



# HONG KONG TAX ALERT

ISSUE 11 | September 2016



## 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](#)

## Contact us:

**Khoon Ming Ho**  
**Head of Tax, KPMG China**  
Tel: +86 10 8508 7082  
khoonming.ho@kpmg.com

**Ayesha M. Lau**  
**Head of Local Market**  
**Head of Tax, Hong Kong**  
Tel: +852 2826 7165  
ayesha.lau@kpmg.com

### Corporate Tax

**Charles Kinsley**  
**Partner**  
Tel: +852 2826 8070  
charles.kinsley@kpmg.com

**John Timpany**  
**Partner**  
Tel: +852 2143 8790  
john.timpany@kpmg.com

**Nicholas Rykers**  
**Director**  
Tel: +852 2143 8595  
Nicholas.rykers@kpmg.com

**Chris Abbiss**  
**Head of Real Estate Tax,**  
**KPMG China**  
Tel: +852 2826 7226  
chris.abbiss@kpmg.com

**Jocelyn Lam**  
**Partner**  
Tel: +852 2685 7605  
jocelyn.lam@kpmg.com

**Michael Olesnick**  
**Special Advisor**  
Tel: +852 2913 2980  
michael.olesnick@kpmg.com

**Stanley Ho**  
**Partner**  
Tel: +852 2826 7296  
stanley.ho@kpmg.com

**Matthew Fenwick**  
**Director**  
Tel: +852 2143 8761  
matthew.fenwick@kpmg.com

**Justin Pearce**  
**Senior Tax Advisor**  
Tel: +852 2143 8756  
justin.pearce@kpmg.com

**Alice Leung**  
**Partner**  
Tel: +852 2143 8711  
alice.leung@kpmg.com

**Ivor Morris**  
**Director**  
Tel: +852 2847 5092  
ivor.morris@kpmg.com

**Curtis Ng**  
**Partner**  
Tel: +852 2143 8709  
curtis.ng@kpmg.com

**Sandy Fung**  
**Director**  
Tel: +852 2143 8821  
sandy.fung@kpmg.com

### M & A Tax

**Darren Bowdern**  
**Head of Financial Services Tax,**  
**KPMG China**  
Tel: +852 2826 7166  
darren.bowdern@kpmg.com

**Benjamin Pong**  
**Partner**  
Tel: +852 2143 8525  
benjamin.pong@kpmg.com

**Christopher Xing**  
**Partner**  
Tel: +852 2978 8965  
christopher.xing@kpmg.com

**Yvette Chan**  
**Principal**  
Tel: +852 2847 5108  
yvette.chan@kpmg.com

**Malcolm Prebble**  
**Principal**  
Tel: +852 2685 7472  
malcolm.j.prebble@kpmg.com

### China Tax

**Daniel Hui**  
**Principal**  
Tel: +852 2685 7815  
daniel.hui@kpmg.com

**Karmen Yeung**  
**Partner**  
Tel: +852 2143 8753  
karmen.yeung@kpmg.com

**Adam Zhong**  
**Principal**  
Tel: +852 2685 7559  
adam.zhong@kpmg.com

**Steve Man**  
**Director**  
Tel: +852 2978 8976  
steve.man@kpmg.com

### Transfer Pricing

**John Kondos**  
**Partner**  
Tel: +852 2685 7457  
john.kondos@kpmg.com

**Lu Chen**  
**Principal**  
Tel: +852 2143 8777  
lu.l.chen@kpmg.com

### Global Mobility Services

**Barbara Forrest**  
**Principal**  
Tel: +852 2978 8941  
barbara.forrest@kpmg.com

**Murray Sarelius**  
**Principal**  
Tel: +852 3927 5671  
murray.sarelius@kpmg.com

**David Siew**  
**Principal**  
Tel: +852 2143 8785  
david.siew@kpmg.com

**Kate Lai**  
**Director**  
Tel: +852 2978 8942  
kate.lai@kpmg.com

### US Tax

**Wade Wagatsuma**  
**Head of US Corporate Tax,**  
**KPMG China**  
Tel: +852 2685 7806  
wade.wagatsuma@kpmg.com

### Indirect Tax

**Lachlan Wolfers**  
**Head of Indirect Tax,**  
**KPMG China Regional Leader,**  
**Asia Pacific Indirect Tax**  
Tel: +852 2685 7791  
lachlan.wolfers@kpmg.com

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2016 KPMG Huazhen LLP — a People's Republic of China partnership, KPMG Advisory (China) Limited — a wholly foreign owned enterprise in China, and KPMG — a Hong Kong partnership, are member firms of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

© 2016 KPMG, a Macau partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.