



Automatic Exchange of Financial Account Information

Frequently Asked Questions (“FAQs”)

(Last updated in June 2019)

Disclaimer

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CRS Overview

1. What is CRS?

The Common Reporting Standard (“CRS”) released by the Organisation for Economic Co-operation and Development (“OECD”) aims to put in place a global model of automatic exchange of financial account information in tax matters (“AEOI”)¹ to combat tax evasion and protect the integrity of taxation systems.

Around 100 jurisdictions, including Hong Kong, have publicly expressed commitment to its implementation (“Participating Jurisdictions”).

2. When does the Hong Kong legislation on CRS become effective?

In order to give legal effect to CRS, the Hong Kong Government has included all essential requirements of the AEOI standard into local legislation. The Inland Revenue (Amendment) (No.3) Ordinance 2016 (the “Amendment Ordinance”) was gazetted and came into effect on 30th June 2016.

The Inland Revenue (Amendment) Ordinance 2018 was gazetted on 2nd February, 2018 to amend certain provisions of the Amendment Ordinance and these amendments commenced operation on 1st January, 2019.

3. What do Financial Institutions (“FIs”) have to do to comply with CRS?

The Amendment Ordinance requires FIs including banks in Hong Kong to identify and report information in relation to “Reportable Accounts”, i.e. financial accounts held by tax residents of reportable jurisdictions or by passive non-financial entity (“passive NFE”) whose controlling persons 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 an activated exchange relationship, under AEOI, with that jurisdiction on the basis of a bilateral or multilateral competent authority agreement. Hong Kong has activated exchange relationships with 54 jurisdictions as of 9th November, 2018, and more exchange relationships are expected in future.

Please refer to the IRD website, which the IRD updated 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.

4. How will the adoption of CRS by FIs impact customers?

Under CRS, FIs will be liable for reporting on Reportable Accounts, i.e. financial accounts held by individuals or entities that are tax residents of the 75 reportable jurisdictions according to the Inland Revenue (Amendment) (No.2) Ordinance 2017 or held by passive

¹ The AEOI standard has two components, which are (i) Model Competent Authority Agreement (“Model CAA”); and (ii) the Common Reporting Standard (“CRS”). The Model CAA is a template for the agreements on AEOI between governments; the CRS specifies the reporting and due diligence standard. The Model CAA together with the CRS constitutes the common standard on reporting, due diligence and exchange of information on financial account information.

NFEs with controlling persons who are tax residents of the 75 reportable jurisdictions. Hong Kong taxpayers who are not tax residents of any territory outside Hong Kong will not be reported. The Amendment Ordinance requires FIs to apply due diligence procedures to collect all required information and documentation from Account Holders and controlling persons as appropriate. To identify Reportable Accounts, FIs may ask Account Holders to complete self-certification forms for identification of their tax residency status.

5. Which types of customers are affected by CRS due diligence and reporting?

Customers that hold financial accounts in FIs will be subject to CRS required due diligence procedures. Customers affected include individuals (whether banking directly or indirectly through an entity) and entities such as corporations, partnerships and trusts, etc. Customers that are identified as reportable persons, i.e. tax residents of the 75 reportable jurisdictions according to the Inland Revenue (Amendment) (No.2) Ordinance 2017, will be subject to CRS required reporting. Therefore, customers whose sole tax residency is Hong Kong are not subject to reporting for CRS purposes.

6. How and where can customers get additional assistance regarding CRS?

Customers may refer to the AEOI reference materials such as the Pamphlets and FAQs available at the IRD website (https://www.ird.gov.hk/eng/tax/dta_aeoi.htm) for more information.

Due Diligence

Tax residence

7. What is the definition of “tax residence”?

Tax residence is referred to in the Amendment Ordinance as “jurisdiction of residence”, which means a territory of which an individual or entity is a resident for tax purposes.² In general, whether or not an individual or entity is a tax resident of a jurisdiction is determined by having regard to the person’s physical presence or stay in a place (say, whether over 183 days within a tax year) or, in the case of a company, the place of incorporation or where the central management and control of the entity lies. That a person has paid taxes charged by a jurisdiction (say, value-added tax, withholding tax or capital gains tax) does not automatically render that person a tax resident of that jurisdiction. Customers should note that the definition of tax residence may differ according to the regulations of different jurisdictions.

It should be noted that the onus of ascertaining tax residence rests with the Account Holders. In other words, Account Holders are responsible for identifying their own tax residence when opening Financial Accounts. They need to provide detailed personal data and self-certification to FIs when opening accounts.

8. What if the customer is unsure about his/her tax residence?

In general, whether or not an individual or entity is a tax resident of a jurisdiction is determined by having regard to the person’s physical presence or stay in a place (say, whether over 183 days within a tax year) or, in the case of a company, the place of incorporation or where the central management and control of the entity lies. That a person

² Amendment Ordinance, Part 8A, Section 50A(1)

has paid taxes charged by a jurisdiction (say, value-added tax, withholding tax or capital gains tax) does not automatically render that person a tax resident of that jurisdiction.³

Information with respect to the tax residency rules and tax identification numbers (“TINs”) of the Participating Jurisdictions is available at the OECD AEOI Portal (<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/>).

Customers may refer to such public information portal which could help themselves determining their tax residence(s). Customers may also seek advice from their own lawyers and/or tax advisors on their tax residence(s) related matters. Customers should note that FIs may not be in a position to provide tax advice to client regarding his/her tax residence.

Self-certification

9. Can a customer have a third party provide self-certification on its behalf?

If the customer, being the Account Holder, has provided evidence that another person has been properly granted authority under the domestic law to represent the Account Holder and sign on his/her behalf, for example through a power of attorney, then that person with such authority may provide a self-certification for or on behalf of the Account Holder.

10. What are the obligations of the customers with respect to the self-certification?

Customers are responsible for the accuracy of information declared in the self-certification. According to the Amendment Ordinance, an Account Holder that knowingly or recklessly provides misleading, false or incorrect information in a material particular, in making a self-certification to the FIs commits an offence and will be subject to a fine at level 3. Furthermore, under the existing Inland Revenue Ordinance (“IRO”), any person who without reasonable excuse gives any incorrect information to IRD for the purpose of exchange of tax information in relation to any matter affecting the person’s own liability to any tax of a territory outside Hong Kong (i.e. Hong Kong’s Comprehensive Double Taxation Agreement (“CDTA”) or Tax Information Exchange Agreement (“TIEA”) partners) commits an offence.

Generally, Account Holders should provide FIs with a new updated self-certification within 30 days of any change in their own and their controlling persons’ (where relevant) tax residence.⁴

11. Will there be any impact to customer after the customer provided self-certification?

Based on the tax residence(s) of the Account Holder and/or controlling person(s) provided on the self-certification, the FI may report to the IRD if the Account Holder or controlling person(s) is tax resident in a reportable jurisdiction.

³ IRD AEOI Frequently Asked Questions, Q9
[\[https://www.ird.gov.hk/eng/faq/dta_aeoi.htm\]](https://www.ird.gov.hk/eng/faq/dta_aeoi.htm)

⁴ IRD AEOI Frequently Asked Questions, Q8
[\[https://www.ird.gov.hk/eng/faq/dta_aeoi.htm\]](https://www.ird.gov.hk/eng/faq/dta_aeoi.htm)

Others

12. Is there any withholding obligation under CRS?

Unlike FATCA⁵, CRS does not require tax withholding. Unless otherwise stipulated by the local regulations of the Participating Jurisdictions, it is not expected that there will be withholding impact under CRS.

13. How will the Inland Revenue Department (“IRD”) safeguard taxpayers’ privacy and confidentiality of information exchanged?

IRD will exchange information with AEOI partners only when an arrangement is in place with the relevant jurisdiction (e.g. an arrangement specified in section 49(1A) of IRO that covers comprehensive avoidance of double taxation agreement and tax information exchange agreement) to provide the basis for exchange. Safeguards have been provided to protect taxpayers’ privacy and confidentiality of information exchanged as prescribed under the international standard. Such safeguards will apply to the information to be exchanged for AEOI purpose. In addition, the AEOI agreement provides that all information exchanged is subject to the confidentiality rules and data privacy safeguards. Should there be any breach of such rules or safeguards, Hong Kong may suspend the information exchange or terminate the AEOI agreement with the partner concerned.⁶

Reporting

14. Which types of customers will have their information reported under CRS?

An individual or entity customer that holds financial account(s) in an FI or a controlling person of an entity customer that is a passive NFE and is determined as a reportable person under the definition of the Amendment Ordinance will be subject to reporting by the FI under CRS.

15. What information will be reported under CRS?

The information to be reported on each reportable account that is identified through the due diligence procedures performed by the FIs, comprises:

- account data (i.e. name, address, date of birth (for individuals), jurisdiction of residence and taxpayer identification number (“TIN”) of the Account Holder); and
- financial data (i.e. 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).

If the Account Holder is classified as a passive NFE, similar personal and financial data of the controlling person(s) of the Account Holder should also be obtained.

⁵ Foreign Account Tax Compliance Act (“FATCA”) of the United States of America

⁶ IRD AEOI Frequently Asked Questions, Q28
[\[https://www.ird.gov.hk/eng/faq/dta_aeoi.htm\]](https://www.ird.gov.hk/eng/faq/dta_aeoi.htm)

The details regarding the reporting format and content are provided in the Financial Account Information Return XML Schema and User Guide issued by the IRD, available at the IRD website: (<https://www.ird.gov.hk/eng/tax/aeoi/schema.htm>).

16. When and to whom will the information be reported under CRS?

It is anticipated that FIs have to report to the IRD the required information with reference to the CRS requirements in May each year starting from 2018. The IRD would in turn exchange the information with another government that has activated an AEOI exchange relationship with Hong Kong starting from 2018.

17. Can customers object to FIs making any reporting?

No. It will be a legal requirement for FIs to report the Account Holder's information, where applicable, in accordance with the Amendment Ordinance requirements.

18. Are FIs required to provide their reportable customers a copy of the report filed under CRS?

The Amendment Ordinance and the IRD Guidance are currently silent on this point and therefore, unless otherwise provided in further local regulatory guidelines, this should be at FIs' discretion, subject to the terms & conditions and other relevant data privacy regulations.

19. Can customers request their FIs to provide a copy of the report filed under CRS?

In accordance with the Personal Data (Privacy) Ordinance ("PDPO"), individuals have the right to request access to and correct their personal data. However, there is currently no guidance regarding the types/format of information which FIs should disclose with respect to CRS reporting.

20. What happens if customers disagree with the information that has been reported?

Customers (i.e. Account Holders) are responsible, under financial account terms and conditions (or contracts), for informing the FIs of any changes to and erroneous information, whether personal or financial, that comes to their attention. In accordance with the PDPO, an individual has the right to require the FI to correct any data relating to him/her which is inaccurate. In case an individual refuses to allow the FI to release his/her personal data for AEOI purposes, the FI may have to consider whether or not the account should be maintained.