

Implementation of Automatic Exchange of Financial Account Information (AEOI) in Hong Kong

In response to the changing international tax landscape towards greater transparency, the Government of Hong Kong Special Administration Region (“HKSAR”) has committed to adopt and implement the new Common Reporting Standard (“CRS”). In essence, CRS requires relevant Financial Institutions (“FIs”) to put in place proper account due diligence and reporting procedures to support the AEOI between the competent tax authorities of reportable jurisdictions.

In Hong Kong, FIs are required to review and identify financial accounts held by tax residents of participating jurisdictions, collect the relevant date and financial account information and report to the Inland Revenue Department (IRD) in an annual AEOI return. The type of financial accounts for review would include depository accounts, custodial accounts, equity investment accounts, insurance contracts and annuities. The details to be collected by the FIs would include name, address, taxpayer identification number issued by the tax authority of the account holder’s jurisdiction of residence, date of birth, account number, account balance or value, transactions in the account etc for reporting to the IRD. The IRD will exchange such information with the relevant reportable jurisdictions on an annual basis, which means the competent tax authorities have full awareness about the overseas financial information and asset profiles of the tax residents in their jurisdictions.

Measures undertaken by HKSAR government

Enactment of the Inland Revenue (Amendment) (No 3) Ordinance 2016 (“Ordinance 2016”)

The legal framework for AEOI implementation in Hong Kong was gazetted and became effective on 30 June 2016 following the enactment of the Ordinance 2016. The Inland Revenue Ordinance has now included specific details on the major aspects about the implementation of AEOI in Hong Kong, including the scope of relevant FIs (reportable/non-reportable FIs), relevant due diligence and reporting requirements, reportable financial information, reportable jurisdictions and enforcement measures on non-compliance of the AEOI requirements.

Enactment of the Inland Revenue (Amendment) (No 2) Ordinance 2017 (“Ordinance 2017”)

To enhance a more swift implementation of AEOI in Hong Kong, Ordinance 2017 has expanded the reportable jurisdictions from 2 to 75 effective from 1 July 2017. FIs in Hong Kong are required to furnish the first AEOI annual returns in Hong Kong for the respective reportable jurisdictions as follows:

- First AEOI annual returns covering the calendar year 2017 for Japan and UK in May 2018;
- First AEOI annual returns covering the calendar year 2018 for Korea in May 2019;
- First AEOI annual returns covering the period of 1 July 2017 to 31 December 2017 for the remaining 72 jurisdictions in May 2018.

AEOI Portal

Pursuant to section 50I(1) of the Inland Revenue Ordinance (Cap. 112), with effect from 3 July 2017, an AEOI Portal has been launched as the information system for FIs to furnish notifications and file AEOI returns. FIs maintaining reportable accounts on or before 3 July 2017 is required to register under the AEOI Portal and submit a notification of commencement of maintaining reportable accounts before 3 October 2017. For reportable accounts maintained after 3 July 2017, FIs should submit the required notifications through the AEOI portal within three months from the commencement of maintaining such accounts.

Ways forward

With the commitments and efforts of the HKSAR government, AEOI implementation is right on the spot and prepared to take off in Hong Kong. It is almost beyond doubt that new initiative comes with new challenges. In particular, both the FIs and account holders holding financial accounts in Hong Kong should have a clear understanding on the requirements of the new AEOI and potential implications to them. They should also be aware of the various enforcement provisions applicable to non-compliant reporting FIs or their employees, directors or management officers in some cases.

During the due diligence review of the FIs, the FIs will seek to confirm if an account holder is a tax resident amongst the reportable jurisdictions. For this purpose the account holder would be required by the FIs to verify his/her tax residency by completing a self certification form, where complications can easily arise on the tax residency determination, especially for overseas secondees working in Hong Kong given the residency rules can be very different between the home country and Hong Kong. The account holders should be alerted that sanctions would be imposed to them if they recklessly or knowingly make misleading, false or incorrect statements in making such self certification to the FIs.

We recommend the relevant stakeholders should take cautious measures and consult professionals on the subject matters to identify and mitigate un-necessary compliance risks.

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