

GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE

Islamabad, the 17th February, 2017.

NOTIFICATION
(Income Tax)

S.R.O. 101 (I)/2017.- The following draft of further amendments in the Income Tax Rules, 2002, which the Federal Board of Revenue proposes to make in exercise of the powers conferred by sub-section (1) of section 237 of the Income Tax Ordinance, 2001 (XLIX of 2001), is hereby published for the information of all persons likely to be affected thereby, as required by sub-section (3) of the said section and notice is hereby given that the draft will be taken into consideration by the Federal Board of Revenue after fifteen days of its publication in the official Gazette.

Any objection or suggestion which may be received from any person in respect of the said draft, before the expiry of the aforesaid period, shall be considered by the Federal Board of Revenue.

DRAFT AMENDMENTS

In the aforesaid Rules, –

- (1) After Chapter XII, the following new Chapter shall be added, namely:-

“CHAPTER XIII

COMMON REPORTING STANDARD

78A. Application. - This Chapter contains rules for reporting financial institutions to provide information to the Federal Board of Revenue for the purposes of section 107 read with section 165B of the Income Tax Ordinance, 2001.

78B. Interpretation.- In this Chapter, –

- (a) **“Reporting Financial Institution”** means any Participating Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution;
- (b) **“Participating Jurisdiction Financial Institution”** means-

- (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction; and
 - (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction;
- (c) **“Financial Institution”** for the purposes of this Chapter, the term means a Custodial Institution, a Depository Institution, an Investment Entity or a Specified Insurance Company;
- (d) **“Custodial Institution”** means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity’s gross income attributable to the holding of Financial Assets and related financial services equals or exceeds twenty per cent of the Entity’s gross income during the shorter of -

(i)	the three-year period that ends on the 31 st December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or
(ii)	the period during which the Entity has been in existence;

- (e) **“Depository Institution”** means any Entity that accepts deposits in the ordinary course of a banking or similar business;
- (f) **“Investment Entity”** means any Entity -
- (i) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer namely:-
 - (a) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.), foreign exchange, exchange, interest rate and index instruments, transferable securities or commodity futures trading;
 - (b) individual and collective portfolio management; or
 - (c) otherwise investing, administering or managing Financial Assets or money on behalf of other persons; or
 - (ii) 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 Investment Entity described in sub-clause (i);

An Entity is treated as primarily conducting as a business one or more of the activities described in sub-clause (i) of clause (f), or an Entity's gross income is primarily attributable to investing, reinvesting or trading in Financial Assets for purposes of sub-clause (ii) of clause(f), if the Entity's gross income attributable to the relevant activities equals or exceeds fifty per cent of the Entity's gross income during the shorter of (a) the three-year period ending on the 31st December of the year preceding the year in which the determination is made; or (b) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in sub-clause (iv) through (vii) of clause (aq) of rule 78B.

- (g) **"Financial Asset"** includes a security (for example, a share of stock in a corporation, partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust, note, bond, debenture or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps and similar agreements), Insurance Contract or Annuity Contract or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract or Annuity Contract. The term "Financial Asset" does not include a non-debt, direct interest in real property;
- (h) **"Specified Insurance Company"** means 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 a Cash Value Insurance Contract or an Annuity Contract;
- (i) **"Non-Reporting Financial Institution"** means any Financial Institution that is-
 - (i) a Governmental Entity, International Organization or Central Bank, 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 a Specified Insurance Company, Custodial Institution, or Depository Institution;
 - (ii) 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;

- (iii) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in sub-clauses (i) and (ii) and included in the list to be published by Federal Board of Revenue and made available on its web portal, on recommendations of the State Bank of Pakistan and the Securities Exchange Commission of Pakistan, as the case may be, as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of these rules;
 - (iv) an Exempt Collective Investment Vehicle; or
 - (v) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to rule 78C with respect to all Reportable Accounts of the trust;
- (j) **“Governmental Entity”** means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county or municipality) or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a “Governmental Entity”). This category is comprised of the integral parts, controlled entities and political subdivisions of a jurisdiction.

Explanation. - For the purpose of this clause,-

- (i) an “integral part” of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official or administrator acting in a private or personal capacity.
- (ii) a “controlled entity” means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that-
 - (A) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
 - (B) 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
 - (C) the Entity’s assets vest in one or more Governmental Entities upon dissolution; and

- (iii) Income does not 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 some phase of government. Notwithstanding the foregoing, 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, such as a commercial banking business that provides financial services to private persons;
- (k) **“International Organization”** means any international organization or wholly owned agency or instrumentality thereof and includes any intergovernmental organization (including a supranational organization) that is comprised primarily of governments, that has in effect a headquarters or substantially similar agreement with Pakistan and the income of which does not inure to the benefit of private persons;
- (l) **“Central Bank”** means 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 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;
- (m) **“Broad Participation Retirement Fund”** means a fund established to provide retirement, disability or death benefits or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund-
 - (i) does not have a single beneficiary with a right to more than five per cent of the fund’s assets;
 - (ii) is subject to government regulation and provides information reporting to the tax authorities; and
 - (iii) satisfies at least one of the following requirements, namely:-
 - (A) The fund is generally exempt from tax on investment income or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
 - (B) the fund receives at least fifty per cent of its total contributions (other than transfers of assets from other plans described in clauses (m) through (o) or from retirement and pension accounts described in sub-clause(i) of clause (ah) from the sponsoring employers;

(C) 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 other retirement funds described in clauses (m) through (o) or retirement and pension accounts described in sub-clause (i) of clause (ah) or penalties apply to distributions or withdrawals made before such specified events; or

(D) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed fifty thousand US Dollars annually, applying the rules set forth in sub- rule (3) of rule 78I for account aggregation and currency translation;

(n) **“Narrow Participation Retirement Fund”** means a fund established to provide retirement, disability or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that-

(i) the fund has fewer than fifty participants;

(ii) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;

(iii) the employee and employer contributions to the fund [other than transfers of assets from retirement and pension accounts described in sub-clause (i) of clause (ah)] are limited by reference to earned income and compensation of the employee, respectively;

(iv) participants, that are not residents of the jurisdiction in which the fund is established, are not entitled to more than twenty per cent of the fund’s assets; and

(v) the fund is subject to government regulation and provides information reporting to the tax authorities;

(o) **“Pension Fund of a Governmental Entity, International Organization or Central Bank”** means a fund 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 such employees) or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organization or Central Bank;

- (p) **“Qualified Credit Card Issuer”** means a Financial Institution satisfying the following requirements, namely:-
- (i) 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
 - (ii) beginning on or before the 1st July, 2017, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of fifty thousand US Dollars or to ensure that any customer overpayment in excess of fifty thousand US Dollars is refunded to the customer within sixty days, in each case applying the rules set forth in sub-rule (3) of rule 78I for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;
- (q) **“Exempt Collective Investment Vehicle”** means 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 that are not Reportable Persons except a Passive NFE with Controlling Persons who are Reportable Persons. An Investment Entity that is regulated as a collective investment vehicle does not fail to qualify as an Exempt Collective Investment Vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that-
- (i) the collective investment vehicle has not issued and does not issue any physical shares in bearer form;
 - (ii) the collective investment vehicle retires all such shares upon surrender;
 - (iii) the collective investment vehicle performs the due diligence procedures set forth in rule 78D through 78J and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
 - (iv) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilized as soon as possible and in any event prior to the 1st July, 2017;
- (r) **“Financial Account”** means an account maintained by a Financial Institution and includes a Depository Account, a Custodial Account and

- (i) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term “Financial Account” does not include any equity or debt interest in any Entity that is an Investment Entity solely because it (a) renders investment advice to and acts on behalf of or (b) manages portfolios for and acts on behalf of a customer 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;
 - (ii) in the case of a Financial Institution not described in sub-clause (i) any equity or debt interest in the Financial Institution, if the class of interests was established with a purpose of avoiding reporting in accordance with Rule 78C; and
 - (iii) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-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. The term “Financial Account” does not include any account that is an excluded account;
- (s) **“Depository Account”** includes any commercial, checking, 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. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon;
- (t) **“Custodial Account”** means an account (other than an Insurance Contract or Annuity Contract) that holds one or more Financial Assets for the benefit of another person;
- (u) **“Equity Interest”** means, 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 considered 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. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust;

- (v) **“Insurance Contract”** means 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;
- (w) **“Annuity Contract”** means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years;
- (x) **“Cash Value Insurance Contract”** means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value;
- (y) **“Cash Value”** means the greater of (a) 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 (b) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term “Cash Value” does not include an amount payable under an Insurance Contract-
 - (i) solely by reason of the death of an individual insured under a life insurance contract;
 - (ii) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
 - (iii) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance contract or an Annuity Contract) due to cancellation or termination of the contract, 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;
 - (iv) 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 described in sub-clause (ii) of clause (y); or

- (v) 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;
- (z) **“Preexisting Account”** means a Financial Account maintained by a Reporting Financial Institution on or before the 30th June, 2017;
- (aa) **“New Account”** means a Financial Account maintained by a Reporting Financial Institution opened on or after the 1st June, 2017;
- (ab) **“Preexisting Individual Account”** means a Preexisting Account held by one or more individuals;
- (ac) **“New Individual Account”** means a New Account held by one or more individuals;
- (ad) **“Preexisting Entity Account”** means a Preexisting Account held by one or more Entities;
- (ae) **“Lower Value Account”** means a Preexisting Individual Account with an aggregate balance or value as of 30th June, 2017 that does not exceed one million US Dollars;
- (af) **“High Value Account”** means a Preexisting Individual Account with an aggregate balance or value that exceeds one million US Dollars as of the 30th June, 2017 or the 31st December of any subsequent year;
- (ag) **“New Entity Account”** means a New Account held by one or more Entities;
- (ah) **“Excluded Account”** means any of the following accounts, namely:-
 - (i) a retirement or pension account that satisfies the following requirements, namely:-
 - (A) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
 - B) the account is tax-favoured (i.e. 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 from the account is deferred or taxed at a reduced rate);
 - (C) information reporting is required to the Commissioner Inland Revenue with respect to the account;

- (D) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
- (E) either (i) annual contributions are limited to fifty thousand US Dollars or less, or (ii) there is a maximum lifetime contribution limit to the account of one million US Dollars or less, in each case applying the rules set forth in sub-rule (3) of rule 78I for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirements of this paragraph will not fail to satisfy such requirements solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of sub-clauses (i) or (ii) of clause (ah) or from one or more retirement or pension funds that meet the requirements of any of clauses (m) through (o);

(ii) an account that satisfies the following requirements, namely:-

- (A) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
- (B) the account is tax-favoured (i.e. 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 from the account is deferred or taxed at a reduced rate);
- (C) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
- (D) annual contributions are limited to fifty thousand US dollars or less, applying the rules set forth in rule 78I for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of para (D) of sub clause (ii) of clause (ah) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of sub-clause (i) or (ii) of clause (ah) or from one or more

retirement or pension funds that meet the requirements of any of clauses (m) through (o);

(iii) a life insurance contract with a coverage period that will end before the insured individual attains age of ninety, provided that the contract satisfies the following requirements, namely:-

- (A) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age of ninety, whichever is shorter;
- (B). the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
- (C) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
- (D) the contract is not held by a transferee for value;

(iv) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;

(v) an account established in connection with any of the following, namely:-

- (A) a court order or judgment;
- (B) a sale, exchange or lease of real or personal property, provided that the account satisfies the following requirements , namely:-
 - (I) 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 is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
 - (II) 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;

- (III) the assets of the account, including the income earned thereon, 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;
 - (IV) the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and
 - (V) the account is not associated with an account described in sub-clause (vi) of clause (ah);
- (C) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
- (D) An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time;
- (vi) A Depository Account that satisfies the following requirements; namely:-
- (A) 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
 - (B) Beginning on or before the 1st July, 2017, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of fifty thousand US Dollar or to ensure that any customer overpayment in excess of fifty thousand US Dollars is refunded to the customer within sixty days, in each case applying the rules set forth in sub-rule (3) of rule 78I for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;
- (vii) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in sub-clauses (i) through (vi) of clause (ah) and is included in the list to be published by the Federal Board of Revenue (FBR) and made available on its web portal, on recommendations of the State Bank of Pakistan and the Securities and Exchange Commission of Pakistan, as the case may be, as excluded account,

provided that the status of such account as an Excluded Account does not frustrate the purposes of these rules;

- (ai) **“Reportable Account”** means 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 rule 78D through 78J;
- (aj) **“Reportable Person”** means a Person other than-
 - (i) a corporation the stock of which is regularly traded on one or more established securities markets;
 - (ii) any corporation that is a Related Entity of a corporation described in sub-clause (i);
 - (iii) a Governmental Entity;
 - (iv) an International Organization;
 - (v) a Central Bank; or
 - (vi) a Financial Institution.
- (ak) **“Reportable Jurisdiction Person”** means an individual or Entity that is resident in a Reportable Jurisdiction or an estate of a decedent that was a resident of Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated;
- (al) **“Reportable Jurisdiction”** means all jurisdictions other than Pakistan and the United States of America;
- (am) **“Participating Jurisdiction”** means a jurisdiction (i) with which an agreement is in place pursuant to which there is an obligation in place to provide the information specified in rule 78C, and (ii) which is identified in a published list to be made available on FBR’s web portal;
- (an) **“Controlling Persons”** means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector, if any, the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust and in the case of a legal arrangement, other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” must be interpreted in a manner consistent with the Financial Action Task Force recommendations;

- (ao) “NFE” means any Entity that is not a Financial Institution;
- (ap) “Passive NFE” means any (i) NFE that is not an Active NFE or (ii) an Investment Entity described in sub-clause (ii) of clause (f) that is not a Participating Jurisdiction Financial Institution;
- (aq) “Active NFE” means any NFE that meets any of the following criteria, namely:-
- (i) less than fifty per cent of the NFE’s gross income for the preceding calendar year is passive income and less than fifty per cent of the assets held by the NFE during the preceding calendar year are assets that produce or are held for the production of passive income;
 - (ii) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
 - (iii) the NFE is a Governmental Entity, an International Organization, a Central Bank , or an Entity wholly owned by one or more of the foregoing;
 - (iv) 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 subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
 - (v) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is twenty four months after the date of the initial organization of the NFE;
 - (vi) the NFE was not a Financial Institution in 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;
 - (vii) 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 any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or

(viii) the NFE meets all of the following requirements, namely:-

- (A) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it 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;
- (B) it is exempt from income tax in its jurisdiction of residence;
- (C) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- (D) 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
- (E) 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;

(ar) **“Account Holder”** means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor or intermediary is not treated as holding the account for purposes of these rules and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder;

- (as) **“AML/KYC Procedures”** means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject;
- (at) **“Entity”** means a legal person or a legal arrangement, such as a corporation, partnership, trust or foundation;
- (au) **“Related Entity”** means if either entity controls the other Entity, or two Entities are under common control. For this purpose control includes direct or indirect ownership of more than fifty percent of the vote and value in an Entity;
- (av) **“TIN”** means Taxpayer Identification Number (or any other functional equivalent in the absence of a Taxpayer Identification Number); and
- (aw) **“Documentary Evidence”** includes any of the following, namely:-
 - (i) a certificate of residence issued by an authorized government body (for example, a government or agency thereof or a municipality) of the jurisdiction in which the payee claims to be a resident;
 - (ii) with respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof or a municipality) that includes the individual’s name and is typically used for identification purposes;
 - (iii) with respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organized;
 - (iv) any audited financial statement, third-party credit report, bankruptcy filing or securities regulator’s report.

78C. General Reporting Requirements (1) Subject to sub-rule (3) through (6) each Reporting Financial Institution shall report the following information with respect to each Reportable Account of such Reporting Financial Institution to the Federal Board of Revenue, namely:-

- (a) the name, address, jurisdiction of residence, TIN and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with rules 78G through 78I, 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 and place of birth of each Reportable Person;

- (b) the account number (or functional equivalent in the absence of an account number);
- (c) the name and identifying number, if any, of the Reporting Financial Institution;
- (d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- (e) in the case of any Custodial Account-
 - (i) 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
 - (ii) 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;
- (f) 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
- (g) in the case of any account not described in clause (e) or (f) of sub-rule (1), 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.

(2) The information reported shall identify the currency in which each amount is denominated.

(3) Notwithstanding clause (a) of sub- rule (1), with respect to each Reportable Account that is a Preexisting Account, the TIN or date of birth is not required to be reported if such TIN or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such

Reporting Financial Institution under the domestic law. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts.

(4) Notwithstanding clause (a) of sub- rule (1), the TIN is not required to be reported if (i) a TIN is not issued by the relevant Reportable Jurisdiction or (ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.

(5) Notwithstanding clause (a) of sub- rule (1), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under the domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.

(6) Notwithstanding rule 78C, the information to be reported with respect to 2017 is the information described in said rule, except for gross proceeds described in sub-clause (ii) of clause (e) of sub-rule (1).

78D. General Due Diligence Requirements.- (1) An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in rules 78D through 78J and, unless otherwise provided, information with respect to a Reportable Account shall be reported annually in the calendar year following the year to which the information relates.

(2) The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.

(3) Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value shall be determined as of the last day of the reporting period that ends with or within that calendar year.

(4) Reporting Financial Institutions may use service providers to fulfill the reporting and due diligence obligations imposed on such Reporting Financial Institutions pursuant to these rules, but these obligations shall remain the responsibility of the Reporting Financial Institutions.

(5) Reporting Financial Institutions may apply the due diligence procedures for New Accounts to Preexisting Accounts and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where New Account due diligence procedures are used for Preexisting Accounts, the rules otherwise applicable to Preexisting Accounts shall continue to apply.

78E. Due diligence procedures for Preexisting Individual Accounts. – The following procedures apply for purposes of identifying Reportable Accounts among preexisting Individual Accounts, namely:-

- (1) **Accounts not Required to be Reviewed, Identified, or Reported.** 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 such Contract to residents of a Reportable Jurisdiction.
- (2) **Lower Value Accounts.** The following procedures shall apply with respect to Lower Value Accounts, namely:-
 - (a) **Residence Address.** If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person;
 - (b) **Electronic Record Search.** If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in sub-clause (a) of clause (2), the Reporting Financial Institution shall review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply sub-clause (c) through (f) of sub-clause (2).
 - i) identification of the Account Holder as a resident of Reportable Jurisdiction;
 - ii) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;
 - iii) one or more telephone numbers in a reporting Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution;
 - iv) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;

- v) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
 - vi) 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.
- (c) if none of the indicia listed in sub-clause (b) of clause (2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account or the account becomes a High Value Account;
- (d) if any of the indicia listed in sub paragraphs (i) through (v) of sub-clause (b) of clause (2) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution shall treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply sub-clause (f) of clause (2) and one of the exceptions in such clause applies with respect to that account;
- (e) if a “hold mail” instruction or “in-care-of” address is discovered in the electronic search and no other address and none of the other indicia listed in paragraphs (i) through (v) of sub-clause (b) of clause (2) are identified for the Account Holder, the Reporting Financial Institution shall, in the order most appropriate to the circumstances, apply the paper record search described in sub-clause (b) of clause (3) or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution shall report the account as an undocumented account; and
- (f) notwithstanding a finding of indicia under sub-clause (b) of clause (2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Reportable Jurisdiction, if -
- (i) 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, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of -

- (A) a self-certification from the Account Holder of the jurisdiction of residence of such Account Holder that does not include such Reportable Jurisdiction; and
- (B) documentary evidence establishing the Account Holder's non-reportable status; and

(ii) 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, the Reporting Financial Institution obtains or has previously reviewed and maintains a record of -

- (A) a self-certification from the Account Holder of the jurisdiction of residence of such Account Holder that does not include such Reportable Jurisdiction; or
- (B) documentary evidence establishing the Account Holder's non-reportable status. `

(3) **Enhanced Review Procedures for High Value Accounts.** The following enhanced review procedures apply with respect to High Value Accounts, namely:-

- (a) **Electronic Record Search.** With respect to High Value Accounts, the Reporting Financial Institution will review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in sub-clause (b) of clause (2);
- (b) **Paper Record Search.** if the Reporting Financial Institution's electronically searchable databases include fields for and capture all of the information described in sub-clause (c) of clause (3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Financial Institution shall also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with

the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in sub-clause (b) of clause (2) namely:-

- (i) the most recent Documentary Evidence collected with respect to the account;
- (ii) the most recent account opening contract or documentation;
- (iii) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML or KYC Procedures or for other regulatory purposes;
- (iv) any power of attorney or signature authority forms currently in effect; and
- (v) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect;

(c) **Exception to the Extent Databases Contain Sufficient Information.**
A Reporting Financial Institution is not required to perform the paper record search described in sub-clause (b) of clause (3) to the extent the Reporting Financial Institution's electronically searchable information includes the following; namely:-

- (i) the Account Holder's residence status;
- (ii) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
- (iii) the Account Holder's telephone number currently on file, if any, with the Reporting Financial Institution;
- (iv) 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);
- (v) whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and
- vi) whether there is any power of attorney or signatory authority for the account.

- (d) **Relationship Manager Inquiry or Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Financial Institution shall treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.
- (e) **Effect of Finding Indicia. -**
- (i) if none of the indicia listed in sub-clause (b) of clause (2) are discovered in the enhanced review of High Value Accounts described above and the account is not identified as held by a Reportable Person in sub-clause (d) of clause (3), 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;
 - ii) if any of the indicia listed in paragraphs (i) through (v) of sub-clause (b) of clause (2) are discovered in the enhanced review of High Value Accounts described above, 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 shall treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply sub-clause (f) of clause (2) and one of the exceptions in such clause applies with respect to that account;
 - (iii) if a “hold mail” instruction or “in-care-of” address is discovered in the enhanced review of High Value Accounts described above, and no other address and none of the other indicia listed in paragraphs (i) through (v) of sub-clause (b) of clause (2) are identified for the Account Holder, the Reporting Financial Institution shall obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it shall report the account as an undocumented account;
- (f) if a Preexisting Individual Account is not a High Value Account as of the 30th June, 2017, but becomes a High Value Account as of the last

day of a current or subsequent calendar year, the Reporting Financial Institution shall complete the enhanced review procedures described in clause (3) with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution shall report the required information about such 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;

- (g) once a Reporting Financial Institution applies the enhanced review procedures described in clause (3) to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in sub-clause (d) clause (3), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented;
 - (h) if there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in sub-clause (b) of clause (2) being associated with the account, then the Reporting Financial Institution shall treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply sub-clause (f) of clause (2) and one of the exceptions in such sub-clause applies with respect to that account.
 - (i) A Reporting Financial Institution shall implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Reportable Jurisdiction, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply sub-clause (f) of clause (2), is required to obtain the appropriate documentation from the Account Holder.
- (4) Review of Preexisting High Value Individual Accounts shall be completed by the 31st December, 2017 and for Low Value Accounts, by the 31st December, 2018; and

- (5) Any Preexisting Individual Account that has been identified as a Reportable Account under this rule shall be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

78F. Due Diligence for New Individual Accounts.- The following procedures shall apply for purposes of identifying Reportable Accounts among New Individual Accounts, namely:-

- (1) With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution shall 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 such 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 or KYC Procedures;
- (2) If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution shall treat the account as a Reportable Account and the self-certification shall also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to sub-rule (4) of rule 78C) and date of birth; and
- (3) If there is a change of 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, the Reporting Financial Institution cannot rely on the original self-certification and shall obtain a valid self-certification that establishes the residence for tax purposes of the Account Holder.

78G. Due Diligence for Preexisting Entity Accounts.- The following procedures shall apply for the purposes of identifying Reportable Accounts among Preexisting Entity Accounts, namely:-

- (1) **Entity Accounts not Required to be Reviewed, Identified or Reported.** 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 such accounts, a Preexisting Entity Account with an aggregate account balance or value that does not exceed two hundred fifty thousand US Dollars as of the 31st December, 2018, is not required to be reviewed, identified or reported as a Reportable Account until the account balance or value exceeds two hundred fifty thousand US Dollars as of the last day of any subsequent calendar year;

- (2) **Entity Accounts subject to Review.** A Preexisting Entity Account that has an aggregate account balance or value that exceeds two hundred fifty thousand US Dollars as of the 31st December, 2018, and a Preexisting Entity Account that does not exceed two hundred fifty thousand US Dollars as of the 31st December, 2018 but the aggregate account balance or value of which exceeds two hundred fifty thousand US Dollars as of the last day of any subsequent calendar year, shall be reviewed in accordance with the procedures set forth in clause (4);
- (3) **Entity Accounts with respect to which Reporting is required.** With respect to Preexisting Entity Accounts described in clause (2), only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts;
- (4) **Review Procedures for identifying entity Accounts with respect to which Reporting is required.** For Preexisting Entity Accounts described in clause (2), a Reporting Financial Institution shall 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, namely:-
- (a) **Determine whether the Entity is a Reportable Person.**
- (i) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML or KYC Procedures) to determine whether the information indicates that the Account Holder is resident in a Reportable Jurisdiction. For this purpose, information indicating that the Account Holder is resident in a Reportable Jurisdiction includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction;
- (ii) If the information indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution shall treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person;
- (b) **Determine whether the Entity is a Passive NFE with one or more Controlling Persons who are Reportable Persons.** With respect to an

Account Holder of a Preexisting Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution shall determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account shall be treated as a Reportable Account. In making these determinations the Reporting Financial Institution shall follow the guidance in the following paragraphs in the order most appropriate under the circumstances:-

- (i) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution shall obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that 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 Investment Entity described in paragraph (ii) of sub-clause (f) of rule 78B that is not a Participating Jurisdiction Financial Institution;
 - (ii) **Determining the Controlling Persons of an Account Holder.** For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML or KYC Procedures; and
 - (iii) **Determining whether a Controlling Person of a Passive NFE is a Reportable Person.** For the purposes of 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 or KYC Procedures in the case of a Preexisting Entity Account held by one or more NFEs with an aggregate account balance that does not exceed one million US Dollars ; or a self-certification from the Account Holder or such Controlling Person of the jurisdiction in which the Controlling Person is resident for tax purposes; and
- (5) **Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.**

- (a) Review of Preexisting Entity Accounts with an aggregate account balance or value that exceeds two hundred fifty thousand US Dollars as of the 31st December, 2017 shall be completed by the 31st December, 2018.
- (b) Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed two hundred fifty thousand US Dollars as of the 31st December, 2018, but exceeds two hundred fifty thousand US Dollars as of the 31st December of a subsequent year, shall be completed within the calendar year following the year in which the aggregate account balance or value exceeds two hundred fifty thousand US Dollars; and
- (c) 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 an account is incorrect or unreliable, the Reporting Financial Institution shall re-determine the status of the account in accordance with the procedures set forth under clause (4).

78H. Due Diligence for New Entity Accounts.- The following procedures shall apply for purposes of identifying Reportable Accounts among New Entity Accounts; namely:-

- (1) **Review procedures for identifying Entity Accounts with respect to which reporting is required.** For New Entity Accounts, a Reporting Financial Institution shall 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:-

- (a) **Determine Whether the Entity Is a Reportable Person.**
 - (i) 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 such 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 or KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder; and

(ii) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution shall treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction;

(b) **Determine whether the Entity is a Passive NFE with one or more Controlling Persons who are Reportable Persons.** With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution shall determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account shall be treated as a Reportable Account. In making these determinations the Reporting Financial Institution shall follow the following paragraphs in the order most appropriate under the circumstances as under:-

(i) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution shall rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that 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 Investment Entity described in sub-clause (ii) of clause (f) of rule 78B that is not a Participating Jurisdiction Financial Institution;

(ii) **Determining the Controlling Persons of an Account Holder.** For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML or KYC Procedures; and

(iii) **Determining whether a Controlling Person of a Passive NFE is a Reportable Person.** For purposes of 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 such Controlling Person.

78I. Special due Diligence Rules. - The following additional clauses shall apply in implementing the due diligence procedures described above:

- (1) **Reliance on self- certification and documentary evidence.** 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;
- (2) **Alternative procedures for financial accounts held by individual beneficiaries of a cash value insurance contract or an annuity contract.** 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 such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in clause (2) of rule 78E. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution shall follow the procedures in clause (2) of rule 78E;
- (3) **Account Balance Aggregation and Currency Rules.-**
 - (a) **Aggregation of individual accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this sub-rule;
 - (b) **Aggregation of entity accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the

Reporting Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this sub-rule;

- (c) **Special aggregation rule applicable to relationship managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person 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 person, to aggregate all such accounts; and
- (d) **Amounts read to include equivalent in other currencies.** All dollar amounts are in U.S. dollars and shall be read to include equivalent amounts in other currencies, as determined by domestic law.

78J. International guidelines and commentaries. – For illustration, interpretation and implementation of this chapter, guidance shall also be sought from commentaries on the Model Competent Authority Agreement and Common Reporting Standard as developed by the Organization for Economic Co-Operation and Development (OECD) as amended from time to time. Following table may be referred to for cross referencing to the Commentary of OECD:

S.No.	Reference in Income Tax Rules, 2002	Reference in Commentary on Common Reporting Standard Developed by OECD
(1)	(2)	(3)
1	Rule 78B	Commentary on Section VIII concerning Defined Terms
	Rule 78C	Commentary on Section I concerning General Reporting Requirements
2	Rule 78D	Commentary on Section II concerning Due Diligence requirements
3	Rule 78E	Commentary on Section III concerning Due Diligence for Pre Existing Individual Accounts
4	Rule 78F	Commentary on Section IV concerning Due Diligence for New Individual Accounts
5	Rule 78G	Commentary on Section V concerning Due Diligence for Pre Existing Entity Accounts
6	Rule 78H	Commentary on Section VI concerning Due

		Diligence for New Entity Accounts
7	Rule 78I	Commentary on Section VII concerning Special Due Diligence Requirements”.

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