



THE POWER
OF BEING
UNDERSTOOD

RSM Tax Advisory (Hong Kong) Limited

羅申美稅務諮詢有限公司

Welcome to Tax Flash – RSM Tax Advisory (Hong Kong) Limited’s Newsletter Covering Technical Development in Taxation

THE IMPLEMENTATION OF BEPS AND CRS/AEOI IN HONG KONG

On 20 June 2016, Hong Kong accepted the Organisation for Economic Co-operation and Development’s (“OECD”) invitation to join as an Associate in the inclusive framework for implementation of the package of measures against base erosion and profit shifting (“BEPS”).

In becoming an Associate to the BEPS Project, Hong Kong has committed to the comprehensive BEPS Package, including its four minimum standards (i.e. in the areas of harmful tax practices, tax treaty abuse, country-by-country reporting requirements and improvements in cross-border tax dispute resolution), and to its consistent implementation.

Hong Kong also supports implementing automatic exchange of financial account information (“AEOI”). To fulfil its commitment to implement AEOI and commence the first information exchanges by the end of 2018, the Inland Revenue (Amendment) (No.3) Ordinance 2016 (“the Amendment Ordinance”) was gazetted and became effective on 30 June 2016. The Amendment Ordinance sets out a legislative framework for Hong Kong to implement AEOI.

1. BEPS

In implementing the BEPS project, priority will be given to the four minimum standards under BEPS, namely

- (i) Harmful tax practices (Action 5)
- (ii) Tax treaty abuse (Action 6)
- (iii) Country-by-country (“CbC”) reporting requirements (Action 13)
- (iv) Improvements in cross-border tax dispute resolution (Action 14)

As indicated by the Hong Kong Government (“the Government”), the timing of implementation of the BEPS measures will be subject to the time required for the necessary legislative amendments. Relevant factors such as the characteristics of the domestic tax regime, the envisaged magnitude of legislative

changes involved and the practical need to prioritize among the BEPS measures will be taken into account when coming up with the timelines for implementation.

The Government is conducting analysis on the BEPS package to map out the priorities among the BEPS measures. Consultation with the industry on the strategy for implementing the relevant proposals at an appropriate juncture and preparation for taking forward the necessary legislative amendments will also be carried out.

POINTS TO NOTE

Transfer pricing documentation

Currently, there is no requirement to prepare contemporaneous transfer pricing (“TP”) documentation in Hong Kong. With the increased focus on TP as part of the BEPS Project, the Government is more likely to put in place comprehensive TP legislation and documentation requirements in the near future. Hong Kong based multi-national enterprises would then be required to prepare master file as well as CbC reporting in accordance with the “TP Documentation and CbC Reporting, Action 13 2015 Final Report” published on 5 October 2015 as part of the BEPS Project carried out by OECD and G20.

Tax treaty abuse

Hong Kong has been approached by some of its treaty partners requesting that the simplified limitation on benefits (“LOB”) rule and the principal purposes test (“PPT”) be incorporated into the Hong Kong tax treaties. The Deputy CIR hinted that the simplified LOB rule and the PPT will probably be the norm for Hong Kong tax treaties in the future.

2. COMMON REPORTING STANDARD/AEOI

Gazetted and came into effect on 30 June 2016, the Amendment Ordinance covers the following five key areas:

- Scope of financial institutions (“FIs”), reporting FIs/non-reporting FIs, reportable accounts and excluded accounts (Section 56A, Schedule 17C)
- Due diligence and reporting requirements for reporting FIs (Sections 50B, 50C, 50D and 50E, Schedule 17D)
- Reportable information to be maintained, furnished and exchanged (Sections 50F and 50G)
- Reportable jurisdictions (Schedule 17E)
- Enforcement provisions (Amended Section 80, Sections 80B, 80C, 80D, 80E and 80F)

Under the AEOI standard, an FI is required to identify financial accounts held by tax residents of reportable jurisdictions in accordance with due diligence procedures. FIs are required to collect the reportable information of these accounts and furnish such information to the Inland Revenue Department (“IRD”). The IRD will then exchange the information with the tax authorities of the AEOI partner jurisdictions on an annual basis.

Some basic information about AEOI and a set of frequently asked questions can be found on the IRD’s website as follows:

http://www.ird.gov.hk/eng/tax/dta_aeoi.htm

http://www.ird.gov.hk/eng/faq/dta_aeoi.htm

Some key aspects of the new AEOI regime are summarized below:

Key areas	Details
<p><i>Definition of FIs, reporting/non-reporting FIs, reporting persons and excluded accounts</i></p>	<p>Reporting FIs:</p> <ul style="list-style-type: none"> - An FI that is resident in Hong Kong or a Hong Kong branch of an FI that is not resident in Hong Kong (i.e. incorporated/constituted in Hong Kong or normally managed or controlled in Hong Kong if incorporated/constituted outside Hong Kong). <p>Non-reporting FIs include:</p> <ul style="list-style-type: none"> - Government entities and international organizations and pension funds of them; - Mandatory Provident Fund Schemes and registered Occupational Retirement Schemes; and - Credit unions. <p>Reportable persons:</p> <ul style="list-style-type: none"> - A corporation the stock of which is regularly traded on an established securities market and its related entities. <p>Excluded accounts include:</p> <ul style="list-style-type: none"> - Accounts with a balance not exceeding HK\$7,800; or - Dormant accounts under the Common Reporting Standards.
<p><i>Due diligence</i></p>	<p>“Wider Approach” -</p> <p>FIs may carry out due diligence procedures in relation to financial accounts even if the account holder (and any controlling person of the account holder) is a tax resident of an overseas jurisdiction that is not a reportable jurisdiction. However, FIs are only required to submit the mandatory information regarding reportable accounts to the IRD.</p>
<p><i>Reporting requirements</i></p>	<p>Reportable data include:</p> <ol style="list-style-type: none"> 1) name, address, jurisdiction of residence, taxpayer identification number, and the date and place of birth (for individual); 2) account number; 3) account balance; and 4) income (e.g. the gross amount of interest, dividends and sale proceeds of financial assets, etc.).
<p><i>Reportable jurisdictions</i></p>	<p>Jurisdictions with which Hong Kong has entered into:</p> <ol style="list-style-type: none"> 1) a comprehensive double tax agreement or tax information exchange agreement; and 2) a competent authority agreement for AEOI.

Key areas	Details
<i>Enforcement</i>	Sanctions will be imposed for non-compliance, “incorrect returns”, and fraud with wilful intent on: <ol style="list-style-type: none"> 1) reporting FIs; 2) service providers of reporting FIs; 3) the employees, directors and other management officers of a non-compliant reporting FIs; 4) the directors and other management officers of a non-compliant service provider; and 5) account holders.

POINTS TO NOTE

Tight time-frame

In order to commence the first exchanges by the end of 2018, the IRD needs to identify a list of AEOI partners to start with, and to conclude the negotiations by the end of 2016. The IRD will announce the list of AEOI partners by the end of 2016.

In the meantime, FIs should make early preparation for the due diligence procedures in order to identify and collect information of the relevant financial accounts in 2017. FIs are expected to register with the IRD by September 2017.

Further, FIs would have to furnish the information in the first AEOI returns to the IRD in 2018 for the IRD’s transmission to the relevant AEOI partners.

In view of the tight implementation schedule, FIs should closely monitor their progress of preparation. In addition, they should stay tuned of the guidance on the implementation details that is expected to be included in the Departmental Interpretation and Practice Note on AEOI to be issued by the IRD.

Self-certification

According to the Amendment Ordinance, self-certifications would be required from account holders for all new accounts (i.e. accounts opened on or after 1 January 2017). As for pre-existing accounts (i.e. accounts opened before 1 January 2017), if a reporting FI has doubts about the tax residence of an account holder, it can seek a self-certification from the account holder to verify its tax residence.

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 to a reporting financial institutions is liable on conviction to a fine of \$10,000.

If the account holder has doubts about his/her tax residence, it is recommended to seek professional advice.

RSM Tax Advisory (Hong Kong) Limited

RSM Hong Kong's dedicated and experienced tax specialists can:

- Advise on tax efficient holding and operational structures for new cross-border investment, including the formation of Hong Kong and Chinese business entities
- Review existing cross-border investment structures, advise on identified deficiencies, quantify any potential exposure from such deficiencies, and further advise on restructuring approach and procedures
- Assist clients to discuss and clarify matters with tax officials, including transfer pricing and advance rulings
- Act as client representative in tax audits and tax investigations
- Provide transaction support services on mergers and acquisitions, including tax due diligence, deal structure advice, tax health checks, related human resources arrangements and other tax compliance and consultation services
- Advise on human resources and structuring employment arrangements in a tax-efficient manner
- Advise on tax equalization schemes
- Provide tax compliance services for individual and corporate clients in Hong Kong and China

The aim of Tax Flash is to alert readers to recent developments. The information is general in nature and it is not to be taken as a substitute for specific advice. Accordingly RSM Hong Kong accepts no responsibility for any loss that occurs to any party who acts on information contained herein without further consultation with us. If you have any comments or require further information please contact:

Mr. Dicky To
T +852 2508 2863
E dickyto@rsmhk.com

Mr. Eric Chen
T +852 2583 1259
E ericchen@rsmhk.com

Ms. Lilian Poon
T +852 2583 1241
E lilianpoon@rsmhk.com

Mr. Samuel Chan
T +852 2583 1242
E samuelchan@rsmhk.com

Mr. Patrick Ho
T +852 2583 1258
E patrickho@rsmhk.com

Mr. Caesar Wong
T +852 2508 2851
E Caesarwong@rsmhk.com

Ms. Catherine Tsang
T +852 2583 1256
E catherinetsang@rsmhk.com

Mr. Chan Ka Ho
T +852 2583 1249
E khchan@rsmhk.com

Ms. Joanna Lee
T +852 2583 1317
E joannalee@rsmhk.com

RSM Tax Advisory (Hong Kong) Limited

29th Floor, Lee Garden Two
28 Yun Ping Road
Causeway Bay, Hong Kong

T +852 2598 5123
F +852 2598 7230
E tax@rsmhk.com

www.rsmhk.com

RSM Tax Advisory (Hong Kong) Limited is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and consulting firm, each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction.

The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ.

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.