

Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong



Financial Services and the Treasury Bureau

Policy Objectives

- (a) Expand CDTA network + sign TIEAs on need basis
- (b) Fulfill international obligations to enhance tax transparency

Hong Kong's Commitment

(a) Implement AEOI

(b) Commence first exchange by end 2018,
subject to legislation in place by 2017

OECD Standard on AEOI

(a) Common Reporting Standard (CRS)

Scope of information to be reported:

- Personal data: name, address, jurisdiction of residence, taxpayer identification number (TIN), date and place of birth
- Financial data: account balance, investment income, sales proceeds from financial assets

Financial institutions required to report:

- Banks, custodians, insurance companies and investment entities

Scope of account holders subject to reporting:

- Individuals
- Entities (including trusts and foundations)
- Controlling persons of entities

Due diligence procedures

- Different due diligence procedures for different accounts

OECD Standard on AEOI (Cont'd)

(b) Competent Authority Agreement (CAA)

(c) Commentaries on CRS and CAA

(d) Guidance on Technical Solutions

Approach for Hong Kong

- (a) **Pragmatic** – legislate for all essential requirements
- (b) **Effective** – delineate clearly responsibilities and sanctions
- (c) **Bilateral** – CDTA or TIEA partners, where proven capable of meeting AEOI standard

Financial Institutions

(a) Custodial institution

- a trust company registered under the Trustee Ordinance (Cap.29); or
- any person that holds, as a substantial portion of business, financial assets for the account of others

(b) Depository institution

- an authorized institution licenced or registered under the Banking Ordinance (Cap. 155); or
- a credit union registered under the Credit Unions Ordinance (Cap.119)

(c) Specified insurance company

- an insurer authorized under the Insurance Company Ordinance (Cap.41) issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract

(d) Investment entity

- a corporation licensed or registered under the Securities and Futures Ordinance (Cap. 571) (SFO);
- a trust company registered under the Trustee Ordinance (Cap. 29);
- a collective investment scheme or a structured produce authorized under the SFO;
- any entity that conducts as a business one or more of the activities set out in CRS, for or on behalf of a customer; or
- any entity the gross income of which is primarily attributable to investing, reinvesting or trading in financial assets and the entity is managed by another FI

Proposed Exemptions – Non-reporting FIs

- (a) Government entity, international organisation, Hong Kong Monetary Authority (HKMA)
- (b) Pension fund of government entity, international organisation or HKMA
- (c) Grant Schools Provident Fund and Subsidized Schools Provident Fund
- (d) Broad Participation Retirement Fund, Narrow Participation Retirement Fund, qualified credit card issuer, exempt collective investment vehicle or trustee-documented trust
- (e) Mandatory Provident Fund Scheme and Registered Occupational Retirement Scheme

Proposed Exemptions – Excluded Accounts

- (a) Retirement or pension accounts
- (b) Non-retirement tax-favoured accounts
- (c) Term life insurance contracts
- (d) Estate accounts
- (e) Escrow accounts
- (f) Depository accounts due to non-returned overpayments

Reporting Requirements

(a) Individual account holder or controlling persons:

Name, address, jurisdiction of residence, TIN, date of birth, and place of birth

(b) Entity account holder: Name, address, jurisdiction of residence, TIN

(c) Account number

(d) Account balance or value @ end of calendar year and

- **Custodial account:** total gross amount of interest, dividends, proceeds from sale or redemption of financial assets
- **Depository account:** total gross amount of interest paid to account
- **Others:** total gross amount paid to account

Reporting Requirements (Cont'd)

- Regarding the financial data, FIs have to provide the **total gross** of each of the category when filling in return to IRD –
 - (a) interest;
 - (b) dividend;
 - (c) proceeds from sale or redemption of financial assets.
- The reporting format will be similar to FATCA.

Due Diligence Procedures for FIs

	Pre-existing Accounts	New Accounts
Individual Accounts	<p><u>Low-value accounts</u> (\leq USD1M)</p> <ul style="list-style-type: none"> Permanent address residence test or electronic record search Self-certification in case of conflicting indicia <p><u>High-value accounts</u> ($>$ USD1M)</p> <ul style="list-style-type: none"> Electronic record search, paper record search and actual knowledge test by relationship manager Self-certification in case of conflicting indicia 	<ul style="list-style-type: none"> Self-certification (without <i>de minimis</i> threshold) FIs confirming reasonableness
Entity Accounts	<p><u>Low-value accounts</u> (\leq USD250,000)</p> <ul style="list-style-type: none"> Excluded from review unless FIs elect otherwise <p><u>High-value accounts</u> ($>$ USD250,000)</p> <ul style="list-style-type: none"> Review information from customer relationship purpose to determine if the entity is a reportable person (unless self-certification states otherwise) Self-certification to determine if the entity is a Passive Non-Financial Entity (NFE) with one or more Controlling Persons who are reportable persons (unless information possessed or publicly available shows otherwise) 	<ul style="list-style-type: none"> Self-certification (unless information possessed or publicly available shows otherwise) (without <i>de minimis</i> threshold) FIs confirming reasonableness

Wider approach to CRS?

- (a) Should due diligence procedures cover
 - ❑ *all* non-residents (under “wider approach”) OR
 - ❑ residents of *reportable jurisdictions* with which Hong Kong has an AEOI instrument in place?
- (b) Legislate with the latter in mind. FIs may opt for the former subject to their compliance with data privacy regime

Tax Residence

- ❑ **Account holders** - report and self-certify (information is correct and complete) when opening accounts
- ❑ **FIs** – requiring self-certification and confirming reasonableness (new accounts); electronic record search/customer relationship inquiry (pre-existing accounts)

Proposed Powers for IRD

- (a) Collect information from FIs
- (b) Access the processing and operation system of FIs
- (c) Direct FIs to rectify their AEOI system if found defective

Proposed Sanctions (FIs)

- (a) Non-compliance (without reasonable excuse) -**
 - ❑ fine at level 3 (i.e. HK\$10,000); and
 - ❑ daily fine not exceeding \$500 for continuing offence
- (b) Furnishing incorrect returns due to failure to comply -**
 - ❑ fine at level 3 (i.e. HK\$10,000); and
 - ❑ daily fine not exceeding \$500 for continuing offence
- (c) Wilfully making a return to mislead or deceive**
 - ❑ fine at level 3 (i.e. HK\$10,000) and imprisonment for 6 months (summary conviction) ; or
 - ❑ fine at level 5 (i.e. HK\$50,000) and imprisonment for 3 years (indictment)

Proposed Sanctions (Employees of FIs)

(a) Causing non-compliance of FIs (without reasonable excuse) -

- ❑ fine at level 3 (i.e. HK\$10,000); and**
- ❑ daily fine not exceeding \$500 for continuing offence**

(b) Wilfully causing FIs to fail to comply or make incorrect returns

- ❑ fine at level 3 (i.e. HK\$10,000) and imprisonment for 6 months (summary conviction); or**
- ❑ fine at level 5 (i.e. HK\$50,000) and imprisonment for 3 years (indictment)**

Proposed Sanctions (Cont'd)

Non-Hong Kong Tax Resident Account Holders

- No plan for a host of new sanctions
- May **expand existing provision** (Section 80(2D) of IRO) to sanction false self-certification (a fine at level 3)

Confidentiality and Notification

- ❑ **Confidentiality** – Rules (section 5 of CAA); suspension of EoI for non-compliance and termination of CAA (section 7 of CAA)
- ❑ **Notification** – Current mechanism under EOI on request does **not** apply. Account holders to check and update information under customer relationship mechanism of FIs

IT System

- (a) IRD will develop a **portal** for collating information from FIs (**AEOI online account**)
- (b) A common platform for **data transmission** between IRD and AEOI partners

Targets

Tasks	Time
Introduce legislation into LegCo	Early 2016
HKSAR to enter into first Competent Authority Agreement	End 2016
FIs to commence due diligence procedures	Jan 2017
Financial institutions to file returns to IRD	May 2018
First AEOI exchange to commence	End 2018

Views sought

- (a) Proposed scope of FIs and non-reporting FIs, and excluded accounts (slides 7 to 9)
- (b) Reporting requirements (slides 10 & 11)
- (c) Due diligence procedures for FIs (slide 12)
- (d) Approach for FIs to identify information (slide 13)

Views sought (cont'd)

(e) Proposed sanctions (slides 16 to 18)

(f) Confidentiality and notification (slide 19)

(g) IT system (slide 20)

Views by **30 June 2015** please.

Thank You