

HONG KONG TAX ALERT

ISSUE 10 | October 2015

CRS/AEOI: Hong Kong responds to consultation

The Hong Kong government will amend legislative proposals for implementing the new international standard on Automatic Exchange of Financial Account Information in Tax Matters (AEOI).

Summary

- *In April to June 2015, the Hong Kong government launched a consultation exercise to gauge views on how it should adapt to Hong Kong the new standard on AEOI promulgated by the Organisation for Economic Cooperation and Development (OECD).*
- *On 12 October 2015, the government announced that they it will amend legislative proposals for implementing the new international standard.*
- *In a consolidated response, seven key questions are addressed, including the broad definitions of Financial Institutions (FI), the scope of reporting FIs and reportable accounts, and the due diligence requirements.*

The Hong Kong government has announced that, subsequent to a public consultation process between April and June this year, it will amend legislative proposals for implementing the new international standard on Automatic Exchange of Financial Account Information in Tax Matters (AEOI). This is contained in a consolidated response to the above process published on 12 October 2015, which also adds that stakeholders who participated in the exercise supported the fundamental direction to align Hong Kong with the global standard for AEOI.

In September 2014, the Hong Kong government indicated its support for the new OECD standard on AEOI and targeted a commencement date for information exchanges with appropriate partners by the end of 2018, provided the necessary domestic legislation could be introduced by no later than 2017. The consultation was a precursor to drafting legislation to put before the Legislative Council in early 2016.

In its response, the Hong Kong government reiterated that they will adhere to the OECD AEOI standard, including the broad definitions of Financial Institutions (FI), the scope of reporting FIs and reportable accounts, and the due diligence requirements. All of which form the building blocks of the proposed legislative framework in Hong Kong. In order to ensure certainty, the Hong Kong government intends making appropriate adaptations to some of the generic terms and requirements for enforcement with specific reference to Hong Kong local legislation where necessary.

The consultation document elicited responses to seven key questions and the Hong Kong government's response thereto may be summarized as follows:

1. FIs, non-reporting FIs and excluded accounts

The Hong Kong government has decided that the definition of FIs, non-reporting FIs and exempted accounts will remain as originally proposed and that only those FIs and/or financial accounts that are at low risk of being used for tax evasion purposes should be exempted.

The Hong Kong government will now, after the consultation, include in the proposed legislation that Mandatory Provident Fund Schemes, Occupational Retirement Schemes and Credit Unions registered under the relevant statutes

will be regarded as non-reporting FIs and that dormant accounts with a balance not exceeding HK\$7,800 will be excluded from AEOI reporting. In addition, it will legislate that certain trust companies that were not intended to be covered by the OECD's Common Reporting Standard (CRS), including private trusts holding non-financial assets, will not fall within the definition of FIs in proposed domestic legislation.

2. Reporting requirements

The Hong Kong government concurs with stakeholders' submissions that reportable information be kept to an acceptable minimum according to CRS requirements. Appropriate flexibility in reporting obligations will be introduced to facilitate FI's adoption of the new AEOI standard, for example FIs can adopt a reporting period other than the calendar year for the reporting of account balances.

3. Due diligence

The majority of submissions on the consultation paper recommended that Hong Kong adopt a "wider" approach to due diligence procedures (i.e. identify and keep information of all non-Hong Kong tax-resident account holders irrespective of whether Hong Kong has concluded an agreement to automatically share information with the account holder's country of residence) provided that FIs comply with the requirements of the Personal Data (Privacy) Ordinance.

The Hong Kong government has decided to maintain its initial proposal to impose a "targeted" approach (where FIs identify and collect information of reportable accounts with the account holders residence corresponding with a specified reportable jurisdiction) but will permit FIs to adopt the "wider" approach although they will only be required to submit the mandatory information regarding reportable accounts to the Hong Kong Inland Revenue Department. Those FIs opting for the "wider" approach will be obliged to follow the applicable regulatory and privacy regimes with regard to the retention of such information.

It is worth noting that the Hong Kong government insisted there is no room for the FATCA *de minimis* threshold to be applicable for due diligence procedures relating to individual account holders under the proposed AEOI framework in Hong Kong.

4. Penalties

Respondents to the consultation paper expressed concerns regarding the need to sanction employees of FIs for non-compliance. However, the Hong Kong government maintains their stance that appropriate, deterrent, penalty provisions are necessary in order to ensure the effective implementation of the CRS and AEOI.

The Hong Kong government will therefore retain the proposed sanctions for FIs (which will also include any service providers engaged by FIs to fulfill their due diligence and reporting obligations). The proposed sanctions, will however, be refined by confining them to those employees who have willfully caused or permitted the FIs to provide incorrect returns.

5. Confidentiality

The Hong Kong government has reiterated its earlier position in respect of the confidentiality of information being exchanged by giving the assurance that all existing confidentiality safeguards for exchange of information under the current international standard will continue to apply to CRS/AEOI.

Although notification of account holders is not a requirement under CRS, the Hong Kong government will expect FIs to inform account holders of the possible use of the information collected for AEOI purposes.

7. Systems

The Hong Kong government will continue to engage with stakeholders in developing IT systems in order to ensure a smooth implementation of AEOI.

The Hong Kong government will now focus on the drafting of the AEOI legislation which it intends to introduce in the Legislative Council in early 2016. Should the legislation be enacted in 2016, then FIs will need to commence their due diligence procedures in 2017 with the first AEOIs taking place before the end of 2018.

The full government response may be found [here](#).

Contact us:



Charles Kinsley

Partner, Tax
KPMG China
T: +852 2978 8941
E: charles.kinsley@kpmg.com



Jeffrey Hau

Director, Tax
KPMG China
T: +852 2685 7780
E: jeffrey.hau@kpmg.com



Eva Chow

Senior Tax Manager
KPMG China
T: +852 2685 7454
E: eva.chow@kpmg.com

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2015 KPMG, a Hong Kong partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. © 2015 KPMG Advisory (China) Limited, a wholly foreign owned enterprise in China and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.