

23 May, 2017
2017年5月23日

New Legislation for Implementation of AEOI in Hong Kong

The Inland Revenue (Amendment) (No.3) Ordinance 2016 for implementation of automatic exchange of financial account information (AEOI) has come into force on 30 June 2016.

Under the AEOI standard, a financial institution (FI) is required to identify, according to the due diligence procedures, financial accounts held by individuals or entities liable to tax by reason of residence in the jurisdictions with which Hong Kong has entered into an AEOI agreement. FIs in Hong Kong are required to collect and furnish reportable information of the identified individual or entity account holders to the Inland Revenue Department (“IRD”). The IRD will then transmit the relevant information to the tax authorities in the relevant jurisdictions where the account holder is a tax resident. Hong Kong will commence the first AEOI by the end of 2018.

Under the legal provisions, for all new accounts opened on or after 1 January 2017, the account holders will be required to provide the FIs with self-certifications which meet the Common

Reporting Standard (CRS) for verifying their tax residence status. For existing accounts opened prior to 1 January 2017, if a reporting FI has queries about the tax residence status of an account holder, it may request the account holder to provide a self-certification to verify his or her tax residence status. The reporting FI may transmit such relevant information to the IRD. The IRD may review the data in the self-certification if necessary.

An account holder commits an offence if he or she, in making a statement to a reporting FI, knowingly or recklessly makes a statement that is misleading, false or incorrect in a material particular. The account holder is liable on conviction to a fine at level 3 (i.e. HK\$10,000). If the account holder refuses to fill in or provide the relevant personal information, the FI may need to consider whether to accept the account opening application or maintain the account.

For an entity, the statement furnished to the reporting FI shall be signed by a director or an officer of a company, a partner of a partnership, a trustee of a trust or an authorized person. The

signatories shall bear personal legal responsibilities. Meanwhile, if a reporting entity fails to meet the CRS compliance standard, or fails to identify its tax residence status properly and make proper self-certification, the reporting entity and the signatory could be exposed to certain tax risks. If there are any questions about the tax residence status of yourself or relevant corporate entities, you are welcome to contact our professional tax team for advice:

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香港自動交換財務帳戶資料新條例

香港就自動交換財務帳戶資料（AEOI）之條例《2016年稅務（修訂）（第3號）條例》已於2016年6月30日生效。

在自動交換財務帳戶資料的標準下，任何個人或實體，若因其稅務居民身份而在某稅務管轄區有繳稅責任，而該稅務管轄區為香港自動交換資料夥伴，香港的財務機構須根據盡職審查程序，以識辨由該個人或實體所持有的財務帳戶。財務機構須收集並向稅務局提交該些帳戶的有關資料。稅務局會將有關資料傳送到該帳戶持有人作為稅務居民所屬的相關稅務管轄區的稅務機關。首次自動交換財務帳戶資料將在2018年年底前進行。

根據法例規定，所有於2017年1月1日或之後所開立的新帳戶之帳戶持有人，需就其稅務居民身份向財務機構提交一份按照共同匯報標準（CRS）的自我證明。至於2017年1月1日之前開立的現存帳戶，如申報財務機構對帳戶持有人的稅務居民身份存疑，可要求帳戶持有人提供自我證明，以確認其稅務居民身份。申報財務機構可把有關資料交給稅務局。稅務局如有需要會查閱自我證明內的資料。

帳戶持有人在向申報財務機構作出正式聲明時，如明知或罔顧實情地作出在要項上具誤導性、虛假或不正確的陳述，便屬違法。一經定罪，可處第三級罰款（即10,000元）。

若帳戶持有人拒絕填寫或拒絕提供其個人資料，財務機構可考慮應否接受其開戶或維持該帳戶。

對於實體而言，該份向申報財務機構的聲明必須由實體的董事或高級人員、合夥的合夥人、信託的受託人或授權人簽署，簽署人將承擔個人法律責任。同時，如果申報實體存有CRS符規差距，或對其稅務居民身份有不當識辨及自我證明，亦會對該申報實體及聲明簽署人帶來一定的稅務風險。如果閣下對自身或相關公司實體的稅務居民身份有疑問，歡迎聯絡我們的專業稅務團隊尋求意見：

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