

## Common Reporting Standard - Frequently Asked Questions

### 1. What is CRS?

The Common Reporting Standard (“CRS”) released by the Organisation of Economic Cooperation and Development (“OECD”) aims to put in place a global model of automatic exchange of financial account information in tax matters (“AEOI”) to combat tax evasion and protect the integrity of taxation systems.

Over 100 jurisdictions, including Hong Kong, have publicly expressed commitment to its implementation (“Participating Jurisdictions”). Under the CRS, a financial institutions (“FI”) of a Participating Jurisdiction is required to carry out due diligence procedures to identify the jurisdiction of residence of an account holder and identify whether a financial account is a “Reportable Account”. In respect of a Reportable Account, an FI will need to report relevant information to the local tax authorities, who then exchange the relevant information with the tax authorities of the Reportable Jurisdictions where account holders are tax residents.

### 2. When will the Hong Kong legislation on CRS become effective?

In order to give legal effect to CRS, the Hong Kong Government has included all essential requirements of the AEOI standard into local legislation. The Inland Revenue (Amendment) (No.3) Ordinance 2016 (the “Amendment Ordinance”) was published and came into effect on 30 June 2016.

### 3. What are the requirements of CRS?

CRS requires all customers of FIs to provide to FIs with information about all their jurisdiction(s) of residence including the relevant tax identification number(s) (TIN(s)). For FIs, they are required to carry out due diligence procedures to identify the jurisdiction of residence of an account holder and identify whether a financial account is a “Reportable Account”.

### 4. What do FIs have to do to comply with CRS?

CRS requires FIs to review and collect information that will enable them to identify Reportable Accounts and report the relevant personal and financial data of the Reportable Accounts to the local authority (i.e., the Hong Kong Inland Revenue Department (“IRD”)) on an annual basis.

### 5. How will the adoption of CRS by FIs impact customers?

Under CRS, FIs will be liable for reporting on Reportable Accounts, i.e., financial accounts held by individuals or entities that are tax residents in jurisdictions that have signed AEOI agreements with Hong Kong. Hong Kong taxpayers who are not tax residents of any territory outside Hong Kong will not be reported. The Amendment Ordinance requires FIs to apply due diligence procedures to collect all required information and documentation from account holders. To identify Reportable Accounts, FIs may ask account holders to complete self-certification forms for identification of their tax residency status.

### 6. Which types of customers are affected by CRS due diligence and reporting?

Customers that hold financial accounts in FIs will be subject to CRS required due diligence procedures. Customers affected include individuals (whether banking directly or indirectly through an entity) and entities such as corporations, partnerships and trusts, etc. Customers that are identified as reportable persons, i.e. tax residents of jurisdictions that have signed AEOI agreements with Hong Kong, will be subject to CRS required reporting. Therefore, customers whose jurisdiction of tax residence is Hong Kong only are not subject to reporting for CRS purposes.

7. Based on what information would FIs require their customers to provide their jurisdiction of tax residence?

Starting from 1 January 2017, upon applying for account opening or services from FIs, all customers are required to provide information of their tax residence including all jurisdictions of tax residence and the relevant tax identification numbers (TINs). FIs will also start to collect the same information from all pre-existing customers, i.e. customers in existence as at 31 Dec 2016.

8. How and where can customers get additional assistance regarding CRS / AEOI?

Customers may refer to the AEOI reference materials such as the AEOI Pamphlets and FAQs available at the IRD website ([http://www.ird.gov.hk/eng/tax/dta\\_aeoi.htm](http://www.ird.gov.hk/eng/tax/dta_aeoi.htm)) or AEOI Fact Sheet available at the website of the Hong Kong Association of Banks (<https://www.hkab.org.hk/DisplayArticleAction.do?sid=5&ss=19&lang=en>) for more information. Customers may also refer to the AEOI portal set up by OECD for information about CRS or seek advice from their lawyers or tax advisors.

9. What is the definition of tax resident?

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.

Customers can find from the OECD AEOI portal (<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/#d.en.347760>) more information about the definition of different jurisdictions of residence on tax resident, or seek advice from their lawyers or tax advisors.

10. What if the customer is unsure about his/her tax residence?

Customers can refer to the information with respect to the tax residency rules and tax identification numbers (TINs) of the Participating Jurisdictions of the OECD AEOI Portal (<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/>). Customers may also seek advice from their own lawyers or tax advisors on their tax residence(s) related matters. Customers should note that FIs would not be in a position to provide opinion or advice to them regarding their tax residence.

11. Should a sole proprietorship provide an individual or entity tax residence self-certification?

A sole proprietorship is treated as an individual under CRS and should therefore provide an individual self-certification for the proprietor.

12. What is the treatment of jointly held account?

With respect to a jointly held account, each joint holder is treated as an account holder for purposes of determining whether the account is a reportable account. Thus, an account is a reportable account if any of the account holders is a reportable person or a passive nonfinancial entity ("passive NFE") with one or more controlling persons who are reportable persons. When more than one reportable person is a joint holder, each reportable person is treated as an account holder and is attributed the entire balance of the jointly held account. Each joint holder or each controlling person of the passive NFE should provide his/her own self-certification.

13. What are the obligations of the customers with respect to the self-certification?

Customers are responsible for the accuracy of information declared in the self-certification. According to the Amendment Ordinance, an Account Holder that knowingly or recklessly provides misleading, false or incorrect information in a material particular, in making a self-certification to the FIs commits an offence and will be subject to a fine at level 3. Furthermore, under the existing Inland Revenue Ordinance ("IRO"), any person who without reasonable excuse gives any incorrect information to IRD for the purpose of exchange of tax information in relation to any matter affecting the person's own liability to any tax of a territory outside Hong Kong (i.e. Hong Kong's Comprehensive Double Taxation Agreement ("CDTA") or / Tax Information Exchange Agreement ("TIEA") partners) commits an offence.

Generally, Account holders should provide FIs with a new updated self-certification within 30 days of any change in their own and their controlling persons' (where relevant) tax residence.

14. Is there any withholding obligation under CRS?

Unlike the United States Government's FATCA, CRS does not require tax withholding. Unless otherwise stipulated by the local regulations of the Participating Jurisdictions, it is not expected that there will be withholding impact under CRS.

15. What information will be reported under CRS?

The information to be reported on each reportable account that is identified through the due diligence procedures performed by the FIs, comprises:

- personal data (i.e. name, address, date of birth, jurisdiction of residence and taxpayer identification number ("TIN") of the account holder); and
- financial data (i.e. account number, interest, dividends, account balance or value, income from certain insurance products, sales proceeds from financial assets and other income generated with respect to assets held in the account or payment made to the account).

If the account holder is classified as a passive NFE, similar personal and financial data of the controlling person(s) of the account holder should also be obtained.

16. Can customers object to FIs making any reporting?

No. It will be a legal requirement for FIs to report the account holder's information, where applicable, in accordance with the Amendment Ordinance requirements. In case a customer refuses to allow the financial institution to release the relevant customer data for AEOI purposes, the FI may have to consider whether or not the account should be maintained.

17. What is the consequence if customer refuses to provide the required information and/or documents to FI?

For pre-existing customers, the FI will base on the indicia identified from the customer information in its record to determine customer's jurisdiction of residence (can be more than one jurisdiction).

For new accounts, FI is required to obtain a valid self-certification for confirming the customers' tax residence. If customers do not provide the self-certification, the account opening process cannot be completed and this may affect the provision of service to customers.

18. If customer is an U.S. Person, does he/she need to provide information for both FATCA and CRS?

Yes.

19. What happens if customers disagree with the information that has been reported?

Customers (i.e. account holders) are responsible, under financial account terms and conditions (or contracts), for informing the FIs of any changes to and erroneous information, whether personal or financial, that comes to their attention. In accordance with the PDPO, customer has the right to require the FI to correct any data relating to him/her which is inaccurate. In case any customer refuses to allow the financial institution to release his/her/its data for AEOI purposes, the financial institution may have to consider whether or not the account should be maintained.