

FREQUENTLY ASKED QUESTIONS

1. Q: Why does Hong Kong have to implement AEOI?

A: Exchanging financial account information on an automatic basis is a new international standard, designed to enhance tax transparency and combat cross-border tax evasion. Members of the international community have been advocating AEOI as a more efficient mode of international tax cooperation and have made it a new global standard. The Organisation for Economic Cooperation and Development (“OECD”) released in July 2014 the Standard for Automatic Exchange of Financial Account Information in Tax Matters, calling on governments of all jurisdictions to obtain relevant financial account information from their financial institutions and exchange that information automatically with jurisdictions of residence of account holders on an annual basis.

As a responsible international citizen and a leading financial centre, Hong Kong indicated in September 2014 our commitment to implement AEOI and commence the first information exchanges by the end of 2018. The commitment was premised on the condition that Hong Kong could put in place necessary domestic legislation by 2017.

As at 26 July 2016, more than 100 jurisdictions over the world have committed to the implementation of AEOI.

The Inland Revenue (Amendment) (No. 3) Ordinance 2016 (“the Amendment Ordinance”), which commenced operation on 30 June 2016, has put in place a legislative framework for Hong Kong to implement AEOI. To deliver the commitment, Hong Kong will commence the first exchanges by the end of 2018.

2. Q: Who will be the reportable persons for AEOI?

A: A financial institution resident (or known as “located”) in Hong Kong will identify the financial accounts held by individuals or entities liable to tax by reason of residence in the AEOI partner jurisdictions. The financial institution will collect and furnish to the Inland Revenue Department (“IRD”) information of the identified account holders (individual or entity) and the financial account information on an annual basis. IRD will then transmit the information to the tax administration of the relevant jurisdiction of which the account holder is tax resident.

3. Q: How will individuals and entities be affected by AEOI?

A: Reporting financial institutions will be liable for reporting on financial accounts held by reportable persons. Hong Kong taxpayers who are not tax residents of any territory outside Hong Kong will not be reported. The Inland Revenue Ordinance (“IRO”) requires the reporting financial institutions to apply due diligence procedures to collect all required information and documentation from account holders. To identify reportable persons, reporting financial institutions may ask account holders to complete self-certification forms for verification of their tax residency status. The self-certifications will be kept by the reporting financial institutions for a period of six years.

4. Q: What is a self-certification?

A: This is a formal declaration that the account holder makes in connection with his/her tax residence.

According to the due diligence procedures set out in the Amendment Ordinance (which are based on the international standard required), 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 financial institution 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. Please also see Item 7 below.

If the account holder has doubts about his/her tax residence, he/she may consider seeking professional advice.

In OECD's AEOI portal, you can find more information regarding the tax laws of different jurisdictions for defining tax residence. The website address is <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/#d.en.347760>.

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 at level 3 (\$10,000). IRD may check the details of the self-certification, if necessary.

5. Q: Why am I asked by a reporting financial institution to provide my tax residency in the self-certification?

A: Under the Amendment Ordinance, reporting financial institutions are required to apply the due diligence procedures to identify the tax residency of the account holders and controlling persons for the purpose of AEOI. Therefore an account holder is required to provide his tax residency to a reporting financial institution.

6. Q: I am a Hong Kong permanent resident and do not hold any foreign passports and only have tax liability in Hong Kong. Do I need to provide a self-certification to a reporting financial institution when opening a new account? Do I need to provide a self-certification to a reporting financial institution for my pre-existing accounts?

A: According to the due diligence procedures set out in the Amendment Ordinance, which are based on the international standard required, account holders have to provide self-certifications to the reporting financial institution in respect of their personal information, including tax residence, for all new accounts. For pre-existing accounts, financial institutions will be required to conduct due diligence procedures to identify and verify the tax residence of the account holders. In case of doubt, self-certification from account holders will be sought. Furthermore, financial institutions can opt to apply the due diligence procedures of new accounts to pre-existing accounts. In other words, an account holder may have to provide a self-certification to a reporting financial institution regarding the pre-existing accounts.

7. Q: What if there are changes in circumstances that affect my tax residency?

A: Account holders should advise the reporting financial institutions of any change in circumstances which affects their tax residency status or causes the information contained in a self-certification to become incorrect. Generally, account holders should provide financial institutions with a suitably updated self-certification form within 30 days of such change in circumstances.

8. Q: How will I know whether or not I am a tax resident of an overseas jurisdiction?

A: 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.

In OECD's AEOI portal, you can find more information regarding the tax laws of different jurisdictions for defining tax residence. The website address is as follows:

<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/#d.en.347760>

9. Q: Will the IRO specify who are tax residents of an overseas jurisdiction? How can a financial institution know and identify tax residence of their account holders?

A: Each jurisdiction has its specific definition of tax residence. Tax laws may differ amongst jurisdictions and the tax residence of individual account holders may change from one year to another. Individual account holders ought to verify and update their tax residence and seek legal advice if necessary.

For new accounts, financial institutions will seek self-certification from account holders in respect of their personal information, including tax residence. For pre-existing accounts, financial institutions will be required to conduct due diligence procedures to identify and verify the tax residence of the account holders. In case of doubt, self-certification from account holders will be sought.

10. Q: I am a Hong Kong permanent resident and do not hold any foreign passports and only have tax liability in Hong Kong. Will my information be reported by financial institution to other jurisdictions under the AEOI regime?

A: If you are **not** a tax resident in any territory outside Hong Kong, the financial institution is not required and should not report your financial account information to IRD for transmission to any tax administration outside Hong Kong.

11. Q: I stay and work full-time in Country A, while my spouse is a Hong Kong permanent resident and works in Hong Kong. We have maintained a joint account in Bank-HK, will Bank-HK need to declare my spouse's information to IRD for onward transmission to the tax authority of Country A if Hong Kong signed an AEOI agreement with Country A in future?

A: If you are a tax resident of Country A in accordance with its tax law, Bank-HK will report information in the joint account (in entirety, with no apportionment) to IRD for transmission under AEOI to the tax administration of Country A. Bank-HK is not required to report the information of your spouse who is not a tax resident in any territory outside Hong Kong.

12. Q: I am a Hong Kong permanent resident and live and work in Hong Kong. I bought a property for self-residence in Country B and hold an account in Bank-HK. Will Bank-HK need to provide my financial account information to IRD for transmission to the tax authority of Country B if it becomes an AEOI partner of Hong Kong?

A: Provided that you are **not** a tax resident of Country B under its tax laws, the ownership of a property in Country B and your liability to pay capital gains tax of Country B alone will **not** automatically render you a tax resident of Country B. Non-Hong Kong tax residents are advised to seek legal advice if in doubt.

13. Q: I am a tax resident of Country C and I hold a financial account for the benefit of my spouse who is not a tax resident of Country C. Will the financial account information be transmitted to the tax authority of Country C if it becomes an AEOI partner of Hong Kong?

A: No. The account holder is the beneficiary, not the agent, of the account. You are not the account holder, but your spouse. Since your spouse is not a tax resident of Country C, the account information will not be exchanged. Only information of a financial account of which the beneficiary, and not the agent, is a tax resident of Country C will be exchanged.

14. Q: If I am a tax resident of an AEOI partner jurisdiction and hold a financial account at one of the financial institutions in Hong Kong, what information will be exchanged?

A: As far as **personal data** is concerned, the information to be exchanged includes name, address, jurisdiction of residence, taxpayer identification number (“TIN”), and the date and place of birth. As for **financial account** data, it includes the account number, account balance or value (year-end), and the gross amount of interests, dividends and sale proceeds of financial assets as appropriate for the year concerned.

15. Q: What types of financial institutions are covered by AEOI?

A: Financial institutions covered include -

custodial institutions;

depository institutions;

investment entities; and

specified insurance companies.

A financial institution will not have obligations under the AEOI regime in Hong Kong, unless it is a “reporting financial institution” which is defined to mean a financial institution resident in Hong Kong or a branch of a non-resident financial institution located in Hong Kong.

16. Q: What are the due diligence obligations of a reporting financial institution under the AEOI regime?

A: A reporting financial institution must establish, maintain and apply due diligence procedures to identify account holders (including controlling persons of the accounts) who are tax residents in

reportable jurisdictions. The financial institution is also authorized to apply the due diligence procedures in relation to any financial account where the account holder is a tax resident in a territory outside Hong Kong that is not a reportable jurisdiction.

As the due diligence requirements are mandatory only for reportable accounts (but not other accounts held by residents of non-reportable jurisdictions), reporting financial institutions will be sanctioned only if they fail to identify, collect and report information of reportable accounts to IRD.

17. Q: When will a financial institution need to start collecting its client information for the purpose of AEOI?

A: Financial institutions would be obliged to start collecting information for reportable accounts of account holders who are tax residents of an AEOI partner, in the calendar year following the approval by the Legislative Council of the inclusion of the AEOI partner as a reportable jurisdiction in the law. Financial institutions will then report the information to IRD in the next calendar year after its collection for onward transmission to relevant AEOI partners.

The Amendment Ordinance provides reporting financial institutions in Hong Kong with the legal basis to collect the required information from account holders in relation to periods that start on or after 1 January 2017. For accounts opened on or after 1 January 2017, reporting financial institutions should request a self-certification from the account holder. For pre-existing accounts (i.e. accounts opened before 1 January 2017), reporting financial institutions can use information on file for the account holders to determine their tax residence. They may also contact the account holders for further information or to verify the information held.

18. Q: How can reporting financial institution verify the information in self-certification provided by an account holder?

A: Financial institutions are expected to rely on the self-certification if it satisfies the **reasonableness test** based on the information obtained by the institution in connection with the opening of the account, including any documentation collected pursuant to the prevailing due diligence or know-your-customers procedures.

Financial institutions are **not expected** to carry out an independent legal analysis of relevant tax laws to determine the residence of an account holder.

19. Q: If I am a reportable person, how can I know what information of my financial account that IRD has reported to other jurisdiction? Can I object to the financial institution for releasing my information to IRD?

A: The IRO imposes legal obligation on financial institutions to establish and apply due diligence procedures to identify tax residents of territories outside Hong Kong for AEOI purpose and collect specified information for submission to IRD.

Financial institutions are expected to observe requirements under the Personal Data (Privacy) Ordinance. For instance, they should inform the account holders of the purpose of use of the personal data for AEOI. They should take all practicable steps to ensure the accuracy and security of the personal data. Account holders are entitled to request access to and correction of their personal data. In case an individual refuses to allow the financial institution to release his personal data for AEOI purpose, the financial institution may have to consider whether or not the account should be maintained.

20. Q: How will IRD safeguard taxpayers' privacy and confidentiality of information exchanged?

A: IRD will exchange information with AEOI partners, which are only those with which Hong Kong has signed a comprehensive avoidance of double taxation agreement or tax information exchange agreement. Both treaties have provided 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 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.

21. Q: What are the sanctions for financial institutions?

A: The penalty provisions contained in the IRO seek to provide sufficient deterrent effect to ensure effective implementation of the AEOI regime in Hong Kong while not imposing disproportionately heavy sanction on financial institutions and individuals.

Three major categories of penalty were imposed to sanction non-compliance, "incorrect returns", and fraud with willful intent. The levels of penalties (generally penalty at Level 3/ \$10,000 for the first two categories, and penalties at Level 3 or Level 5/ \$50,000 with imprisonment for six months or three years for the last category) have made reference to other sanctions of similar gravity in the IRO.

22. Q: Will individual account holders be sanctioned?

A: The focus of the Amendment Ordinance is to ensure compliance by financial institutions; hence the sanctions for non-compliance of the due diligence requirements and for filing of incorrect returns with intent to defraud were targeted at financial institutions.

As far as individual account holders are concerned, it is an offence for a person to provide knowingly or in a reckless manner, misleading, false or incorrect information in a material particular, in making a self-certification to financial institutions. The penalty is fine at Level 3 \$10,000. This is to ensure that we abide by the international standard concerning effective implementation.