtains a self-certification from the account holder to establish that the account holder is not a reportable person, or
  - reasonably determines, based on information in its possession or that is publicly available, that the account holder is not a reportable person; and
- with respect to an account holder of a preexisting account (including an entity that is a reportable person), the reporting financial institution must determine whether the account holder is a passive NFE with one or more controlling persons who are reportable persons, and for the purposes of
  - determining whether the account holder is a passive NFE, the reporting financial institution must obtain a self certification from the account holder to establish its status, unless it has information in its possession or information is publicly available, based on which it can reasonably determine that the account holder is
    - an active NFE, or
    - a financial institution other than an entity described in paragraph (b) of the definition “investment entity” that is not a participating jurisdiction financial institution,

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- determining the controlling persons of an account holder, a reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures, and
  - determining whether a controlling person of a passive NFE is a reportable person, a reporting financial institution may rely on
    - information collected and maintained pursuant to AML/KYC procedures in the case of a preexisting entity account held by one or more NFEs with an aggregate account balance or value that does not exceed 1 million USD, or
    - a self-certification from the account holder or the controlling person indicating the jurisdiction in which the controlling person is resident for tax purposes.

#### *Timing of review and additional procedures*

ITA  
275(5)

Subsection 275(5) contains the rules governing the timing of the review procedures for identifying reportable accounts among pre-existing entity accounts. Each preexisting entity account must be reviewed in accordance with subsection (4)

- before 2020, if the account has an aggregate account balance or value that exceeds 250,000 USD on June 30, 2017; or
- if not, before the end of the calendar year following the year in which the aggregate account balance or value exceeds 250,000 USD on December 31.

#### *Change of circumstances*

ITA  
275(6)

Subsection 275(6) provides that if there is a change of circumstances with respect to a preexisting entity account that causes the reporting financial institution to know, or have reason to know, that the self-certification or other documentation associated with the account is incorrect or unreliable, the reporting financial institution must re-determine the status of the account in accordance with subsection (4).

#### **Due diligence procedures for new entity accounts**

ITA  
276

This section describes the due diligence procedures for new entity accounts.

ITA

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## 276(1)

Subsection 276(1) provides that, for new entity accounts, a reporting financial institution must apply the following review procedures to determine whether the account is held by one or more reportable persons or by passive NFEs with one or more controlling persons who are reportable persons:

- the reporting financial institution must
  - obtain a self-certification (which may be part of the account opening documentation) that allows the reporting financial institution to determine the account holder's residence for tax purposes and confirm the reasonableness of the self-certification based on the information obtained by the reporting financial institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures, and
  - if the self-certification that is obtained indicates that the account holder is resident in a reportable jurisdiction, treat the account as a reportable account unless it reasonably determines, based on information in its possession or information that is publicly available, that the account holder is not a reportable person with respect to the reportable jurisdiction; and
- with respect to an account holder of a new entity account (including an entity that is a reportable person), the reporting financial institution must determine whether the account holder is a passive NFE with one or more controlling persons who are reportable persons and if so, treat the account as a reportable account, and for the purposes of
  - determining whether the account holder is a passive NFE, the reporting financial institution must obtain a self-certification from the account holder to establish its status, unless it has information in its possession or information is publicly available, based on which it can reasonably determine that the account holder is
    - an active NFE, or
      - a financial institution other than an entity that is an “investment entity” because of paragraph (b) of that definition, and is not a participating jurisdiction financial institution,
  - determining the controlling persons of an account holder, a reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures, and
  - determining whether a controlling person of a passive NFE is a reportable person, a reporting financial institution may rely on a self-certification from the account holder or the controlling person.

If there is a change in circumstances with respect to a new entity account that causes the reporting financial institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the reporting financial institution must re-determine the status of the account in accordance with the procedures for a pre-existing entity account.

### **Special due diligence procedures**

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ITA  
277

This section contains special due diligence rules that reporting financial institutions are required to apply.

ITA  
277(1)

Subsection 277(1) provides that a reporting financial institution may not rely on a self-certification or documentary evidence if the reporting financial institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

ITA  
277(2)

Subsection 277(2) provides that a reporting financial institution may presume that an individual beneficiary (other than the owner) of a cash value insurance contract or an annuity contract receiving a death benefit is not a reportable person and may treat the financial account as other than a reportable account unless it has actual knowledge, or reason to know, that the beneficiary is a reportable person.

ITA  
277(3)

Subsection 277(3) contains the account aggregation rules that reporting financial institutions must follow for purposes of determining the aggregate balance or value of financial accounts.

Specifically, paragraph 277(3)(a) provides that, for the purposes of determining the aggregate balance or value of financial accounts held by an individual or entity,

- a reporting financial institution is required to aggregate all financial accounts maintained by the reporting financial institution, or by a related entity, to the extent that the reporting financial institution's computerized systems
  - link the financial accounts by reference to a data element such as a client number or TIN, and
  - allow account balances or values to be aggregated, and
- each holder of a jointly held financial account is attributed the entire balance or value of the jointly held financial account.

Paragraph 277(3)(b) provides that for the purposes of determining the aggregate balance or value of financial accounts held by an individual in order to determine whether a financial account is a high value account, a reporting financial institution is also required — in the case of any financial accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by the same individual — to aggregate all such accounts.

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*Dealer accounts*ITA  
277(4) and (5)

Subsections 277(4) and (5) provide for the purposes of Part XIX equivalent rules to the rules in subsections 265(7) and (8) which apply for the purposes of Part XVIII. Subsection 277(4) provides that subsection 277(5) applies to a reporting financial institution in respect of a client name account maintained by the institution if the property recorded in the account is also recorded in a related account maintained by a dealer and the dealer has advised the institution whether the related account is a reportable account, unless the institution can reasonably conclude that the dealer has failed to comply with its due diligence obligations under this Part. If subsection 277(5) applies, the institution is not required to comply with the due diligence obligations under subsections 272 to 276 in respect of the account and shall rely on the determination of the dealer in determining whether the account is a reportable account.

*Group insurance and annuities*ITA  
277(6)

Subsection 277(6) provides an alternative procedure that applies to certain group insurance contracts and group annuity contracts.

Specifically, subsection 277(6) provides that a reporting financial institution may treat a financial account that is a member's interest in a group cash value insurance contract or group annuity contract as a financial account that is not a reportable account until the day on which an amount becomes payable to the employee, certificate holder or beneficiary, if the financial account meets the following requirements:

- the group cash value insurance contract or group annuity contract is issued to an employer and covers 25 or more employees or certificate holders;
- the employees or certificate holders are entitled to
  - receive any contract value related to their interest, and
  - to name beneficiaries for the benefit payable upon the employee or certificate holder's death; and
- the aggregate amount payable to any employee or certificate holder or beneficiary does not exceed 1 million USD.

**Reporting**ITA  
278(1)



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Subsection 278(1) requires every reporting financial institution that maintains a reportable account at any time during a calendar year and after June 30, 2017 to file an information return with the Minister of National Revenue before May 2 of the next year.

ITA  
278(2)

Subsection 278(2) requires every reporting financial institution that is required to file an information return under subsection 278(1) to file the return electronically.

### **Record keeping**

ITA  
279(1)

Subsection 279(1) requires every reporting financial institution to maintain adequate records, including self-certifications and records of documentary evidence, to enable the Minister of National Revenue to determine whether the institution has complied with its obligations under Part XIX.

ITA  
279(2)

Subsection 279(2) requires every reporting financial institution that keeps records in an electronic format to retain the records in an electronically readable format for the retention period referred to in subsection 279(3).

ITA  
279(3)

Subsection 279(3) requires every reporting financial institution that keeps, obtains or creates records for the purpose of complying with Part XIX to retain those records for, in the case of a self-certification, six years following the day on which the related financial account is closed, or in the case of any other record, six years from the end of the last calendar year in respect of which the record is relevant.

### **Anti-avoidance**

ITA 280

Section 280 provides an anti-avoidance rule. This rule provides that where a person enters into an arrangement or engages in a practice, the primary purpose of which is to avoid an obligation under Part XIX, the person is subject to the obligation as if the person had not entered into the arrangement or engaged in the practice.

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## Amendments to the Income Tax Regulations

### Clause 2

#### Prescribed non-reporting financial institution

##### ITR 9005

New section 9005 of the *Income Tax Regulations* prescribes as non-reporting financial institutions for the purposes of the definition “non-reporting financial institution” in subsection 270(1) of the Act, the following entities:

- a labour-sponsored venture capital corporation as prescribed in section 6701;
- a registered retirement savings plan;
- a registered retirement income fund;
- a pooled registered pension plan;
- a deferred profit sharing plan;
- a registered disability savings plan;
- a registered education savings plan;
- a registered pension plan; and
- a central cooperative credit society, as defined in section 2 of the *Cooperative Credit Association Act* and whose accounts are maintained for member financial institutions.

This amendment to the *Income Tax Regulations* comes into force on July 1, 2017.

#### Prescribed excluded accounts

##### ITR 9006

New section 9006 of the *Income Tax Regulations* prescribes as excluded accounts for the purposes of the definition “excluded account” in subsection 270(1) of the Act, the following accounts:

- a registered retirement savings plan;
- a registered retirement income fund;
- a pooled registered pension plans;
- a registered pension plan;
- a registered disability savings plan;
- a registered education savings plan;
- a deferred profit sharing plan;
- a net income stabilization account, including a NISA Fund No. 2;
- an eligible funeral arrangement; and
- a dormant account.

This amendment to the *Income Tax Regulations* comes into force on July 1, 2017.