



HONG KONG TAX ALERT

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CRS: Hong Kong guidance published

The IRD has published guidance for financial institutions to assist them in complying with their obligations under the Common Reporting Standard (CRS).

Summary

- *Hong Kong will adopt CRS from 1 January 2017*
- *The IRD guidance includes self-certification forms to facilitate CRS implementation*
- *The guidance clarifies a number of issues on due diligence and reporting requirements*
- *There is little guidance on the reasonableness test, which would be crucial for financial institutions to carry out their CRS due diligence requirements*

Under the CRS framework, financial institutions in Hong Kong are required to identify and report to the IRD the financial accounts held by tax residents of overseas reportable jurisdictions (including individuals, entities and controlling persons of certain entity accounts) on an annual basis. The IRD will pass this information to the tax authority in the relevant overseas jurisdiction. Reporting will commence from 2018 with respect to 2017 account information. Over 100 jurisdictions have committed to CRS, but the IRD will exchange information only with jurisdictions with which Hong Kong has a tax treaty or a tax information exchange agreement in place, and with which it has entered into a supplemental agreement providing for such exchange.

To facilitate compliance with the CRS requirements, the IRD has recently published guidance on a number of issues including the following:

Reporting of place of birth

Currently, financial institutions are not required under Hong Kong law to collect information on the place of birth for individuals who open accounts. The reporting of place of birth is therefore not required under the CRS legislation. However, the CRS guidance encourages financial institutions to collect the place of birth information as this is necessary to assist foreign tax administrations to identify the taxpayers concerned.

Classification of clearing houses

The CRS guidance clarifies the classification and obligations of certain clearing houses.

HKFE Clearing Corporation Limited, The SEHK Options Clearing House Limited and OTC Clearing Hong Kong Limited are not considered to be financial institutions and are therefore not required to conduct due diligence or undertake any reporting on their participants. As a result, participants of these clearing houses who themselves are reporting financial institutions are responsible for undertaking the applicable due diligence and reporting obligations.

Hong Kong Securities Clearing Company Limited would likely be a custodial institution (i.e. a financial institution) under CRS. (It is a registered foreign financial institution for FATCA purposes, and the FATCA and CRS definitions are similar.) It should therefore be responsible for conducting due diligence and reporting obligations in respect of the Investor Participants under the Central Clearing and Settlement System.

Exclusion of certain accounts

The definition of “financial account” excludes certain accounts from CRS due diligence and reporting. In a failed trade scenario where an executing broker holds legal title to the asset that it intended to broker, the CRS guidance provides that neither the holding of the asset nor any resultant claims will lead to financial accounts being established by the executing broker. Subject to certain criteria, shares held by placing agents as nominees for underlying investors for up to 7 days will not be treated as a financial account. Finally, general insurance products (e.g., property or motor insurance) that do not carry any investment element are not financial accounts.

Timing for obtaining self-certifications for new accounts

The tax legislation requires reporting financial institutions to obtain a self-certification from the customer upon the opening of the account. The CRS guidance provides flexibility on timing in circumstances where it is not possible or practical to obtain a self-certification on “day one” of the account opening process. In this case, the self-certification should be obtained as soon as possible and, in any case, within 90 days from the account opening date.

Templates for self-certifications

Reporting financial institutions can design their own self-certification forms provided that the form captures all required data. The CRS guidance states that self-certification may be provided in any manner and in any form (e.g., in paper or electronic format). The guidance also provides template self-certification forms for individuals, entities and controlling persons. The templates include a section that warns of the potential penalty of HK\$10,000 for an account holder who knowingly or recklessly makes a self-certification that is misleading, false or incorrect in a material particular.

Reasonableness standard

There is little elaboration on the standard the IRD will apply in determining whether a financial institution has behaved reasonably when it reviews the information provided by the customer in a self-certification form. Financial institutions generally see this as a crucial step in the CRS due diligence process.

Preparation for CRS

With CRS coming into force in Hong Kong in less than 4 months' time, financial institutions should be planning for the CRS implementation. Given the complexity of this new international standard, it is important for financial institutions to have effective communication both internally and with customers, and to provide up-to-date training for front-line staff to manage the customer experience.

The IRD webpage dealing with automatic exchange of information can be found [here](#).

Our previous tax alerts on the CRS developments in Hong Kong are accessible below:

2016

[Issue 6: CRS/AEOI Hong Kong legislation gazetted](#)

[Issue 1: CRS/ AEOI: Hong Kong bill gazetted](#)

2015

[Issue 10: CRS/AEOI: Hong Kong responds to consultation](#)

[Issue 7: Hong Kong launches the Consultation on Automatic Exchange of Information](#)

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