



Enhanced Financial Account Information Reporting to CRA on Insurance and Annuity Contracts

Information for Insurance Advisors and Managing General Agencies (MGAs)

The following information has been prepared to help clients of Canadian financial institutions and their advisors understand Enhanced Financial Account Information Reporting and how it might affect them. This document should not be construed as tax, legal or financial advice. The information below is current as of June 5, 2017. Further information is available from tax advisors and on:

- CRA's Enhanced financial account information reporting website at: <http://www.cra-arc.gc.ca/tx/nnrdsnts/nhncdrprtng/menu-eng.html>
- the OECD website at: <http://www.oecd.org/tax/transparency/automaticexchangeofinformation.htm>

The information below is intended to provide general information only, and is not an exhaustive analysis of the impact of Enhanced Financial Account Information Reporting. The information below should not be construed as legal or tax advice. It is inappropriate and illegal for advisors or agents to assist clients in avoiding legal tax obligations. It is inappropriate for advisors or agents to give tax advice to clients in relation to complex tax obligations. Agents and advisors should always advise clients to obtain independent tax advice on questions or issues in relation to complex tax obligations. Tax evasion is an international "predicate offense" included in anti-money laundering crimes.

The following information is current as of June 5, 2017.

Overview

1. What is Enhanced Financial Account Information Reporting?

Enhanced Financial Account Information Reporting is a requirement under Canadian law which obligates financial institutions to provide certain information to the Canada Revenue Agency (CRA), which in turn transfers that information to:

- the US as a result of US law commonly known as FATCA (reflected in Part XVIII of Canada's *Income Tax Act*)
- other countries as a result of Canada's adoption of the Common Reporting Standard (CRS) (incorporated under Part XIX of Canada's *Income Tax Act*).

2. What is FATCA?

The *Foreign Account Tax Compliance Act* (FATCA) is a US law that was passed in March 2010 to discourage “US Persons”¹ from evading US tax using financial accounts (such as bank, mutual fund and brokerage accounts, segregated fund contracts and certain annuity and insurance contracts) held outside the US. FATCA requires non-US financial institutions to identify and report information to the US Internal Revenue Service (IRS) on certain financial accounts held outside the US by US Persons. The US has signed a number of agreements with other countries to implement FATCA, including Canada. The requirement for Canadian taxpayers, including financial institutions, to comply with FATCA has been incorporated into Part XVIII of Canada's *Income Tax Act*. Since 2014, Canadian financial institutions are required under Canadian law to identify and report information to the CRA on reportable financial accounts held in Canada by US Persons. The CRA then exchanges this information with the IRS.

3. What is the CRS?

The CRS is a new international standard for the automatic exchange of information on “Financial Accounts” (such as bank, mutual fund and brokerage accounts, segregated fund contracts and certain annuity and insurance contracts), between CRS participating countries, which includes Canada. The CRS is very similar to FATCA, except the exchange of Financial Account information under the CRS is between countries other than the US. It was developed by the Organization for Economic Co-operation and Development (OECD)², with the support of Canada and the other G20 industrialized countries, to reduce tax evasion and improve tax compliance around the world.

One hundred countries³ have agreed to exchange information under the CRS and most of these countries have passed legislation implementing the CRS effective January 1, 2016 or 2017. The CRS requires financial institutions to request the tax residency of their clients and provide information to their local tax authority about any accounts held by tax residents of other countries. The local tax authority will then share the information with the tax authorities of other countries. The CRS describes the information to be exchanged, the different types of accounts and account holders covered, the types of financial institutions that are required to report, and procedures that financial institutions must follow to identify reportable accounts (see Question 6).

Canada has passed legislation (Part XIX of Canada's *Income Tax Act*) requiring Canadian financial institutions to gather tax residency information from account holders for the purpose of identifying reportable accounts. This requirement begins on July 1, 2017, and information relating to reportable accounts and account holders will be reported annually to the CRA beginning in May 2018. The CRA will exchange this information with countries with which Canada has an agreement. Canada has committed to ensuring countries it exchanges information with have safeguards to protect privacy and ensure the information is used only for tax purposes.

¹ See Appendix for additional information on "US Persons".

² The Organisation for Economic Co-operation and Development (OECD) has 35 member countries, including Canada. Its mission is to promote policies that improve the economic and social well-being of people around the world. For more information, see <http://www.oecd.org/>.

³ For a list of the countries that have committed to implement the CRS visit the OECD website at: <https://www.oecd.org/tax/transparency/AEOI-commitments.pdf>.

4. How does the CRS compare to US FATCA?

The CRS expands upon FATCA by requiring Canadian financial institutions to identify and report information to the CRA about accounts held by persons who are resident for tax purposes in other countries (i.e., other than Canada or the US). The CRA will then exchange this information with foreign tax authorities (for countries with which Canada has an agreement). Reportable accounts held by US Persons will continue to be reported to the CRA under FATCA (Part XVIII of the *Income Tax Act*), not the CRS (Part XIX of the *Income Tax Act*). One important difference between the CRS and FATCA is that FATCA exempts certain accounts with a balance of less than US \$50,000, while the CRS does not.

Accounts subject to reporting

5. What types of Financial Accounts are subject to review and possible reporting?

Financial Accounts that are subject to review and possible reporting (referred to in this document as “Accounts”) include:

- bank accounts
- interests in mutual funds and similar investments
- brokerage and custodial accounts
- annuity contracts (including segregated fund contracts)
- life insurance policies with cash value.

Accounts that are low risk for tax evasion, such as most CRA registered plans, are exempt (including: Registered Retirement Savings Plans (RRSPs), Registered Retirement Income Funds (RRIFs), Registered Education Savings Plans (RESPs), Registered Pension Plans (RPPs), Pooled Registered Pension Plans (PRPPs), Tax Free Savings Accounts (TFSA) and Registered Disability Savings Plans (RDSPs)).

6. Are all insurance and annuity products reportable under Enhanced Financial Account Information Reporting?

No. Insurance and annuity contracts that are reportable include non-registered:

- life insurance policies with "cash value", such as Universal and Whole Life ⁴; and
- annuity contracts (including segregated fund contracts)

held by:

- i) individuals or entities resident for tax purposes in countries other than Canada (including US citizens);
or
- ii) entities with primarily passive income⁵ controlled by persons who are tax resident in a country other than Canada.

⁴ Under FATCA, policies with a cash value under US \$50,000 are not reportable subject to aggregation rules if multiple policies are held by the same policyholder. There is no similar exemption for CRS.

Additionally, a Financial Account may also be reported if the account holder does not clarify their tax status when requested.

Accounts subject to reporting are referred to in the remainder of this document as “Reportable Accounts.”

Reporting is not required for certain accounts such as:

- i) insurance contracts that provide pure insurance protection and have no cash value (such as term life, disability, health, and property and casualty insurance);
- ii) government registered retirement and savings plans (such as RRSPs, RRIFs, RPPs, PRPPs, RESPs, RDSPs and TFSAs);
- iii) annuity contracts that are non-transferable and non-investment linked that monetize a pension or disability benefit arising from a contract in i) or ii) above.

7. How will clients of Canadian financial institutions be impacted by CRS?

i. Clients who open new accounts after June 30, 2017

Effective July 1, 2017, clients purchasing or opening a Financial Account with a Canadian financial institution will be required to provide a “Declaration of Tax Residence” which indicates their tax residency, date of birth and tax identification number (TIN) for all countries in which they are resident for tax purposes. (Refer to Question 5 for the most common types of Financial Accounts.) In addition, applications for accounts held by certain entities may require similar information about the entity’s controlling person(s). Clients who are tax resident in countries other than Canada will have information on their Reportable Accounts reported to the CRA.

ii. Clients who hold existing accounts on June 30, 2017

Clients who hold a Financial Account with a Canadian financial institution on June 30, 2017 may be required to provide a Declaration of Tax Residence to confirm their tax residency and provide TINs for all countries in which they are a resident for tax purposes. It is expected that most Canadians with existing accounts at Canadian financial institutions will be minimally affected by the CRS, since many will be solely resident in Canada for tax purposes. Clients who are tax resident of other countries may have information on their existing Reportable Accounts reported to the CRA.

⁵ Accounts held by financial institutions, government organizations, and publicly traded entities are generally not reportable. Passive income is earned on investments, and is usually in the form of interest, dividends or capital gains.

For existing account holders on June 30, 2017, additional ongoing requirements apply as follows:

Cash-value insurance contracts and annuity contracts (including segregated fund contracts)	
Individuals	Entities
Cash-value insurance contracts and annuity contracts (including segregated fund contracts) held by individuals as of June 30, 2017 are exempt under the CRS (FATCA has a similar exemption as of June 30, 2014). Similar to FATCA, if any contract issued prior to July 1, 2017 is transferred to a new owner (or a term policy is converted to a permanent insurance contract) it will be considered a new account and the owner will be asked for a Declaration of Tax Residence.	Contracts held by entities will be reviewed if the policy value exceeds US \$250,000 on June 30, 2017 (or at the end of any subsequent year) and may require completion of a Declaration of Tax Residence and may be reported. Entities may also be required to provide information about their controlling persons.
All other Financial Accounts	
All other types of Accounts, such as mutual funds and bank accounts that are open on June 30, 2017 are also subject to ongoing review for any changes in client information (such as address or phone number) that could indicate a change of tax residence.	

8. As an advisor, what is my role and what is expected of me to ensure the insurance company complies with its reporting obligations under Enhanced Financial Account Information Reporting (i.e., CRS and FATCA)?

As an advisor selling insurance products subject to Enhanced Financial Account Information Reporting, you should be aware of the insurer’s new on-boarding policies and procedures as you may be required to collect a Declaration of Tax Residence from your clients certifying whether they are a tax resident of:

- Canada;
- the US (which includes a US citizen); and/or
- a country other than Canada or the US.

As well, insurers are required to perform some due diligence on existing clients with contracts in force on June 30, 2017 for CRS (June 30, 2014 for FATCA) and may contact your client directly, or require you to obtain additional information or documentation to validate whether or not they are a tax resident of a country other than Canada.

Financial institutions are also required to monitor any changes to client information (e.g., a foreign address or phone number) that could indicate a change in tax residency. The insurer requires you to inform them of any changes you become aware of and obtain additional information or documentation to validate whether the change is indicative of a client becoming a tax resident of another country.

As is the case for FATCA, any changes to your sales routines should be relatively minor and, for the majority of your clients, there should be little impact (other than completion of the new Declaration of Tax Residence form).

9. What is a Declaration of Tax Residence?

A "Declaration of Tax Residence" is a written declaration completed by account holders, certifying their country of tax residence and including their TIN(s) and date of birth, which must be provided to their financial institution when required under Canadian law. For an example, see CRA form [RC518 - Declaration of Tax Residence for Individuals – Part XVIII and Part XIX of the *Income Tax Act*](#) or [RC519 - Declaration of Tax Residence for Entities – Part XVIII and Part XIX of the *Income Tax Act*](#). Your financial institution may have its own form, or alternatively may collect this information in the account opening documentation or application.

Life insurers may require account holders to provide a Declaration of Tax Residence when:

- applying for a new life insurance or annuity policy (other than term or most registered policies);
- converting a term policy to a permanent insurance contract;
- changing ownership;
- changing client information (e.g., address or telephone number) that could indicate a change in tax residency;
- there are standing orders to transfer funds to an account in the US or another country; and/or
- a death benefit is paid and the beneficiary: i) has a foreign address or phone number or ii) is an entity.

Account holders who have provided a Declaration of Tax Residence to their financial institution (including one provided within the account application) must provide a new Declaration of Tax Residence within 30 days of any change in circumstances causing their previous Declaration of Tax Residence to become incomplete or inaccurate (i.e., any change affecting their tax residency status).

10. I am an individual tax resident only in Canada. How am I affected by Enhanced Financial Account Information Reporting?

If requested by your financial institution, you will still need to complete a Declaration of Tax Residence and provide your TIN(s). If you are not a tax resident in a country outside Canada, the financial institution is not required to, and will not, report your Financial Account information to CRA for possible transmission to tax authorities in other countries, provided you have submitted all required documentation.

11. What if clients do not provide the required information about their tax residency and/or their TIN?

Canadian financial institutions and their clients are required by law to comply with Enhanced Financial Account Information Reporting. It is important for clients to respond to requests from financial institutions to provide a Declaration of Tax Residence, which includes their TIN(s), even if they are not tax resident outside of Canada. If a client does not provide the required information, the client's financial institution may report the account to the CRA, as required under Canada's *Income Tax Act*. Your client may also be subject to penalties imposed by CRA.

Privacy

12. Should I be concerned about the confidentiality of my client's personal information?

Financial institutions operate under strict federal and provincial privacy laws. The information financial institutions collect from clients and disclose to the CRA is strictly limited to what is required under Canada's *Income Tax Act*.

CRA is required to comply with the confidentiality provisions of the [Convention on Mutual Administrative Assistance in Tax Matters](#) or a relevant tax treaty when exchanging financial data with foreign countries. CRA has also confirmed that it will only communicate CRS information to foreign countries that have appropriate capacity and safeguards in place to keep information safe. See: www.cra-arc.gc.ca/gncy/bdgt/2016/qa08-eng.html

Tax Residency

13. What if my client is unsure or needs more information to determine if they are tax resident of a country?

A client may be considered a tax resident of a country according to the country's tax laws. Generally, an individual will be a tax resident of a country if, under the laws of that country, they pay or should be paying tax there because of their domicile, residence, or similar criteria. It is possible to be a tax resident of more than one country.

Individuals who are tax residents in more than one country can rely on the tie-breaker rules in tax treaties (when they apply) to resolve cases of dual tax residence. Unfortunately, insurers cannot provide tax advice about tax residency rules to clients. Information about tax residency is also available as follows:

- OECD: <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/>
- CRA: see Income Tax Folio, S5-F1-C1, *Determining an Individual's Residence Status*, which you can get on CRA's website at: <http://www.cra-arc.gc.ca/tx/tchncl/ncmtx/fls/s5/f1/s5-f1-c1-eng.html>

It is the responsibility of account holders to determine whether they are a tax resident of a country other than Canada.

14. Can individuals be a tax resident in more than one country at a time?

Yes, it is possible for an individual to be a tax resident of multiple countries depending on each country's tax law and whether or not there is a tax treaty between the countries. Tax treaties frequently contain tie-breaker rules to address the treatment of dual tax residents and deem residency in one country or the other.

For Canadian tax purposes, it will be extremely rare for a taxpayer to have multiple tax residence. That is because Canada has 92 tax treaties that provide a tie breaker rule. Where the taxpayer is resident in a country with which Canada does not have a tax treaty, there is no tie breaker rule to apply. If you are unsure of your tax residency, contact a tax advisor.

Taxpayer Identification Number (TIN)

15. What is a Taxpayer Identification number (TIN)?

This is a number used by a country's tax authority for identification purposes. It varies in nature and form by country. For example, in Canada, a Social Insurance Number (SIN) is a Canadian individual resident's TIN. For Canadian entities, such as corporations and partnerships, the TIN will be the Business Number (BN) issued by CRA.

Information about foreign TINs is posted at:

- US: www.irs.gov/individuals/international-taxpayers/taxpayer-identification-numbers-tin
- other countries: www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers.

16. What if your client does not know their TIN?

If your client is eligible to receive a TIN, but does not have one, they have 90 days from the time they open a financial account to apply for a TIN from the tax authority of their country of tax residence. Once they obtain a TIN, they have 15 days to provide it to their financial institution. If they fail to provide their TIN, their financial institution may be required to report their account to the CRA, and they may be subject to penalties imposed by CRA.

17. What if a country does not issue TINs?

If your client's country of tax residence does not issue TINs, they do not have to provide one.

When the client completes the Declaration of Tax Residence, they will have to indicate their country of tax residence and give the reason why they do not have a TIN, for example, "*My country of tax residence does not issue TINs to its residents*".

Information to be reported

18. If a Canadian resident has an account with a financial institution outside Canada, will information be reported to CRA?

If a Canadian resident has a Reportable Account in another country that has adopted the CRS, the financial institution in that country will be required to report information to its local tax authority, which will then exchange that information with CRA (assuming that country has entered into an agreement to share information with Canada).

19. What information will be reported to CRA?

If an account is reportable, the Canadian financial institution (or a foreign country in the case of accounts outside Canada) will report information to CRA including:

- The account holder's:
 - Name
 - Address
 - Date of birth (for individuals)
 - TIN(s) (if the country issues TINs)
 - Country (or countries) of tax residence
- Account number
- Account balance or value at the end of the year
- Amount of interest, dividends, gross proceeds and other amounts paid or credited to the account holder (if applicable)
- Entity type (for entities)

In the case of Reportable Accounts held by certain types of entities, information about the entity's controlling persons who are resident outside Canada will also be reported to CRA (including name, address, date of birth, TIN, country of tax residence, and controlling person type).

Other countries participating in the CRS may require that additional information be reported to their local tax authorities (such as the account holder's place of birth).

Once an account is reportable, updated information must be reported every year for as long as the account remains open and reportable.

20. My client is purchasing a jointly owned cash-value insurance policy. Are both joint owners required to provide their tax residence(s) and TIN(s)?

Yes, to comply with Canadian law, all policy owners must provide their tax residence and TIN on request from your financial institution. The financial institution will report to CRA information on all account holders who are reportable persons along with information on the joint policy. The financial institution is not required to provide information about any joint policy holder who is not a reportable person.

21. How does this impact claimants/beneficiaries?

At the time of payment, a claimant/beneficiary may be asked to complete a Declaration of Tax Residence form, for example, if a financial institution knows, or has reason to know, that the beneficiary is a tax resident of another country, or if the beneficiary is an entity.

Questions for Entities⁶

22. How will the Enhanced Financial Account Information Reporting affect business owners?

Individual/Unincorporated Business Owners (Sole Proprietors)

The requirements discussed above apply to all Financial Accounts opened by Sole Proprietors. At account opening, you will be required to ask the client to provide a Declaration of Tax Residence certifying whether they are tax resident of:

- Canada
- US (including a US citizen) and/or
- any country other than Canada or the US.

Corporations and Partnerships (Entities)

A corporation is a separate legal person, distinct from its owners, and may own property separately from its owners. FATCA and the CRS treat accounts opened by partnerships as owned by the partnership, not by the individual partners.

If the account is opened for an entity, the entity account holder is required to provide a Declaration of Tax Residence. Additional information may be required in order to determine the entity type. Depending on the entity type, the entity may be required to provide information about the controlling persons (see question 25).

23. How will the enhanced financial account information reporting affect estates and trusts?

Accounts held by an estate of a deceased individual are exempt from Enhanced Financial Account Information Reporting starting in the year that the financial institution receives a copy of the deceased's will or death certificate.

Accounts held by trusts must provide a Declaration of Tax Residence for the trust and its controlling persons (note that controlling persons include the trustee(s), settlor(s), and beneficiaries).

If the trust is established to hold family assets for estate planning purposes, it must classify itself as either an "active" or "passive" non-financial entity (see question 26).

24. How are pension plans and other registered plans treated?

Government registered pension plans (including RRSPs, RRIAs, DPSPs, PRPPs, and RPPs) and TFSAs are generally not required to be reviewed and reported under Enhanced Financial Account Information Reporting.

Registered plans that are entities can certify that they are a Financial Institution if they meet the definition of a non-reporting financial institution.

⁶ "Entity" includes corporations, partnerships and some trusts.

25. What information needs to be collected for controlling persons of an entity?

For "passive" non-financial entities and certain investment entities, information must be collected about individuals who control the entity. For corporations, this is generally defined to mean ownership of 25% or more, but may vary depending on the type of account. If no individual owns 25% or more of the shares, a senior officer or director will be treated as a controlling person.

Required information includes:

- name
- residence address
- country(ies) of residence for tax purposes
- TIN(s) for all countries in which they are tax resident
- date of birth

This is similar to anti-money laundering requirements.

26. How will I know if my client's Canadian entity is "passive" or "active"?

Publicly available information and/or a Declaration of Tax Residence from the entity account holder may be used to determine if an entity is "active" or "passive".

In general, "passive" entities do NOT engage in substantive business activities to produce a good or service, but rather derive the majority of their revenue from holding or buying and selling investments that produce income, usually in the form of interest, dividends or capital gains.

For Enhanced Financial Account Information Reporting purposes, a "passive" entity is one that is not "active". At a high level, an entity is "active" if it meets any one of the following criteria⁷ under the *Income Tax Act*:

- 50% or more of the entity's gross proceeds are from an active business AND 50% or more of its assets are used in an active business
- The entity's shares are **publicly traded** (or it is related to such an entity)
- The entity is a **holding company** whose subsidiaries are not financial institutions and the entity is not an investment fund such as a private equity fund or venture capital fund
- The entity is **in liquidation** or reorganization (and was not a financial institution)
- The entity is a **start-up** business (other than a financial institution) that is investing in active assets (24-month limit to become "active")
- The entity primarily engages in **financing and hedging with or for related entities** that are not financial institutions
- The entity is a **Governmental Entity**, an International Organization, or a Central Bank

⁷ Refer to the *Income Tax Act* (Canada) for a complete list of criteria to qualify as an "active" entity (see subsection 265(4) and subsection 270(1))

- The entity is a **tax exempt** religious, charitable, scientific, cultural, athletic or educational organization and it meets certain other criteria

The detailed criteria for active entities in the *Income Tax Act* should be consulted. If your client is unsure whether their entity is active or passive, they should consult a tax advisor.

27. My client, who is a US resident, owns a company which was incorporated in Canada and all the income is earned from an active business. Will this company be reportable to CRA under Part XVIII (US FATCA)?

No. Your client's company would be considered a Canadian entity because it was incorporated in Canada. It would therefore not be considered a US Person. Because it earns only "active" income, it is not a "passive" entity. As a result, accounts or contracts held by the company would not be reportable to the CRA even though the company is controlled by a US person.

28. Same situation as Q. 27 above but my client is a UK resident. Will this company be reportable to CRA under Part XIX (CRS for countries other than Canada and the US)?

No, your client's company was incorporated in Canada and it earns only "active" income, it is not a "passive" entity. As a result, accounts or contracts held by the company would not be reportable to CRA even though the company is controlled by a UK resident.

29. My client is a Canadian resident who owns a company which has its head office and operations in Canada but was incorporated in the US. Will this company be reportable to CRA under Part XVIII (US FATCA)?

Yes, since the company was incorporated in the US, it is a US entity which is considered a US Person. Accounts held by it are reportable to CRA (who in turn will report to the IRS), even if the company's business is carried on in Canada and it is owned and controlled by a Canadian. You may want to suggest that your client contact a US tax specialist.

30. My client, who is a tax resident of Mexico, owns a company which was incorporated in Canada and all the income is earned from passive investments. Will this company be reportable to CRA under Part XIX (CRS for countries other than Canada and the US)?

Yes. The corporation is not a reportable person by virtue of being incorporated in Canada. However, since your client is a controlling person of a company that earns only passive income and who is a tax resident in a country other than Canada or the US, the account is a reportable account.

Advisors & Agencies

31. If multiple parties are working with the same client or account, such as a nominee name segregated fund contract, who will perform the due diligence and reporting?

The Canadian insurance industry collaborated with Fundserv to develop the *FATCA and the Common Reporting Standard Process Agreement for "Nominee Name" Individual Variable Insurance (Segregated Fund) Contracts* ("Agreement") to assist in administration and compliance with the *Income Tax Act*.

For non-registered segregated fund contracts held in nominee name, the Agreement states that the distributor (broker/dealer) will perform the due diligence and reporting to CRA.

32. What is the purpose of the FATCA & CRS Process Agreement for Nominee Name Segregated Fund Contracts?

The *FATCA and the Common Reporting Standard Process Agreement for "Nominee Name" Individual Variable Insurance (Segregated Fund) Contracts* ("Agreement") is critical to:

- facilitate the industry's Enhanced Financial Account Information Reporting compliance and
- ensure consistent treatment of all nominee name accounts, including both segregated funds and mutual funds, so that, in all cases, the dealer performs the due diligence and reporting.

If the agreement for nominee name segregated fund contracts is not completed, insurers are required by CRA to perform the due diligence and reporting requirements for segregated fund contracts held in nominee name. (This is in contrast to mutual fund accounts held in nominee name where dealers are not required to sign an agreement, as CRA already requires them to perform the due diligence and reporting responsibilities.)

The agreement also provides some indemnification for both dealers and insurers in the event that a party does not carry out their agreed upon responsibilities.

33. Who can rely on these agreements?

Only manufacturers (insurers) and distributors (dealers) that sign the agreement can rely on it.

34. Why is there a requirement for distributors to send a yearly declaration to Fundserv within the FATCA & CRS Process Agreement?

The purpose of the declaration is to notify manufacturers that the distributor has satisfied their obligations and conducted due diligence on all relevant accounts.

35. Is there a FATCA & CRS Process Agreement for segregated fund contracts held in client name?

As per the CRA Guidance, the insurer is responsible for both due diligence and reporting of client name non-registered segregated fund contracts. Therefore, no additional agreement is required for client name segregated fund contracts. It is expected that broker/dealers, MGAs and agents will support the information collection and recordkeeping needs of the insurer as per the normal course of business and existing agreements in place.

36. Are MGAs classified as a Financial Institution for reporting purposes under Canadian law?

MGAs generally would not meet the definition of Financial Institution for reporting purposes since they do not:

- accept deposits in the course of banking or similar business
- hold financial assets for the account of others, or
- conduct themselves as a business investing, administering or managing funds for or on behalf of a client.

If the MGA also has a mutual fund dealership, that dealership may be considered a Financial Institution for due diligence and reporting purposes under Part XVIII (FATCA) and Part XIX (CRS) of the *Income Tax Act* (Canada). MGAs should get their own tax advice on their own specific circumstances.

37. What amendments or additions to broker/dealer agreements will be needed for brokers/dealers who sell business in nominee name?

Each broker/dealer who sells business in nominee name is encouraged to complete the *FATCA and the Common Reporting Standard Process Agreement for "Nominee Name" Individual Variable Insurance (Segregated Fund) Contracts (Distributor's Agreement)*.

As per existing broker/dealer agreements, all broker/dealers, MGAs and agents will continue to be required to comply with insurance company procedures, Canadian laws and regulations. For example, compliance with Canadian law will require broker/dealers to notify the insurer of any change in their FATCA & CRS compliance status.

38. What information needs to be sent for electronic orders using the Fundserv network?

Fundserv's requirements are posted at: <http://www.fundserv.com/tools-and-training/industry-reports-and-agreements/fatcafatca-firm-acknowledgement/>

Updates to the Fundserv information exchange standard already support the distributor providing the financial institution the following information for client name non-registered business:

- US Person status/entity classification
- date this status/entity classification was provided to the distributor
- US TIN, if applicable
- information on controlling persons of passive non-financial entities.

For CRS purposes, updates to the Fundserv information exchange standard include the distributor providing the financial institution the following information for client name non-registered business:

- tax residence/entity classification
- date this status/classification was provided to the distributor
- foreign country tax residence and corresponding TIN, or reason for no TIN
- date of birth
- information on controlling persons of passive non-financial entities.

For nominee name business, no individual client account information is required to be sent to Fundserv if the *FATCA & CRS Process Agreement for "Nominee Name" Individual Variable Insurance (Segregated Fund) Contracts (Distributor's Agreement)* has been completed by the dealer and is on file with Fundserv.

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Appendix - Additional information for US Persons:

Who is considered a "US Person"?

A US Person includes:

- A citizen of the US [including an individual born in the US, but resident in Canada (or another country) who has not renounced their US citizenship]
- A permanent resident of the US
- A US green card holder⁸
- US corporations and US estates and US trusts

You may also be considered a US Person if you spend considerable time in the US on a yearly basis. For example, some Canadian "snowbirds" may be considered a US Person for US tax purposes. Contact your tax advisor on how this may impact you.

For more information about your Canadian residency, visit the CRA website at:

<http://www.cra-arc.gc.ca/tx/nnrstdnts/cmmn/rsdncy-eng.html>

For more information, visit the IRS website at:

<https://www.irs.gov/individuals/international-taxpayers/alien-taxation-certain-essential-concepts>

For more information on snowbirds, visit the IRS website at:

<https://www.irs.gov/individuals/international-taxpayers/substantial-presence-test>

Your financial institution may request additional information from you, or through your advisor, to clarify and confirm your US Person status. If you are not sure if you are a US Person, please contact your tax advisor or lawyer.

⁸ A green card has a 10-year standard term (which requires renewal). A green card holder continues to be a U.S. Person until IRS form 8854 "Initial and Annual Expatriation Statement" has been filed.

For more information, visit the websites for U.S. Citizenship and Immigration Services and the IRS at:

<https://www.uscis.gov/green-card/after-green-card-granted/maintaining-permanent-residence>

and

<https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-about-international-individual-tax-matters>

If I am a snowbird, am I considered a US Person?

Snowbirds may become US Persons if they have moved their principal residence to the US or if the amount of time they spend in the US on a yearly basis exceeds a certain time limit. They may be deemed to be a “resident alien” if they are a US green card holder. Information on the "Substantial Presence Test" is posted on the IRS website at:

<https://www.irs.gov/individuals/international-taxpayers/substantial-presence-test>

For general information, see the CRA webpage "Canadian residents going down south", which includes information on US tax issues: <http://www.cra-arc.gc.ca/tx/nnrdsnts/sth-eng.html>

Contact your tax advisor or lawyer for further advice on how this may impact you.

Your financial institution may ask you to certify that you are only a temporary visitor to the US. Any such certifications will need to be renewed at least every seven years.

I am a Canadian resident but I was born in the US. Am I considered a US Person?

Generally yes, unless you have renounced your US citizenship. As noted above, you are considered a US Person if you are a citizen of the US (including an individual born in the US, but resident in Canada, or another country, who has not renounced their US citizenship). Note, a person can be a tax resident of more than one country.

I am a Canadian resident but am also a resident of the US for tax purposes*. Is there anything I can do to change my status from a US Person to a non-US Person?

If you wish to become a non-US Person, you may be able to formally renounce your US citizenship with the US government. We recommend you consult a lawyer to review your options. Some information is available at:

<https://travel.state.gov/content/travel/en/legal-considerations/us-citizenship-laws-policies/renunciation-of-citizenship.html>

* Examples of individuals who are US residents for US tax purposes may include:

- i) Someone born in the US who moved to Canada shortly after birth (who has not renounced their US citizenship)
- ii) Canadian resident, born outside of the US, who has acquired US citizenship through US citizenship rights due to US parents or marriage
- iii) Canadian US green card holder who has stopped working in the US and, after leaving the US, has not yet filed IRS form 8854 "Initial and Annual Expatriation Statement" or has not declared themselves a “nonimmigrant” on their US tax return⁹

⁹ For more information, see IRS and U.S. Citizenship and Immigration Services websites listed in footnote 8.