

HONG KONG TAX ALERT

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Hong Kong launches the Consultation on Automatic Exchange of Information

Highlights

- On 24 April 2015, the HKSAR Government issued a consultation paper on the automatic exchange of information on tax matters in Hong Kong.
- The proposal relates to the definition of FIs, the types of information FIs have to secure from account holders, the due diligence and reporting requirements FIs have to follow, the powers of the IRD to collect the information and forward to the bilateral treaty partners, the sanction for non-compliance and confidentiality provisions.
- Double tax treaties and tax information exchange agreements will be the legal foundation for Hong Kong's AEOI. Many of these agreements may need to be renegotiated to allow for the AEOI.
- The HKSAR Government will work to a strict time frame to have the necessary legislation enacted by 2017 before the anticipated implementation of the first information exchanges in 2018.

Background

Hong Kong does not currently allow for the automatic exchange of information. Exchange of information can only be made under the Comprehensive Avoidance of Double Taxation Agreement or Tax Information Exchange Agreement and on a request basis. However, the HKSAR Government has committed to the automatic exchange of information to comply with the Organization for Economic Co-operation and Development's (OECD) standard. Amending legislation will be required in order to allow the HKSAR Government to exchange information automatically and as such, the HKSAR Government launched a consultation paper to gauge views on the proposed model for automatic exchange of financial account information in tax matters (AEOI) in terms of the legislative regime and operational framework.

In September 2014, we [reported](#) that the HKSAR Government had announced its commitment to implement the OECD's Common Reporting Standard for AEOI (the OECD standard).

The consultation

The HKSAR Government issued a consultation paper on 24 April 2015 to gather feedback on the following seven key aspects:

- a. the proposed scope of Financial Institutions (FI), non-reporting FIs and excluded accounts;
- b. the types of information FIs have to secure from account holders;
- c. the due diligence procedures and reporting requirements that FIs have to follow;
- d. the powers of the Inland Revenue Department (IRD) to collect relevant information from FIs and forward such information to designated bilateral AEOI partners;
- e. the proposed sanctions for failure to comply with the AEOI requirements;
- f. the mechanism for FIs to meet the confidentiality safeguards; and
- g. the related information technology infrastructure to support the implementation.

Under the OECD standard, FIs include banks, custodians, insurance companies, brokers and investment entities (such as collective investment vehicles), unless they present a low risk of being used for evading tax and are excluded from reporting. FIs are required to identify and keep information of their non-Hong Kong tax resident account holders in accordance with the due diligence procedures prescribed in the OECD standard and report the details of the reportable accounts to the IRD in a prescribed format. For account holders who are tax residents of AEOL partners, the IRD will pass the relevant information to the AEOL partners concerned on an annual basis.

The HKSAR Government also proposed that the AEOL be conducted on a bilateral basis with jurisdictions with which Hong Kong has signed a comprehensive avoidance of double taxation agreement (CDTA) or a Tax Information Exchange Agreement (TIEA). In identifying AEOL partners from amongst our CDTA or TIEA partners, the HKSAR Government will take into account their capability in meeting the OECD standard and in protecting data privacy and confidentiality of the information exchanged in their domestic law.

The first automatic information exchanges are expected to commence by 2018. FIs will be required to commence due diligence procedures in 2017. The HKSAR Government is proposing that an Inland Revenue Ordinance Amendment Bill be introduced into the Legislative Council in early 2016 and the necessary legislation be in place by 2017.

The HKSAR Government is working to a very strict timeframe in order to meet its commitment. Specific administrative resources will also be required for the effective and practical implementation of the OECD standard and it is likely that legislators and stakeholders will raise concerns over privacy and appropriate use of information.

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