HONG KONG TAX ALERT

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CRS/ AEOI: Hong Kong legislation gazetted

The Hong Kong government gazetted the Inland Revenue (Amendment) (No.3) Ordinance 2016 on 30 June 2016. This enables Hong Kong to implement the latest international standard for the automatic exchange of financial account information (AEOI) from 1 January 2017.

Summary

- *The Inland Revenue (Amendment) Bill 2016 was passed by the Legislative Council on 22 June 2016*
- *Hong Kong will adopt CRS from 1 January 2017 and undertake the first exchange of information in 2018*
- *CRS requires reporting financial institutions to identify and report overseas tax residents holding financial accounts*
- *This would impose new compliance requirements on reporting financial institutions in Hong Kong, including registration, due diligence, reporting and on-going monitoring*

The OECD Common Reporting Standard (CRS) represents a globally coordinated approach to the disclosure of financial information of individuals and organisations outside their country of tax residence. After the passage of the Inland Revenue (Amendment) Bill 2016 in the Legislative Council on 22 June 2016, CRS will be effective in Hong Kong beginning 1 January 2017. Over 100 jurisdictions have committed to CRS to-date. Reporting financial institutions which are headquartered or have operations in these jurisdictions will need to have processes and procedures in place to meet their CRS obligations.

Under the CRS framework, a reporting financial institution in Hong Kong is required to identify and report to the Hong Kong Inland Revenue Department (IRD) financial accounts held by tax residents of overseas reportable jurisdictions (including individuals, entities and controlling persons of certain entity accounts) on an annual basis starting from 2018.

The basic requirements behind CRS are similar to the US Foreign Account Compliance Act (FATCA). However, there are some key differences between the two regimes. In particular, CRS is based upon tax residence rather than US citizenship under FATCA. Although the OECD provides on its AEOI website an overview of the tax residency rules applicable in jurisdictions that are committed to automatically exchanging information under the CRS, it is worth noting that the laws regarding tax residency are complicated and could be modified by applicable double tax treaties. Hence, the review procedures expected of reporting financial institutions in determining whether the tax status claimed by account holders is reasonable may not be straightforward.

Another major difference is the increased scope and volume of reporting. CRS does not provide for exemptions available to certain low-risk financial institutions available under FATCA. Further, CRS does not provide the option of electing a de minimis threshold for individual account holders. Therefore, all of a reporting financial institution's individual accounts are subject to review and potential reporting under CRS. This, combined with the fact that the review must be done with respect to multiple reportable jurisdictions (rather than only US accounts under FATCA), means that reporting financial institutions will have to collect and remit information on significantly more accounts under CRS. This could pose additional operational burdens and associated cost increases for reporting financial institutions. With the CRS requirements effective in Hong Kong in 6 months' time, financial institutions 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.

We set out below a few key questions that financial institutions should be considering for a successful implementation of CRS:

CRS programme design principles

- Who should have ownership of this initiative?
- How do you structure an effective CRS program?
- What objectives drive your approach?
- How to manage uncertainty, conflict and consistency?

CRS impact assessment

- What parts of the business are in scope?
- How big is the challenge?
- Should the business model change?
- What needs to be implemented by whom?

CRS design & implementation plan

- What activities, effort, skills and budget are required?
- Who needs to be involved?
- Who oversees decisions?

CRS signoff

- Who will sign off on the CRS return to the IRD?
- What needs to be assured to be able to sign off?
- Who will be responsible for the record retention?

The full Inland Revenue (Amendment) Ordinance 2016 may be found here.

Our previous tax alerts on the CRS developments in Hong Kong are accessible below:

2016
Issue 1: CRS/ AEOI: Hong Kong bill gazetted

2015
Issue 10: CRS/AEOI: Hong Kong responds to consultation

Issue 7: Hong Kong launches the Consultation on Automatic Exchange of Information

Contact us:

Khoon Ming Ho
Head of Tax, KPMG China
Tel: +86 10 8508 7082
khoonming.ho@kpmg.com

Ayesha M. Lau
Head of Local Market
Head of Tax, Hong Kong
Tel: +852 2826 7165
ayesha.lau@kpmg.com

Corporate Tax

Charles Kinsley
Partner
Tel: +852 2826 8070
charles.kinsley@kpmg.com

John Timpany
Partner
Tel: +852 2143 8790
john.timpany@kpmg.com

Nicholas Rykers
Director
Tel: +852 2143 8595
Nicholas.rykers@kpmg.com

Chris Abbiss
Head of Real Estate Tax, KPMG China
Tel: +852 2826 7226
chris.abbiss@kpmg.com

Jocelyn Lam
Partner
Tel: +852 2685 7605
jocelyn.lam@kpmg.com

Michael Olesnicky
Special Advisor
Tel: +852 2913 2980
michael.olesnicky@kpmg.com

Stanley Ho
Partner
Tel: +852 2826 7296
stanley.ho@kpmg.com

Matthew Fenwick
Director
Tel: +852 2143 8761
matthew.fenwick@kpmg.com

Justin Pearce
Senior Tax Advisor
Tel: +852 2143 8756
justin.pearce@kpmg.com

Alice Leung
Partner
Tel: +852 2143 8711
alice.leung@kpmg.com

Ivor Morris
Director
Tel: +852 2847 5092
ivor.morris@kpmg.com

Curtis Ng
Partner
Tel: +852 2143 8709
curtis.ng@kpmg.com

Sandy Fung
Director
Tel: +852 2143 8821
sandy.fung@kpmg.com

M & A Tax

Darren Bowdern
Head of Financial Services Tax, KPMG China
Tel: +852 2826 7166
darren.bowdern@kpmg.com

Benjamin Pong
Partner
Tel: +852 2143 8525
benjamin.pong@kpmg.com

Christopher Xing
Partner
Tel: +852 2978 8965
christopher.xing@kpmg.com

Yvette Chan
Principal
Tel: +852 2847 5108
yvette.chan@kpmg.com

Malcolm Prebble
Principal
Tel: +852 2685 7472
malcolm.j.prebble@kpmg.com

China Tax

Daniel Hui
Principal
Tel: +852 2685 7815
daniel.hui@kpmg.com

Karmen Yeung
Partner
Tel: +852 2143 8753
karmen.yeung@kpmg.com

Adam Zhong
Principal
Tel: +852 2685 7559
adam.zhong@kpmg.com

Steve Man
Director
Tel: +852 2978 8976
steve.man@kpmg.com

Transfer Pricing

John Kondos
Partner
Tel: +852 2685 7457
john.kondos@kpmg.com

Lu Chen
Principal
Tel: +852 2143 8777
lu.l.chen@kpmg.com

Global Mobility Services

Barbara Forrest
Principal
Tel: +852 2978 8941
barbara.forrest@kpmg.com

Murray Sarelius
Principal
Tel: +852 3927 5671
murray.sarelius@kpmg.com

David Siew
Principal
Tel: +852 2143 8785
david.siew@kpmg.com

Kate Lai
Director
Tel: +852 2978 8942
kate.lai@kpmg.com

US Tax

Wade Wagatsuma
Head of US Corporate Tax, KPMG China
Tel: +852 2685 7806
wade.wagatsuma@kpmg.com

Indirect Tax

Lachlan Wolfers
Head of Indirect Tax, KPMG China Regional Leader, Asia Pacific Indirect Tax
Tel: +852 2685 7791
lachlan.wolfers@kpmg.com