



# Common Reporting Standard (“CRS”)

## Frequently Asked Questions

(Last updated in December 2016)

### **Disclaimer**

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**With respect to the FAQs, in case of any discrepancy between the English and Chinese version, the English version shall prevail.**

<b>CRS Overview</b>
1. What is CRS?
2. When will the Hong Kong legislation on CRS become effective?
3. What do FIs have to do to comply with CRS?
4. How will the adoption of CRS by FIs impact customers?
5. Which types of customers are affected by CRS due diligence and reporting?
6. How and where can customers get additional assistance regarding CRS?
<b>Due Diligence</b>
<b>Tax residence</b>
7. What is the definition of “tax residence”?
8. What if the customer is unsure about his/her tax residence?
<b>Self-certification</b>
9. Can a customer have a third party provide self-certification on its behalf?
10. What are the obligations of the customers with respect to the self-certification?
11. Will there be any impact to customer after the customer provided self-certification?
<b>Others</b>
12. Is there any withholding obligation under CRS?
13. How will the IRD safeguard taxpayers’ privacy and confidentiality of information exchanged?
<b>Reporting</b>
14. Which types of customers will have their information reported under CRS?
15. What information will be reported under CRS?
16. When and to whom will the information be reported under CRS?
17. Can customers object to FIs making any reporting?
18. Are FIs required to provide their reportable customers a copy of the report filed under CRS?
19. Can customers request their FIs to provide a copy of the report filed under CRS?
20. What happens if customers disagree with the information that has been reported?

## **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”)<sup>1</sup> to combat tax evasion and protect the integrity of taxation systems.

Over 100 jurisdictions, including Hong Kong, have publicly expressed commitment to its implementation (“Participating Jurisdictions”). Under the CRS, a financial institution (“FI”) of a Participating Jurisdiction is required to carry out due diligence procedures to identify the jurisdiction of residence of an Account Holder and identify whether a financial account is a “Reportable Account”<sup>2</sup>. In respect of a Reportable Account, an FI will need to report relevant information to the local tax authorities, who then exchange the relevant information with the tax authorities of the Reportable Jurisdictions<sup>3</sup> where Account Holders are tax residents.

### **2. When will 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 published and came into effect on 30<sup>th</sup> June 2016.

### **3. What do FIs have to do to comply with CRS?**

CRS requires FIs to review and collect information that will enable them to identify Reportable Accounts and report the relevant personal and financial data of the Reportable Accounts to the local authority (i.e. the Hong Kong Inland Revenue Department (“IRD”)) on an annual basis.

### **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 in jurisdictions that have signed AEOI agreements with Hong Kong. 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. To identify Reportable Accounts, FIs may ask Account Holders to complete self-certification forms for identification of their tax residency status.

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<sup>1</sup> 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.

<sup>2</sup> Reportable accounts are financial accounts held by individuals or entities that are reportable persons by reason of residence in the jurisdictions that have signed AEOI agreements with Hong Kong.

<sup>3</sup> Reportable jurisdictions are jurisdictions that have signed AEOI agreements with Hong Kong.

## **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 jurisdictions that have signed AEOI agreements with Hong Kong, will be subject to CRS required reporting. Therefore, customers whose jurisdiction of tax residence is Hong Kong only 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 AEOI Pamphlets and FAQs available at the IRD website ([http://www.ird.gov.hk/eng/tax/dta\\_aeoi.htm](http://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<sup>4</sup>. 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 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<sup>5</sup>.

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

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<sup>4</sup> Amendment Ordinance, Part 8A, Section 50A(1)

<sup>5</sup> IRD AEOI Frequently Asked Questions, Q11

Customers may refer to such public information portal which could help them determine their tax residence(s). Customers may also seek advice from their own lawyers 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<sup>6</sup>.

### **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.

## **Others**

### **12. Is there any withholding obligation under CRS?**

Unlike FATCA<sup>7</sup>, 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.

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<sup>6</sup> IRD AEOI Frequently Asked Questions, Q8

<sup>7</sup> Foreign Account Tax Compliance Act (“FATCA”) of the United States of America

**13. How will the IRD safeguard taxpayers’ privacy and confidentiality of information exchanged?**

IRD will exchange information with AEOI partners, which are only those with which Hong Kong has signed AEOI agreements. Such partners will only be jurisdictions which have signed a CDTA or TIEA with Hong Kong in the first place. Both types of treaties provide for safeguards 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 purposes.

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<sup>8</sup>.

## **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 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:

- personal data (i.e. name, address, date of birth (if applicable), 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 payment made 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. 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: (<http://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 signed a CAA with Hong Kong starting from 2018.

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<sup>8</sup> IRD AEOI Frequently Asked Questions, Q29

**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 financial institution to release his/her personal data for AEOI purposes, the FI may have to consider whether or not the account should be maintained.