



HONG KONG MONETARY AUTHORITY
香港金融管理局

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11 October 2016

The Chief Executive
All Authorized Institutions

Dear Sir/Madam,

Automatic Exchange of Financial Account Information in Tax Matters

I am writing to draw your attention to the Inland Revenue (Amendment) (No.3) Ordinance 2016 (the Amendment Ordinance) which came to effect on 30 June 2016¹. The Amendment Ordinance provides a legal framework in Hong Kong for implementing the new international standard on automatic exchange of financial account information in tax matters (AEOI), as promulgated by the Organisation for Economic Cooperation and Development (OECD).

The new international standard on AEOI is an important part of the international effort to enhance tax transparency and combat cross-border tax evasion. It is therefore important for Hong Kong's reputation as an international financial centre that implementation of AEOI is both timely and effective.

Under the Amendment Ordinance, a financial institution (FI) is required to identify financial accounts held by tax residents of reportable jurisdictions (i.e. tax residents who are liable to tax by reason of residence in the jurisdictions with which Hong Kong has entered into an AEOI agreement). The Amendment Ordinance prescribes the due diligence procedures for FIs to identify whether a financial account is a "reportable account". FIs are required to collect the reportable information of these accounts and furnish such

¹ The relevant press release can be found at http://www.fstb.gov.hk/tb/en/docs/pr20160630a_e.pdf

information to the Inland Revenue Department (IRD) which will exchange the information with the tax authorities of relevant AEOI partner jurisdictions (AEOI partners) on an annual basis.

It is expected that subject to negative vetting by the Legislative Council, the new Schedule to the Inland Revenue Ordinance listing the AEOI partners will come into operation by the end of 2016. FIs can start conducting the due diligence procedures to identify and collect information of the relevant financial accounts in 2017, and furnish the information to the IRD in 2018 for transmission to the AEOI partners concerned.

Compliance with the due diligence and reporting obligations under the Amendment Ordinance

In light of the enactment of the Amendment Ordinance, all AIs should carefully assess the impact of the implementation of AEOI regime on their operations and put in place necessary processes and controls in order to ensure compliance with the due diligence and reporting obligations under the Amendment Ordinance.

AIs should note that the IRD has launched a dedicated webpage on AEOI² on its website which contains the latest set of guidance prepared for FIs in relation to AEOI. It also contains other materials, for example, sample self-certification forms and pamphlets on AEOI which provide good reference for AIs when implementing AEOI. The IRD may update the contents of the webpage from time to time and AIs should keep abreast of any further guidance posted on this webpage.

Customer communications in relation to additional information requirements for AEOI purposes

As this new development also requires cooperation with bank customers particularly in terms of information collection and updating, AIs are reminded that in applying the due diligence measures under the Amendment Ordinance, adequate emphasis should be given to the customers' perspectives in the process of implementing AEOI. To further promote a strong customer-centric culture among banks, the HKMA has set out, and expects all AIs to adopt, the

² www.ird.gov.hk/eng/tax/dta_aei.htm

high-level guiding principles on customer communications for AEOI purposes (the Guiding Principles)³ set out in the Annex to this circular.

AIs are expected to adopt a balanced approach in meeting statutory obligations under the AEOI regime while treating customers fairly in the processes, and to consider individual circumstances in formulating the relevant due diligence and reporting processes and developing customer communication strategies in accordance with the Guiding Principles. The key outcomes that the HKMA expects include, but not limited to, clear customer communication to explain the purpose of and expectation in connection with AEOI arrangement, seeking to minimise customers' burden as far as practicable within the bounds of the Amendment Ordinance, and supporting customers in providing relevant information to complete the process. AIs should also ensure that appropriate procedures and staff training are put in place for responding to customer enquires in a prompt and user-friendly manner.

I would also like to take this opportunity to remind AIs to ensure compliance with the Personal Data (Privacy) Ordinance and relevant codes of practice or guidance issued by the Office of the Privacy Commissioner for Personal Data when handling customers' personal data.

Industry Guidance on AEOI

To assist AIs in implementing their due diligence and reporting obligations under the Amendment Ordinance, the Hong Kong Association of Banks and Private Wealth Management Association have developed the "Guidance Notes on Common Reporting Standard for Automatic Exchange of Financial Account Information" (the CRS Guidance Notes). The HKMA fully supports the industry's initiative and expects all AIs to give full consideration to the guidance set out in the CRS Guidance Notes when they devise their own policies and procedures for compliance with these obligations⁴.

Enquiries on this circular may be addressed to Ms Maggie Wong or Mr Desmond Lo (aml@hkma.gov.hk) (on compliance with the Amendment Ordinance and industry guidance on AEOI) and Ms May Cheung

³ The Guiding Principles are also incorporated in section 2 of the "Guidance Notes on Common Reporting Standard for Automatic Exchange of Financial Account Information" developed by the Hong Kong Association of Banks and Private Wealth Management Association.

⁴ For the avoidance of doubt, the contents of the CRS Guidance Notes including the Guiding Principles do not relax, override or dis-apply the relevant provisions in the Amendment Ordinance. The CRS Guidance Notes should be read in conjunction with all prevailing applicable laws, regulations and guidance, including any subsequent amendments, revisions and updates thereof.

(mwccheung@hkma.gov.hk) or Mr Danny Yip (dstyip@hkma.gov.hk) (on customer communications) respectively.

Yours faithfully,

Arthur Yuen
Deputy Chief Executive

Encl.

c.c. The Chairman, Hong Kong Association of Banks
The Chairman, Private Wealth Management Association
The Chairman, The DTC Association
Financial Services and the Treasury Bureau
(Attn: Ms Eureka Cheung and Mr Gary Poon)
Office of the Privacy Commissioner for Personal Data
(Attn: Ms Fanny Wong)

High-level guiding principles on customer communications for AEOI purposes

1. The overarching principle is for AIs to embrace a balanced approach in meeting their CRS/AEOI regulatory obligations while treating customers fairly and taking customers' experience into consideration when designing the AEOI implementation framework, in order to raise customers' awareness and manage customers' expectation with a view to alleviating customers' burden and preventing customer complaints.
2. Adequate emphasis should be given to customers' perspectives when drafting the industry guidelines and supporting customer communication materials for AEOI, apart from observing necessary regulatory and legal perspectives¹.
3. On due diligence scoping, AIs should suitably formulate and design the relevant processes (including but not limited to filters/criteria design) for identifying customers or groups of customers to be approached for AEOI documentation, while keeping in mind the objective of seeking to minimize customers' burden as far as practicable within the bounds of the CRS/AEOI requirements. Among other things, AIs should review whether there is a practical need for sending the AEOI documentation request to all of their pre-existing customers before doing so, and AIs doing so should, in line with Principle 4, clearly explain to their customers the basis of their approach and provide explanatory note(s) that would help proactively address likely questions or concerns of customers.
4. On customer communication approach, AIs should clearly inform customers of the purpose of and expectation in connection with the CRS/AEOI and explain the additional information requirement as a result, in order to improve clarity on what is reasonably expected of their customers and to enhance their customers' understanding on services that are available to them on this front. Where appropriate, AIs could leverage and build upon the subject-based / public education / awareness materials (e.g. AIs to disseminate printed materials) on CRS/AEOI, in order to minimise the potential of mixed messages their customers may receive

¹ For avoidance of doubt, AIs are not in a position to offer any tax and legal advice to their customers including but not limited to the CRS self-certification.

during their involvements in the AEOI regime in Hong Kong. This includes the following scenarios, at a minimum:

- (a) When sending documentation requests to customers, AIs should provide explanatory note(s) that would help proactively address likely questions or concerns of customers. For example, a customer would naturally be curious as to why he/she being a resident in Hong Kong should need to provide any additional information and make any tax reporting to other overseas authorities; and if Hong Kong is the sole tax residence of the account holder, whether his/her financial account information will still be reported to the Inland Revenue Department in Hong Kong.
 - (b) AIs should, for instance, through dissemination of the relevant customer communication materials, explain to their customers that financial institutions (except those exempted) in Hong Kong are required by law to implement CRS/AEOI framework and in the process may obtain a self-certification and/or further information, if needed, from customers in order to determine the client's country/countries of tax residence, which is necessary and unavoidable for Hong Kong (just like other international financial centres) as part of its commitment in the global CRS/AEOI efforts in enhancing tax transparency and combatting cross-border tax evasion, and AIs would work with their customers to seek to alleviate concerns. For example, it would be advisable not to simply attribute the arrangements to "regulatory requirements" without providing appropriate explanation on the details and purpose of doing so.
5. On customer communication materials, AIs should exercise professional judgment and pragmatism in the preparation of AEOI customer communication contents, and have in place appropriate management process (including but not limited to reviews and supervision) to manage customer communication materials and channels that would take into consideration all relevant guiding principles.² AIs should also minimise the use of legalese in communication materials e.g. explanation should be matter-of-fact and uncomplicated, where feasible.

² AIs are expected to have their customer communication materials reviewed and commented on by their Quality Assurance or similar functional unit to make sure customers' perspectives are taken into account. Senior management of AIs should exercise professional judgement and take a pragmatic instead of a purely legalistic approach in coming up with the customer communication materials.

6. On customer support, AIs should ensure that appropriate procedures and staff training are in place for responding to customer enquiries in a prompt and user-friendly manner. For example, it is advisable for AIs not to only referring their customers to the bank websites, in order to minimise customers' frustration. AIs should leverage on and make available different business-as-usual account opening and servicing channels for addressing customer enquiries or concerns, while delivering consistent customer experience. For example, AIs should include clear written instructions in the self-certification forms, and should provide user-friendly support or measures to cater for possible customer queries that may arise.