

# **Common Reporting Standard: An Unprecedented Time for Improving Tax Transparency in Hong Kong**

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## **Abstract**

Since June 2016, Hong Kong has been actively responding to the OECD/G20's 15 action plans to tackle base erosion and profit shifting. In order to improve tax transparency and to enhance tax co-operation, Hong Kong introduces a legal framework on Common Reporting Standard (CRS) for Automatic Exchange of Financial Account Information (AEOI). With the CRS AEOI implementation, Hong Kong tax authority can identify its resident taxpayers who may have under-reported incomes and taxes through queries, field audits and tax investigations. Apart from financial institutions, multinational companies and mobile employees should increase awareness of the latest development in CRS AEOI and its implications to them.

**Keywords:** Common Reporting Standard (CRS), Automatic Exchange of Financial Account Information (AEOI), Transparency

# **Common Reporting Standard: An Unprecedented Time for Improving Tax Transparency in Hong Kong**

## **Introduction**

Since June 2016, Hong Kong has been actively responding to the Organization for Economic Co-operation and Development (OECD) / Group of Twenty (G20)'s 15 action plans to tackle Base Erosion and Profit Shifting (BEPS). Several tax amendment legislations are enacted to improve tax transparency and to enhance tax co-operation. The first one is the Inland Revenue (Amendment) (No. 3) Ordinance 2016 (enacted on 30 June 2016) which introduced a legal framework on the Common Reporting Standard (CRS) for Automatic Exchange of Financial Account Information (AEOI) in Hong Kong. It is worth noting that the CRS AEOI framework is different from the exchange of tax information (EOI) regime which is currently carried out on a request basis through comprehensive avoidance of double taxation agreements (DTAs) or tax information exchange agreements (TIEAs) which Hong Kong has concluded<sup>1</sup>. The second one is the Inland Revenue (Amendment) (No. 2) Ordinance 2017 (enacted on 16 June 2017) which added 73 jurisdictions to the list of reportable jurisdictions of Hong Kong (in addition to Japan and the UK which are already in the list) for the CRS AEOI purposes. The third one is the Inland Revenue (Amendment) Ordinance 2018 (gazetted on 2 February 2018) which enabled Hong Kong to adopt the Multilateral Convention signed by the mainland China through territorial extension.

Increasing tax transparency and protecting tax bases through fair taxation are key international tax agenda. On 5 December 2017, the Council of the European Union (EU) released the EU list of non-cooperative jurisdictions for tax purposes (EU blacklist). Hong Kong is not included in the December 2017 EU blacklist<sup>2</sup>. The recent tax amendment legislations are good indicators that Hong Kong is committed to comply with the international tax standards of improving tax transparency and countering tax evasion.

The 15 OECD/G20's anti-BEPS action plans signify significant changes in international tax laws and treaties. This paper aims to study the CRS AEOI development and its potential implications in Hong Kong. This paper is organized in three sections. The first section examines the latest CRS AEOI landscape in Hong Kong and analyzes the recent tax amendment legislations. The second section discusses the impact of the CRS AEOI on individuals and companies and its potential implications on tax audit in Hong Kong. The last section concludes this paper with recommendations.

### **CRS AEOI Landscape in Hong Kong**

The OECD released the CRS AEOI in July 2014<sup>3</sup>. It proposes a new global standard that will require financial institutions (FIs) to review and collect information that will enable them to identify the tax residency of account holders as well as to provide relevant financial account information to the local tax administration authorities on an annual basis. Over 100 countries and jurisdictions have committed to the implementation of CRS AEOI and more than 50 of them are early adopter to have the first CRS AEOI by 2017<sup>4</sup>.

The Inland Revenue (Amendment) (No. 3) Ordinance 2016 (enacted on 30 June 2016) introduced a legal framework on the CRS AEOI in Hong Kong for implementation starting from 1 January 2017. Also, Hong Kong Inland Revenue Department (IRD) publishes a CRS AEOI guidance<sup>5</sup> to assist reporting FIs<sup>6</sup> to comply with their obligations<sup>7</sup>. A reporting FI requires new account<sup>8</sup> holder (individual or entity) to declare the tax residency by completing a self-certification form<sup>9</sup> effective from 1 January 2017. A new self-certification form is required to be completed by the account holder within 30 days in case of any changes. In making a self-certification, a penalty of HK\$10,000 is imposed on any person who knowingly or recklessly makes a statement that is misleading, false or incorrect in a material particular<sup>10</sup>. With regard to the pre-2017 existing individual accounts, reporting FIs are required to complete due diligence<sup>11</sup> for high value accounts<sup>12</sup> by 31 December 2017 and for all remaining accounts by 31 December 2018<sup>13</sup> to verify tax residency of the account holders and require them to complete a self-certification form in case of any doubt. With regard to the pre-2017 existing entity accounts,

reporting FIs are required to carry out due diligence procedures which are broadly the same as those for new entity accounts except that there is a threshold exemption<sup>14</sup>.

If an account holder is identified by a reporting FI as being tax resident in any of the reportable jurisdictions, then the account holder is a reportable person and the account is a reportable account for the CRS AEOI purposes. The Inland Revenue (Amendment) (No. 2) Ordinance 2017 (enacted on 16 June 2017) became effective on 1 July 2017. It amended the definition of reportable jurisdictions so that it is not necessary to have a DTA/TIEA and a Competent Authority Agreement (CAA) with a jurisdiction to make it as a reportable one<sup>15</sup>. Also, it expanded the number of reportable jurisdictions from 2 (namely, Japan and the UK) to 75 jurisdictions<sup>16</sup> for the CRS AEOI purposes. The CRS AEOI partners consist of jurisdictions which expressed an interest in conducting CRS AEOI with Hong Kong, Hong Kong's DTAs partners which have committed to the CRS AEOI, and all member states of the EU. Table 1 shows the 75 reportable jurisdictions of Hong Kong.

### **Insert Table 1 Here**

Reporting FIs are obliged to identify and collect information<sup>17</sup> on accounts of tax residents<sup>18</sup> in Japan and the UK and then submit the 2017 full year information to Hong Kong IRD in May 2018<sup>19</sup>. Similarly, reporting FIs are obliged to identify and collect information on accounts of tax residents in the other reporting jurisdictions (except Korea<sup>20</sup>) and then furnish the 2017 second half year information to Hong Kong IRD in May 2018. Hong Kong IRD will then transmit the 2017 information to the relevant CRS AEOI partner in September 2018. From 2019 onwards, Hong Kong IRD will transmit the reportable accounts to the relevant CRS AEOI partner on an annual basis. Table 2 shows the CRS AEOI reporting year and financial information. The financial information on account holders to be exchanged includes the following personal and financial account data<sup>21</sup>: (1) name, address, jurisdiction of tax residence, tax identity number, date of birth and place of birth; (2) account number; (3) year-end account balance or value; (4) gross income paid during the year (e.g. interest and dividends); (5) gross proceeds from the sale or redemption of financial assets during the year; and (6) gross income from certain insurance products.

## **Insert Table 2 Here**

Through using software provided by Hong Kong IRD, reporting FIs will enter the data in the form provided. Alternatively, reporting FIs can use self-developed software but need to submit test data files to Hong Kong IRD for verification. The data files are in XML format<sup>22</sup>. Through the CRS AEOI Portal<sup>23</sup> provided by Hong Kong IRD, reporting FIs will upload the data files and sign and submit CRS AEOI returns<sup>24</sup>. The encrypted data files and CRS AEOI returns will then be stored in Hong Kong IRD's database. Hong Kong IRD will then transmit the information to the relevant CRS AEOI partners with whom Hong Kong has signed CAAs on CRS AEOI. As at 16 October 2017, Hong Kong has 15 CAAs on CRS AEOI in place with Belgium, Canada, Guernsey, Ireland, Indonesia, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Portugal, South Arica, Switzerland and the UK<sup>25</sup>. There are punitive provisions to sanction reporting FIs. The levels of penalties are HK\$10,000 for non-compliance and submission of incorrect returns<sup>26</sup>. The levels of penalties are HK\$10,000 with imprisonment for 6 months or HK\$50,000 with imprisonment for 3 years for defrauding with intent<sup>27</sup>.

The latest development of Hong Kong's CRS AEOI framework is the gazettal of the Inland Revenue (Amendment) Ordinance 2018 on 2 February 2018<sup>28</sup>. It enabled Hong Kong to adopt the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCMAA)<sup>29</sup> signed by Mainland China in Hong Kong<sup>30</sup> and amended certain Hong Kong tax provisions on CRS AEOI so that they align with the international standard stipulated by the OECD<sup>31</sup>. The MCMAA will further expand the CRS AEOI network in Hong Kong<sup>32</sup>.

Various matters relating to the implementation of the CRS AEOI in Hong Kong were discussed during the annual meeting between Hong Kong IRD and Hong Kong Institute of Certified Public Accountants held in April 2017. These include<sup>33</sup>:

- Whether reporting FIs can treat dormant accounts as reportable financial accounts instead of excluded accounts;

- What reporting FIs are expected to do in validating the self-certification or documentary evidence provided by the accounts holders against the other information of the accounts holders held by the reporting FIs;
- Entities to be excluded from the CRS AEOI reporting obligation; and
- The treatment of FIs with dual tax residences.

## **Impacts and Implications**

Global transparency in tax matter will stay with greater information exchanges, mutual administrative assistance agreements and guidelines from the OECD. Recent information exchange measures include mandatory disclosure to US tax administration under Foreign Account Tax Compliance Act and automatic information exchanges between tax administrations under the Country-by-Country Reporting AEOI and CRS AEOI requirements. These measures lead to additional reporting requirements for certain industries and within specific countries.

The CRS AEOI will not only impact FIs, but also on individuals and companies when they open new bank accounts. In particular, expatriates and travelling directors/employees may have difficulty to open bank accounts as it may not be easy for them to determine their tax residency. Companies engaging expatriates and travelling directors/employees need to review the existing global mobility policy to examine whether it is explicit enough on the impact to the assignees<sup>34</sup>.

The CRS AEOI can be a new method for Hong Kong IRD to identify tax audit targets<sup>35</sup>. With the implementation of CRS AEOI, Hong Kong IRD collects and analyzes the information from Hong Kong FIs and CRS AEOI partners. Hong Kong IRD can ascertain the correctness and completeness of personal and financial information reported by taxpayers. This leads to Hong Kong IRD's queries on different issues including income from employment/investment, source of funds/profits, related party transactions and holding structure. Figures 1 and 2 highlight some potential queries from Hong Kong IRD through CRS AEOI mechanism.

**Insert Figure 1 Here**

**Insert Figure 2 Here**

In Figure 1, Hong Kong IRD receives financial account information of a BVI Company, which has self-certified to its Swiss bank as Hong Kong tax resident, from Swiss tax authority through CRS AEOI. After reviewing and analyzing the BVI Company's financial account information, Hong Kong IRD may raise queries on the BVI Company (e.g. does the BVI Company have any tax filing records in Hong Kong, does the BVI Company carry on a business in Hong Kong, are there any related party transactions, etc.). In Figure 2, Hong Kong IRD provides financial account information of an individual, which has self-certified to his Hong Kong bank as Mainland China tax resident, to Mainland China tax authority through CRS AEOI. After reviewing and analyzing the individual financial account information, Hong Kong IRD may raise queries on the individual (e.g. does the individual have any tax filing records in Hong Kong, what is the source of fund for the individual buying property in Hong Kong, any employment of the individual in Hong Kong, etc.).

With the much increased transparency on information, it is likely that there will be greater scrutiny and more challenges from tax authorities. In particular, more taxpayers will be referred to Field Audit and Investigation Unit of Hong Kong IRD for determination of profits undercharged, if any. Accordingly, taxpayers are strongly advised to perform health checks to assess their CRS AEOI risk and tax audit risk. Taxpayers should have sufficient records and supporting documents to defend against challenges from tax authorities.

The traditional settlement strategy and legal theory (which are based mainly on local considerations) of dealing with tax disputes on a single jurisdiction basis is increasingly anachronistic. Taxpayers will be increasingly more difficult to control the disclosure of information and should be aware that information disclosed to one government agency will be shared with other agencies abroad. The changing nature of international tax disputes will demand for a modern settlement strategy and legal theory which take into account of cross-border considerations. A system of legal education and legal practice, which are based on international

laws and multiple jurisdictions, will be needed to provide new capabilities to resolve future international tax disputes<sup>36</sup>.

## **Conclusion**

The OECD/G20's BEPS project and the EU blacklist signify that increasing tax transparency and protecting tax bases are important tax agenda items. Although Hong Kong is not included in the recent 2017 EU blacklist, Hong Kong needs to keep up its efforts to fulfill its commitments to the EU (and the OECD) and comply with the ever-changing international tax standards to avoid any potential reputational damage or defensive measures<sup>37</sup>.

For many years, Hong Kong is a slow follower to implement EOI beyond that of the DTA/TIEA<sup>38</sup>. As a responsible member of the international community and a leading financial center, Hong Kong indicated in September 2014 its commitment to implement CRS AEOI on a reciprocal basis and will commence the first exchanges in September 2018. The Inland Revenue (Amendment) (No. 3) Ordinance 2016, which became effective on 30 June 2016, has put in place a legal framework for Hong Kong to implement CRS AEOI. In terms of the Hong Kong's BEPS action plan implementation, the CRS AEOI legislation addresses the BEPS Action 12 of Disclosure of Aggressive Tax Planning<sup>39</sup>.

In the era of tax transparency, tax authorities are now more focusing on cross-border activities. It is anticipated that the increasing disclosure requirements for a transparent environment will have a material impact on individuals and companies. With the CRS AEOI implementation, tax authorities can identify their resident taxpayers who may have under-reported incomes and taxes through queries, field audits and tax investigations. Apart from FIs, multinational companies and mobile employees should increase awareness of the latest development in CRS AEOI and its implications to them.



**Table 1: List of 75 CRS AEOI Reportable Jurisdictions**

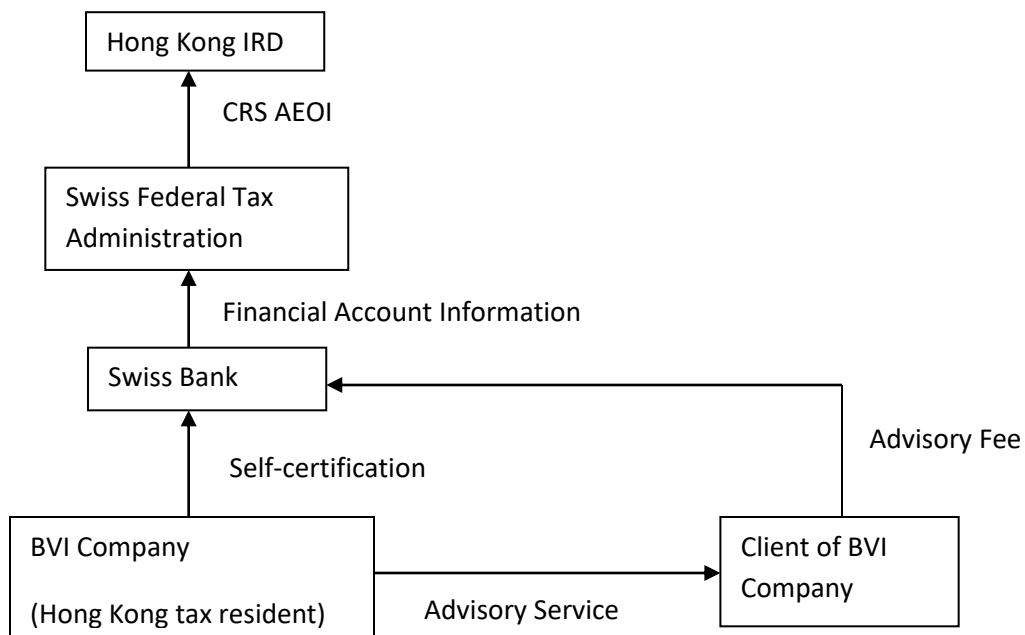
1. Antigua and Barbuda	16. Croatia	31. Hungary	46. Lithuania	61. Saint Vincent and the Grenadines
2. Argentina	17. Curacao	32. Iceland	47. Luxembourg	62. Saudi Arabia
3. Australia	18. Cyprus	33. India	48. Malaysia	63. Seychelles
4. Austria	19. Czech Republic	34. Indonesia	49. Malta	64. Singapore
5. Bahamas	20. Denmark	35. Ireland	50. Mauritius	65. Slovak Republic
6. Belgium	21. Estonia	36. Isle of Man	51. Mexico	66. Slovenia
7. Brazil	22. Faroe Islands	37. Israel	52. Montserrat	67. South Africa
8. Brunel Darussalam	23. Finland	38. Italy	53. Netherlands	68. Spain
9. Bulgaria	24. France	39. Japan	54. New Zealand	69. Sweden
10. Canada	25. Germany	40. Jersey	55. Norway	70. Switzerland
11. Cayman Islands	26. Gibraltar	41. Korea	56. Poland	71. Turkey
12. Chile	27. Greece	42. Kuwait	57. Portugal	72. United Arab Emirates
13. The Mainland of China	28. Greenland	43. Latvia	58. Qatar	73. United Kingdom

14. Colombia	29. Grenada	44. Lebanon	59. Romania	74. Uruguay
15. Costa Rica	30. Guernsey	45. Liechtenstein	60. Russia	75. Vanuatu

**Table 2: CRS AEOI Reporting Year and Financial Information**

<b>Reporting Year</b>	<b>Jurisdiction</b>	<b>Period of Financial Information to be Reported</b>
2018	Japan and the UK	1 January 2017 to 31 December 2017
	Other reportable jurisdictions (except for Korea)	1 July 2017 to 31 December 2017
2019 and onwards	All reportable jurisdictions	1 January 2018 to 31 December 2018

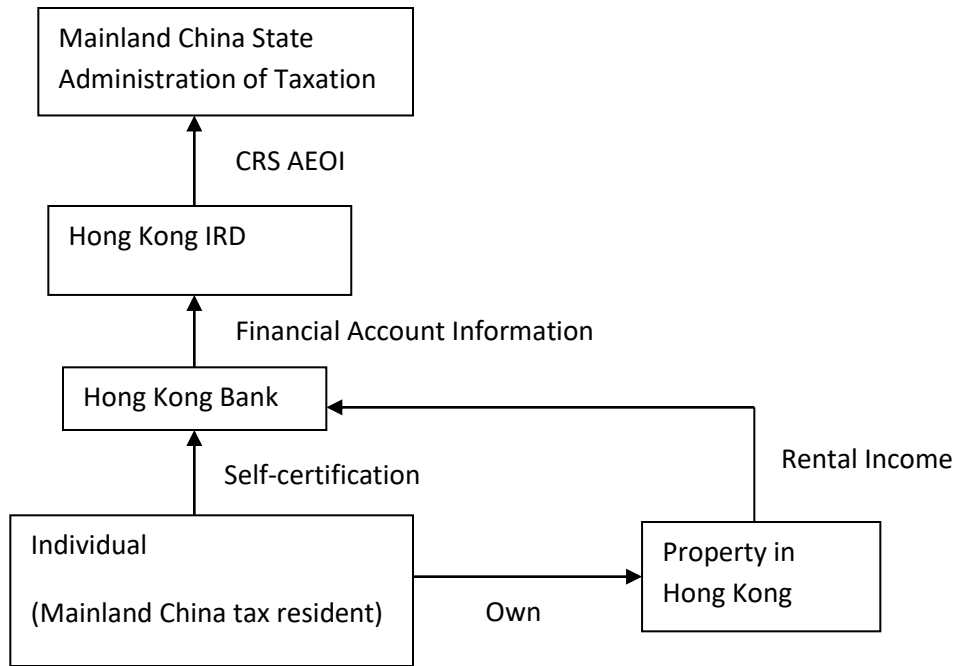
**Figure 1: Potential Hong Kong Inland Revenue Department (IRD) Queries: Financial Account Information Received from CRS AEOI Partner<sup>40</sup>**



Potential Hong Kong IRD Queries:

- Any tax filing records of BVI Company in Hong Kong?
- Does BVI Company carry on a business in Hong Kong?
- What is the source of fund/income of BVI Company?
- What is the holding structure of BVI Company?
- Any related party transactions of BVI Company?

**Figure 2: Potential Hong Kong Inland Revenue Department (IRD) Queries: Financial Account Information Provided to CRS AEOI Partner<sup>41</sup>**



Potential Hong Kong IRD Queries:

- Any tax filing records of the Individual in Hong Kong?
- What is the source of fund for the Individual buying Hong Kong property?
- Is there any fund transfer from/to Mainland China?
- Any employment of the Individual in Hong Kong?

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<sup>1</sup> The Inland Revenue (Amendment) (No. 2) Ordinance 2013 (enacted on 10 July 2013) liberalized the exchange of tax information (EOI) framework in Hong Kong. The EOI is carried out on a request basis between Hong Kong and comprehensive avoidance of double taxation agreements (DTAs) or tax information exchange agreements (TIEAs) partners to whom Hong Kong has concluded Competent Authority Agreements (CAAs) on EOI. As at 21 March 2018, Hong Kong has concluded 39 DTAs (The 1<sup>st</sup> DTA is concluded with Belgium on 10 December 2013 and the 39<sup>th</sup> DTA is concluded with India on 19 March 2018). See [https://www.ird.gov.hk/eng/tax/dta\\_inc.htm](https://www.ird.gov.hk/eng/tax/dta_inc.htm). As at 27 April 2018, Hong Kong has signed 7 TIEAs (The first TIEA is concluded with the US on 25 March 2014). See [https://www.ird.gov.hk/eng/tax/dta\\_tiea\\_agreement.htm](https://www.ird.gov.hk/eng/tax/dta_tiea_agreement.htm). Under the current EOI mechanism, Hong Kong Inland Revenue Department (IRD) will supply information upon a specific request from the competent authority of a DTA/TIEA partner, authorize the EOI in relation to taxes covered by the DTA/TIEA, disclose information which relates to a period after the DTA/TIEA came into operation, give prior notification to the subject person before the information is exchanged unless exceptional circumstances exist, and endeavor to furnish a reply to the DTA/TIEA partner within 90 days after receipt of a request for EOI. The subject person concerned will have the right to request a copy of the information and to amend factual errors. The person can appeal to the Financial Secretary if the amendment request is refused by the Commissioner of Inland Revenue (CIR). See [https://www.ird.gov.hk/eng/tax/dta\\_eoi.htm](https://www.ird.gov.hk/eng/tax/dta_eoi.htm).

<sup>2</sup> Hong Kong spent a short time on the June 2015 EU list of non-cooperative jurisdictions for tax purposes (EU blacklist). See [https://www.fstb.gov.hk/tb/en/docs/pr\\_20151014\\_e.pdf](https://www.fstb.gov.hk/tb/en/docs/pr_20151014_e.pdf). With Hong Kong's strong support for global transparency by concluding TIEAs and expanding DTA network, Hong Kong was not on the December 2017 EU blacklist.

<sup>3</sup> The Common Reporting Standard (CRS) for Automatic Exchange of Financial Account Information (AEOI) is approved by OECD Council in July 2014 and endorsed by the G20 in September 2014. See <http://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-financial-account-information.htm>. The CRS AEOI is a measure to improve information transparency and its development was heavily influenced by the US's Foreign Account Tax Compliance Act (FATCA). FATCA is enacted in March 2010 and is effective in July 2014 and comprises sections 1471 to 1474 of the Internal Revenue Code 1986. See Sawyer, A. (2016), "An Update of Hong Kong's Exchange of Information Developments and Engaging with BEPS", Taxation Law Research Programme Tax Comments No. 4, Asian Institute of International Financial Law, Faculty of Law, The University of Hong Kong, November, p. 2 and p. 6. Available at: <http://www.aiifl.com/>. For further discussion of OECD's CRS and US's FATCA, see Rahimi-Laridjani, E. and Hauser, E. (2016), "The New Global FATCA: An Overview of the OECD's Common Reporting Standard in Relation to FATCA", International Tax Journal, 42(1), January – February, pp. 31- 37.

<sup>4</sup> Over fifty countries and jurisdictions (e.g. France, Germany and the UK) have first CRS automatic exchanges by 2017 (see: <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/#d.en.345489>). Also, over forty countries and jurisdictions (e.g. Australia, Canada, Mainland China, Hong Kong and Singapore) have first CRS exchanges by 2018 (see: <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/crs-by-jurisdiction-2018.htm>). Each country and jurisdiction needs to sign a multilateral (or bilateral) CAA with other countries and jurisdictions before information can be exchanged.

<sup>5</sup> The IRD releases a Guidance for Financial Institutions ("CRS Guidance") which provides reporting FIs with an understanding of the requirements that must be fulfilled to comply with their obligations: see <https://www.ird.gov.hk/eng/tax/aeoi/guidance.htm>.

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<sup>6</sup> Only reporting FIs will have obligations under the CRS AEOI regime. A reporting FI is any FI resident in Hong Kong (i.e. it is incorporated in Hong Kong or, if incorporated outside Hong Kong, is normally managed or controlled in Hong Kong), as well as any branch of a non-resident FI located outside Hong Kong. FIs include custodial institutions, depository institutions, investment entities, and specified insurance companies: section 50A, IRO. Holding companies or treasury centers of non-financial group are generally regarded as non-FIs: CRS Guidance, paragraph 67 of Chapter 3. Also, certain FIs are excluded from being reporting FIs: Part 2 of Schedule 17C, IRO. These non-reporting FIs (e.g. government entity, international organization, Hong Kong Monetary Authority, Mandatory Provident Fund Schemes and Occupational Retirement Schemes) do not have obligations under the CRS AEOI regime.

<sup>7</sup> The obligations of reporting FIs are set out in Part 8A, Inland Revenue Ordinance (IRO) (Cap. 112). Seven chapters of the CRS Guidance discuss the due diligence procedures which the reporting FIs could apply to identify the reporting accounts.

<sup>8</sup> It refers to financial account which is an account maintained by a reporting FI. Financial accounts include custodial accounts, depository accounts, equity or debt interests in investment entities, and cash value insurance contracts and annuity contracts: section 50A, IRO. However, certain financial accounts (e.g. retirement and pension account, term-life insurance contracts and dormant account (i.e. an account with a balance that does not exceed HK\$7,800 in some circumstances) are seen to be low-risk of being used to evade tax and are specifically excluded from being reportable financial accounts: Part 3 of Schedule 17C, IRO.

<sup>9</sup> Self-certification is a formal declaration that the account holder makes in connection with his/its tax residence.

<sup>10</sup>Section 80(2F), IRO. The penalty of HK\$10,000 is a fine at Level 3 of the Criminal Procedure Ordinance (CPO) (Cap. 221).

<sup>11</sup> Schedule 17D of IRO prescribes the due diligence procedures that reporting FI must follow. There are different due diligence procedures for financial accounts held by individuals and entities as well as for pre-existing and new accounts.

<sup>12</sup> High value individual accounts are those with an aggregate balance or value that exceeds an amount equivalent to HK\$7,800,000 as at 31 December 2016: Part 1 of Schedule 17D, IRO and paragraphs 1-2, Chapter 9, CRS Guidance.

<sup>13</sup> Paragraph 2, Chapter 9, CRS Guidance.

<sup>14</sup> A pre-existing entity account with an aggregate account balance or value that does not exceed HK\$1,950,000 as at 31 December 2016 is not required to be reviewed, identified or reported as a reportable account: paragraphs 1 and 3, Chapter 11, CRS Guidance.

<sup>15</sup> Section 50A and Part 1 of Schedule 17E, IRO.

<sup>16</sup> Part 1 of Schedule 17E, IRO.

<sup>17</sup> To comply with the CRS AEOI requirement, reporting FIs can adopt a mandatory “targeted approach” or an optional “wider approach”. Under the targeted approach, reporting FIs will request the account holders who are residents of the reportable jurisdictions to fill in forms/declarations: section 50B(1) and (2), IRO. However, under the wider approach, reporting FIs will request the account holders to fill in forms/declarations even if they are not residents of the CRS AEOI reportable jurisdictions: section 50B(3), IRO.

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<sup>18</sup> Each jurisdiction has its own rules for defining tax residence, and jurisdictions have provided such information on how to determine whether a person is tax resident in the jurisdiction on the OECD CRS AEOI Portal. Generally, a person will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction (including tax conventions), that person pays or should be paying tax therein by reason of domicile, residence, place of management or incorporation, or any other criterion of a similar nature, and not only from sources in that jurisdiction. In general, whether or not an individual is a tax resident of a jurisdiction is determined by the person's physical presence or stay in a place (e.g. whether over 183 days within a tax year) or, in the case of a company, the place of incorporation or the place where the central management and control of the entity is exercised. Account holders have to conduct self-certification on whether or not the holders are tax residents of a reportable jurisdiction. If reporting FIs consider an account holder is a tax resident of reportable jurisdiction based on the self-certification, reporting FIs will send the account holder's financial information to Hong Kong IRD.

<sup>19</sup> Reporting FIs are required to register an account under the CRS AEOI Portal (which is a secured platform developed by Hong Kong IRD to facilitate the CRS AEOI reporting) and submit a notification of commencement of maintaining reporting accounts by 3 October 2017. In January 2018, Hong Kong IRD issues CRS AEOI returns to registered reporting FIs which have to file the CRS AEOI returns in May 2018.

<sup>20</sup> For Korea, the first reporting year is 2019 and the first period of financial account information is 1 January 2018 to 31 December 2018.

<sup>21</sup> Sections 50C(3) and 50F, IRO.

<sup>22</sup> To facilitate reporting FIs to fulfill their obligations to furnish CRS AEOI returns, Hong Kong IRD has developed a data schema in Extensible Markup Language (XML), which is based on the OECD's CRS XML Schema, specifying the data structure and format for reporting the required financial account information.

<sup>23</sup> The CRS AEOI Portal facilitates reporting FIs: 1) to submit notifications for commencement/cessation of maintaining reporting accounts and change of address, 2) to file CRS AEOI returns, and 3) to receive/send messages in connection with the reporting of financial account information. It is designated as the information system for the CRS AEOI purposes with effect from 3 July 2017: section 50I(1), IRO.

<sup>24</sup> The Financial Account Information Return (BIR80), which is commonly known as the CRS AEOI return, is a form prescribed by the Board of Inland Revenue for reporting FIs to report the financial account information in relation to reportable accounts. Hong Kong IRD will issue electronic notices in January each year starting from 2018 via the CRS AEOI Portal to reporting FIs and require them to file the CRS AEOI returns within 5 months from the date of notice.

<sup>25</sup> See [https://www.ird.gov.hk/eng/tax/aeoi/rpt\\_jur.htm](https://www.ird.gov.hk/eng/tax/aeoi/rpt_jur.htm). All of these CAAs on CRS AEOI are concluded with jurisdictions which have DTAs in place with Hong Kong.

<sup>26</sup> Sections 80B(3) and 80B(7), IRO. The penalty of HK\$10,000 is a fine at Level 3 of the CPO.

<sup>27</sup> Sections 80B(8) and 80B(9), IRO. The penalties of HK\$10,000 and HK\$50,000 are fines at Level 3 and Level 5 respectively of the CPO.

<sup>28</sup> See <https://www.ird.gov.hk/eng/ppr/archives/18020201.htm>.

<sup>29</sup> As at 24 January 2018, 117 countries/jurisdictions participated in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCMAA). See <http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>.



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<sup>30</sup> Mainland China signed the MCMAA on 27 August 2013, with entry into force on 1 February 2016. Since Hong Kong is not a sovereign state, Hong Kong could not be a signatory of the MCAA. See [http://www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf). With the passage of the Inland Revenue (Amendment) Ordinance 2018, Mainland China will deposit a declaration to the OECD for territorial application of the MCMAA in Hong Kong.

<sup>31</sup> Technical amendments are made to certain provisions on Hong Kong's CRS AEOI regime to align them with the OECD's CRS. These amendments do not make substantial changes to the due diligence requirements for reporting FIs and are effective on January 1, 2019. See [http://www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf). An example of the technical amendment is the threshold for determining the controlling person of a passive non-financial entity will be updated from "not less than" 25% to "more than" 25% of the issued share capital of the entity under section 50A(6), IRO: see Chow, E. and Lee, I. (2018). "Automatic Exchange of Information (AEOI) in Hong Kong", Seminar Notes, Association of Chartered Certified Accountants – Hong Kong Branch, 12 February, p. 12.

<sup>32</sup> The MCMAA permits more effective implementation of the arrangements relating to CRS AEOI as well as automatic exchange of country-by-country reports (i.e. the reports in which multinational corporations set out the information such as amounts of revenue, profits and tax paid for their business operations in each jurisdiction) and spontaneous exchange of information on tax rulings under the BEPS package.

<sup>33</sup> See minutes of the 2017 annual meeting between Hong Kong IRD and Hong Kong Institute of Certified Public Accountants: [http://www.hkicpa.org.hk/file/media/section5\\_membership/Professional%20Representation/pdf-file/tax-b/28.pdf](http://www.hkicpa.org.hk/file/media/section5_membership/Professional%20Representation/pdf-file/tax-b/28.pdf).

<sup>34</sup> Chak, E., Li, D. and Ko, C. (2017). "Exchange of Information – Implications to Hong Kong Companies", Seminar Notes, Hong Kong Institute of Certified Public Accountants, 20 April, p. 43.

<sup>35</sup> Traditionally, Hong Kong IRD identifies tax audit targets through referrals within different IRD units, referrals by other government departments, informers, computerized selections and project cases. A detailed discussion of tax audit in Hong Kong can be found from Ho, C. M. (2016), "A Practical Guide to Tax Audit and Investigation in Hong Kong", Wolters Kluwer (CCH), July.

<sup>36</sup> Lim, E. (2018), "Multinationals under Siege – The Changing Nature of International Tax and Trade Disputes", Seminar Notes, Taxation Law Research Programme, Asian Institute of International Financial Law, Faculty of Law, The University of Hong Kong, 11 April.

<sup>37</sup> The defensive measures include non-tax measures (e.g. restrictions on EU funding) and tax measures (e.g. non-deductibility of costs and withholding taxes). See PricewaterhouseCoopers (2017). "Hong Kong is not on the EU blacklist with its commitment to comply with the international tax standards", News Flash, Hong Kong Tax, December, Issue 12, p.2. Available at: <https://www.pwchk.com/en/hk-tax-news/hongkongtax-news-dec2017-12.pdf>.

<sup>38</sup> See note 3 above for Sawyer (2016), p.18. It is noted that there is an increasing trend of EOI requests received by Hong Kong IRD from its DTA/TIEA partners in respect of the financial, tax and other information of Hong Kong and/or non-Hong Kong (such as BVI) companies.

<sup>39</sup> See note 3 above for Sawyer (2016), Table 1, p.14.

<sup>40</sup> Adapted from Cheng, W. and Ho, P. (2017). "Automatic Exchange of Information and its Potential Impact on Tax Audit Cases in Hong Kong", Seminar Notes, Hong Kong Institute of Certified Public Accountants, 12 October, p. 16.

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<sup>41</sup> Adapted from Cheng and Ho (2017). See note 40 above.