

# HONG KONG TAX ALERT

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## OECD – global standard for automatic exchange of information

On 13 February 2014 the Organisation for Economic Co-operation and Development (OECD), released the Common Reporting Standard (the CRS), which is intended to become the new global standard for automatic exchange of financial information (covering bank accounts and other financial assets held offshore).

The CRS provides a common global approach for jurisdictions to obtain financial information from their financial institutions and to automatically exchange that information with other jurisdictions on an annual basis. The CRS outlines the financial account information to be exchanged, the financial institutions that need to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. The standard is based on the Model 1 Intergovernmental Agreement (IGA) in connection with the U.S. tax and reporting provisions commonly known as FATCA (Foreign Account Tax Compliance Act).

In addition to containing an overview on automatic Eol, texts of the CRS and the Model Competent Authority Agreement (CAA), are included in the release by the OECD.

The three key aspects of the CRS are:

- **Financial information to be reported** with respect to reportable accounts includes all types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of income,) but also account balances and sales proceeds from financial assets.
- **Financial institutions** that are required to report under the CRS include not only banks and custodians, but also other financial institutions such as brokers, certain collective investment vehicles and certain insurance companies.
- **Reportable accounts** include accounts held by individuals and entities (which includes trusts and foundations). The CRS includes the requirement to look through passive entities to report on the individuals that ultimately control these entities.

The OECD document makes the point that the standard on automatic EoI is intended to be a minimum standard and countries can ask for more information and is not intended to restrict other types of automatic EoI. This raises the prospect that financial institutions might be required to report under multiple automatic EoI regimes simultaneously, thus significantly increasing cost and complexity.

As with the U.S. FATCA regime, the scope will be broad so as to reduce the risk of circumvention. Thus, it will apply not just to banks, but also to certain brokers, investment firms, and some insurance companies.

These initiatives were endorsed by the G20 at their recent meeting of Finance Ministers and Central Bank Governors in Sydney on 22-23 February 2014. There is overwhelming support for the CRS for the automatic exchange of tax information on a reciprocal basis. The G20 announced that it will work with all relevant parties, including their financial institutions, to detail our implementation plan at its meeting in September 2014. In parallel, the G20 expect to begin to exchange information automatically on tax matters among G20 members by the end of 2015.

The G20 calls for the early adoption of the standard by those jurisdictions that are able to do so. The G20 urges all jurisdictions that have not yet complied with the existing standard for exchange of information on request to do so and sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay.

### **Comment**

Hong Kong's current policy is to only exchange information upon request and it has not yet agreed to exchange information on an automatic or spontaneous basis. Information, including bank information, will only be supplied upon specific and bona-fide requests received from the competent authority of a treaty partner in justifiable cases. This policy is reflected in the DTAs concluded by Hong Kong, either in the article on EoI or in the protocol to the agreement.

This policy was reiterated in mid 2013 when the Inland Revenue Ordinance (IRO) was amended to allow Hong Kong to enter into TIEAs. This amendment was necessary for Hong Kong to pass the Phase 2 peer review of the Global Forum and to prevent it from being labelled as an uncooperative jurisdiction.

Against the above background, and in particular the endorsement of the G20 of the CSR, Hong Kong is likely to come under increasing pressure in the coming years to agree to the automatic EoI. This will be driven largely by Hong Kong wishing to continue to be viewed as a cooperative jurisdiction committed to tax transparency. To this end Hong Kong may need to further amend the IRO and re-negotiate the EoI article in its existing DTAs.





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