



HONG KONG TAX ALERT

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CRS/ AEOI: Hong Kong bill gazetted

The Hong Kong government gazetted the Inland Revenue (Amendment) Bill 2016, which seeks to provide the legal framework for Hong Kong to implement the OECD's standard for the automatic exchange of financial account information (AEOI).

Summary

- *Hong Kong commits to adopt CRS by 1 January 2017 and to undertake the first exchange of information in 2018*
- *On 8 January 2016, the Hong Kong government gazetted the Inland Revenue (Amendment) Bill 2016 which represents the legislative proposal for implementing the new international standard on AEOI*
- *The wider approach is permitted under the Bill so that FIs can carry out due diligence procedures in relation to financial accounts even if the account holder is not a tax resident of a reportable jurisdiction*

With the increase in access to global financial services and cross-border business, it is common for wealth to be held by individuals in offshore accounts. Apart from US FATCA, the OECD Common Reporting Standard (CRS) is another significant step towards a globally coordinated approach to the exchange of information on income earned by individuals and entities.

In September 2014, the Hong Kong government indicated its support for the new OECD standard on AEOI. While the Cayman Islands, the British Virgin Islands and most European countries are early CRS adopters, i.e. implementing the CRS requirements from 1 January 2016, Hong Kong and most Asian jurisdictions have committed to adopt CRS by 1 January 2017 and undertake the first exchange of information in 2018. Under the CRS framework, a financial institution (FI) in Hong Kong is required to identify financial accounts held by tax residents of overseas reportable jurisdictions (i.e. individuals and entities who are liable to tax by reason of residence in the jurisdictions with which Hong Kong has entered into an AEOI arrangement).

Subsequent to a public consultation process in Hong Kong between April and June 2015, the Hong Kong government published a consolidated response to the consultation process in October 2015 on the key issues identified. On 8 January 2016, the Hong Kong government gazetted the Inland Revenue (Amendment) Bill 2016 (the Bill) which represents the legislative proposal for implementing the new international standard on AEOI in Hong Kong. In line with the Hong Kong government's consolidated response, the draft Hong Kong legislative framework on AEOI largely adheres to the OECD AEOI standard, including the broad definitions of FIs, the scope of reporting FIs and reportable accounts, and the due diligence requirements. There are certain local adaptations relating to enforcement and to provide flexibility for Hong Kong financial institutions.

The following key areas, as outlined in the Hong Kong government's consultation paper and the consolidated response, are noted in the Bill:

1. FIs, non-reporting FIs and excluded accounts

The definition of FIs, non-reporting FIs and exempted accounts are largely in line with the OECD AEOI standard. There are certain local customisations to the definitions of FIs and excluded accounts. In particular, Mandatory Provident Fund Schemes, registered Occupational Retirement Schemes (including the respective approved pooled investment funds) and registered credit unions will be regarded as non-reporting FIs, while dormant accounts with a balance not exceeding HK\$7,800 will be excluded from AEOI reporting.

2. Reporting requirements

The reportable information outlined in the Bill is limited to an acceptable minimum according to CRS requirements. Reportable personal data includes name, address, jurisdiction of overseas residence, taxpayer identification number, and the date and place of birth, while financial account data covers the account number, account balance, and the gross amount of interest, dividends and sale proceeds of financial assets (where appropriate).

FIs are allowed to adopt a reporting period of 12 months other than the calendar year for the reporting of account balances. It is also noted that nil reporting will be required for FIs which do not maintain any reportable accounts during the 12-month reporting period.

3. Due diligence

Unlike most jurisdictions committed to CRS, Hong Kong does not plan to sign a multilateral instrument for CRS implementation allowing for the exchange of information between the Hong Kong government and other participating jurisdictions directly. Instead, AEOI in Hong Kong will be conducted on a bilateral basis with jurisdictions with which Hong Kong has signed a comprehensive avoidance of double taxation agreement (CDTA) or tax information exchange agreement (TIEA). This had given rise to concerns in the consultation process on the ability for FIs in Hong Kong to collect and keep information of all non-Hong Kong tax resident account holders (the wider approach), regardless of whether Hong Kong had a signed CDTA/TIEA.

The wider approach is permitted under the proposed legislative framework. FIs can therefore carry out due diligence procedures in relation to financial accounts even if the account holder (and any controlling person of the account holder) is a tax resident of an overseas jurisdiction that is not a reportable jurisdiction. However, FIs are only required to submit the mandatory information regarding reportable accounts to the Hong Kong Inland Revenue Department (IRD). FIs generally will welcome this approach as it avoids the high compliance costs and inefficiencies in remediation efforts each time Hong Kong signs a new bilateral competent authority agreement.

It is worth noting that the FATCA de minimis threshold of US\$50,000 has not been adopted in the proposed legislation for due diligence procedures relating to individual account holders. As a result, all financial accounts relating to individuals should be subject to review and potential reporting under CRS.

4. Penalties

With a view to ensuring effective implementation of AEOI in Hong Kong, various penalty provisions are proposed in the Bill. Account holders, FIs (including their management and employees) and service providers will be subject to penalty provisions for offences ranging from the filing of late or incorrect returns to an offence of wilfully providing false information. Generally,

the imprisonment penalty will only be invoked (as a maximum sanction) if an FI or person, with an intent to defraud, provides any information that is misleading, false or incorrect.

The Bill also provides the IRD with necessary enforcement powers to access the business premises of FIs to inspect their compliance systems and processes, as well as requiring FIs to rectify systems and processes if the FIs are found to be non-compliant.

5. IT systems

AEOL reporting should be filed electronically through the system designed by the IRD.

It is expected that the Bill will be introduced into the Legislative Council for first reading on 20 January 2016. If Hong Kong wants to commence CRS due diligence procedures in 2017 with the first information exchange taking place before the end of 2018, the local legislation should be passed before July 2016 (i.e. the end of the legislative year). Further, the Hong Kong government will need to identify at least one suitable jurisdiction to be an AEOL partner, i.e. for information exchange, with a view to negotiations with such jurisdiction being concluded before the end of 2016.

Most FIs in Hong Kong, after the implementation of FATCA, accept that the increased cost of compliance is now part of their normal business expenditure. However, in the absence of the minimum US\$50,000 threshold and the fact that the review must be done with respect to multiple reportable jurisdictions, suggests that FIs will have to collect and remit information for significantly more accounts under CRS as compared to FATCA. This could pose additional operational issues and associated cost increases for reporting for FIs. FIs are encouraged to start planning for CRS and should look to develop a sustainable IT architecture that caters for remediation and reporting under this new international standard.

The full Inland Revenue (Amendment) Bill 2016 may be found [here](#).

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