

Automatic Exchange of Financial Account Information (“AEOI”) Fact Sheet

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Specific independent legal and/or tax advice about your treatment under the Inland Revenue Ordinance (Cap. 112) (including in respect of the Inland Revenue (Amendment) (No.3) Ordinance 2016, any further changes to the Inland Revenue Ordinance for the purposes of the AEOI and any associated regulations) and your obligation to make disclosures to your financial institution should be sought separately. You should ensure that you consider the latest legislative requirements and guidance.

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The English version of this Fact Sheet shall prevail whenever there is any discrepancy between the English and the Chinese versions.

1. What is AEOI/CRS?

- AEOI stands for automatic exchange of financial account information.
- CRS stands for Common Reporting Standard. It establishes the standard by which different countries/jurisdictions can perform AEOI.
- AEOI/CRS is an international standard established by the Organisation for Economic Cooperation and Development (“OECD”) in July 2014 to enhance tax transparency and combat cross-border tax evasion.

2. Why is AEOI relevant to Hong Kong?

- Around 100 jurisdictions have committed to implementing AEOI. As a responsible international citizen and a leading financial centre, Hong Kong has committed to implement AEOI (https://www.fstb.gov.hk/tb/en/docs/pr_20151012_e.pdf).
- The Inland Revenue (Amendment) (No.3) Ordinance 2016ⁱ (the “Amendment Ordinance”) sets out the legislative framework for Hong Kong to implement AEOI under a phased timeline with due diligence procedures commencing from 1st January, 2017. To deliver its commitment, Hong Kong commenced the first information exchanges in September 2018.
- The Amendment Ordinance essentially requires financial institutions in Hong Kong, including banks, to identify and report information relating to financial accounts held by customers that are tax residents of reportable jurisdictions to the Hong Kong Inland Revenue Department (“IRD”). There are a total of 75 reportable jurisdictions according to the Inland Revenue (Amendment) (No.2) Ordinance 2017 as of 1st July, 2017.
- The IRD performs information exchange with a reportable jurisdiction if Hong Kong has activated exchange relationship, under AEOI, with that jurisdiction on the basis of a bilateral or multilateral competent authority agreementⁱⁱ.
- Hong Kong has activated exchange relationships with 54 jurisdictions as of 9th November, 2018, and more exchange relationships are expected in future.
- Customers may refer to the IRD website, which the IRD updates from time to time, for the list of reportable jurisdictions and the current list of jurisdictions with which Hong Kong has activated exchange relationships, at https://www.ird.gov.hk/eng/tax/aeoi/rpt_jur.htm.
- In order to determine whether reporting is required and to provide accurate information to the IRD for information exchanges, banks are required to ascertain the tax residency of their customers and may need to obtain additional information or documentation from them.

3. Under what circumstances will customers be requested by their banks in Hong Kong to provide AEOI-related information or documents?

- During new account opening, banks are required to ascertain the tax residency of individuals (including sole proprietors) and entities (e.g. limited companies, trusts, etc.). Banks may obtain this information by asking customers to complete self-certification forms and provide other supporting documentation where necessary (collectively “AEOI documentation”).
- Pre-existing individual and entity customers (i.e. customers whose accounts were opened before 1st January, 2017) may also be contacted for AEOI documentation. Common scenarios where a bank may require further information from pre-existing customers include:
 - (a) The bank identifies customer information on file that indicates a connection with a reportable jurisdiction (e.g. identification of the account holder as a tax resident of a reportable jurisdiction, an address in a reportable jurisdiction, one or more telephone numbers in a reportable jurisdiction with no telephone number in Hong Kong, standing instructions to transfer funds to an account maintained in a reportable jurisdiction, a power of attorney or signatory authority granted to a person whose address is in a reportable jurisdiction, a hold mail or in-care-of address in a reportable jurisdiction with no other address on file for the customer.);
 - (b) The bank identifies customer information on file that indicates a connection with a foreign residence (e.g. identification of the account holder as a non-Hong Kong tax resident, a non-Hong Kong address, one or more non-Hong Kong telephone numbers with no telephone number in Hong Kong, standing instructions to transfer funds to an account maintained outside Hong Kong, a power of attorney or signatory authority granted to a person whose address is not in Hong Kong, a non-Hong Kong hold mail or in-care-of address with no other address on file for the customer.)ⁱⁱⁱ;
 - (c) [Applicable to entity customers only] The bank does not have sufficient customer information on hand to internally determine the customer’s entity classification under AEOI and/or that of the customer’s controlling persons^{iv};
 - (d) AEOI documentation previously provided by the customer is no longer reliable.

4. Why are banks asking me / my company to fill in a self-certification form? What is this form about?

- Banks will need to have sufficient information about the individual or entity customer to identify the tax residency of the customer.
- The self-certification form is an important document that enables banks to collect relevant information from their customers. It is a formal declaration that customers make in connection with their tax residency(ies) and (in relation to an entity customer) the entity classification for AEOI purposes. Under the Amendment Ordinance, an account holder who knowingly or recklessly provides a statement that is misleading, false or incorrect in a material particular in making a self-certification is liable on conviction to a fine at level 3 (HK\$10,000).
- According to the due diligence procedures set out in the Amendment Ordinance, self-certifications are required from customers for all new accounts (i.e. accounts opened on or after 1st January, 2017). For pre-existing accounts (i.e. accounts opened before 1st January, 2017), depending on the customer information on record (e.g. address), banks can seek self-certifications from the customers to determine their tax residency as part of their due diligence procedures.

5. What happens if a customer does not provide the required AEOI-related information or documents?

- The Amendment Ordinance imposes a legal obligation on financial institutions to obtain a self-certification from new customers. If a new customer does not provide the self-certification as required, the account application will likely not be accepted.
- For a pre-existing customer that does not provide self-certification and/or other supporting documents when requested, as prescribed by the Amendment Ordinance, the bank will need to determine the customer's tax residency based on the information currently on record, and if this is in a reportable jurisdiction, the bank will need to report the relevant account information to the IRD. The IRD will in due course, perform information exchange with jurisdictions that have activated AEOI exchange relationships with Hong Kong.
- Please refer to Question 7 for information that will be reported by the banks.

6. Why are banks asking me additional questions even after I provided a self-certification form?

- In accordance with the Amendment Ordinance, banks must confirm the reasonableness of the self-certification received based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures (i.e. the "reasonableness" test).
- If any part of the self-certification is found to be incorrect, incomplete, or apparently in conflict with the information held by the banks, they must obtain a new self-certification form or an explanation and/or supporting documents from the customer.

7. What customers and what information are banks required to report to the IRD?

- Banks are required to report financial accounts held by individuals and entities (including controlling persons of certain types of entities) that are tax residents of reportable jurisdictions.
- Information to be reported includes the following:
 - (1) account data (such as name, address, date of birth (for individuals), jurisdiction of residence and taxpayer identification number ("TIN") of the account holder); and
 - (2) financial data (such as account number, interest, dividends, account balance or value, income from certain insurance products, sales proceeds from financial assets and other income generated with respect to assets held in the account or payments made with respect to the account).
- Financial account information of customers whose sole tax residency is Hong Kong will not be reported to the IRD under the AEOI regime.

8. Can I check my tax residency status held with my bank(s), and how?

- In accordance with the Personal Data (Privacy) Ordinance ("PDPO"), customers have the right to request access to their personal data.
- Customers can make use of account servicing channels of banks to check and/or update their tax residency status as needed.

9. Why is it important to update my bank(s) of any change in circumstances which affects my tax residency status (e.g. cease to be / newly become a tax resident of a non-Hong Kong jurisdiction (including reportable and non-reportable jurisdiction))?

- Banks are required to report the financial accounts of customers that are tax residents of reportable jurisdictions to the IRD on an annual basis.
- The Amendment Ordinance allows a financial institution to collect information from a customer that indicates a connection with a foreign residence (even though this overseas jurisdiction may not be a reportable jurisdiction yet). This is because more jurisdictions may be added to the list of reportable jurisdictions. It is therefore important that customers advise banks of any change in (including cessation of) their tax residency status to ensure accurate and up-to-date information is being reported as required.
- Generally, a customer should provide the bank with a suitably updated self-certification form within 30 days of such change in circumstances.

10. How and where can customers get additional assistance regarding AEOI?

- The IRD has issued guidance and reference materials such as pamphlets and frequently asked questions ("FAQs"). Customers should refer to the IRD website for more details: https://www.ird.gov.hk/eng/tax/dta_aeoi.htm.
- In addition, customers may refer to the OECD's AEOI portal for information regarding the definition of tax residency and TINs in different jurisdictions. The website is: <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/>.
- Please note that banks are not to offer any tax advice, notably the determination of tax residency or entity classification, to their customers. As such, for any tax related questions that cannot be resolved, customers should seek advice according to their own circumstances from professional legal and/or tax advisors.

ⁱ The Inland Revenue (Amendment) Ordinance 2018 was gazetted on 2nd February, 2018 which: -

a) paves the way for Hong Kong to participate in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (see footnote ii); and
b) makes technical amendments to certain provisions on AEOI, to align the Inland Revenue Ordinance with the OECD CRS standard.

The technical amendments (i.e. sections 5 to 11) under the Inland Revenue (Amendment) Ordinance 2018 commenced operation on 1st January, 2019, while other provisions were effected on 2nd February, 2018.

ⁱⁱ The Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order was gazetted and came into operation on 13th July, 2018 to allow Hong Kong to effectively implement the AEOI promulgated by the OECD. The Convention on Mutual Administrative Assistance in Tax Matters entered into force in Hong Kong on 1st September, 2018 and provides a multi-party platform for participating jurisdictions to mutually agree with each other on various forms of administrative co-operation in the assessment and collection of taxes, including AEOI. Customers may refer to the following Press Release for more information: <https://www.ird.gov.hk/eng/ppr/archives/18071301.htm>

ⁱⁱⁱ The Amendment Ordinance allows a financial institution to collect information from an account holder that indicates a connection with a foreign residence (even though this overseas jurisdiction may not be a reportable jurisdiction yet). This is because more jurisdictions may be added to the list of reportable jurisdictions.

^{iv} "Controlling Persons" are the natural person(s) who exercise control over an Entity. In the case of a trust, the Controlling Person(s) are the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust. Where the settlor, trustee, protector or beneficiary of a trust are themselves Entities then the Controlling Persons of the settlor, trustee, protector or beneficiary must be treated as Controlling Persons of the trust. In the case of a legal arrangement other than a trust, Controlling Person(s) means persons in equivalent or similar positions to those of a trust. (Source: <https://www.ird.gov.hk/eng/pdf/2016/terms.pdf>)

With the technical amendments (i.e. sections 5 to 11) under the Inland Revenue (Amendment) Ordinance 2018 commenced operation on 1st January, 2019, the "Controlling Person" of a passive non-financial entity that is a trust is defined to also include an enforcer. An enforcer is a person who is given the power and duty to enforce the trust. The appointment of enforcer is commonly found in non-charitable trusts. The enforcer's role is to oversee the actions of the trustee to ensure those actions are in line with the purposes stated in the trust instrument. (Source: https://www.ird.gov.hk/eng/faq/dta_aeoi.htm#tech_exp)