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Summary on Automatic Exchange of Financial Account Information (“AEOI”)

Background Information

In support of the international efforts to enhance tax transparency and combat cross-border tax evasion, Hong Kong had, in September 2014, indicated her willingness to adopt the standard promulgated by the Organization for Economic Co-operation and Development on AEOI.

More than 100 tax authorities across the world have agreed to share financial information under “the Common Reporting Standard” (“CRS”), commencing from 2017 or 2018.

Legal Support

The Inland Revenue (Amendment) (No.3) Ordinance 2016 (the “Amendment Ordinance”), effective from 30 June 2016, put in place a legislative framework for Hong Kong to implement AEOI.

The Amendment Ordinance has incorporated the CRS requirements which require Hong Kong based reporting financial institutions¹ (the “Reporting FIs”) to collect certain required financial information relating to tax residents of the Reportable Jurisdictions² maintaining financial accounts with the Reporting FIs and to file such financial information with the Hong Kong Inland Revenue Department (the “IRD”) who will subsequently exchange with the Reportable Jurisdictions.

AEOI Regime

The AEOI regime as implemented by Hong Kong requires Reporting FIs to conduct due diligence on all their accounts (whether pre-existing or new) to identify whether any of such accounts are considered Reportable Accounts³ for AEOI purposes. By

¹ Reporting FIs include Hong Kong based custodial institutions, depository institutions, investment entities, and specific insurance companies. Banks and corporations licensed under the Securities and Futures Ordinance (Cap. 571 of Laws of Hong Kong) to carry on one or more of the following regulated activities: dealing in securities; trading in futures contracts; leveraged foreign exchange trading; and asset management, fall into the category of the Reporting FIs.

² Reportable Jurisdictions mean the jurisdictions with which Hong Kong has signed bilateral Competent Authority Agreements. As at 24 March 2017, Hong Kong's list of "Reportable Jurisdictions" covers two jurisdictions only (i.e. Japan and the United Kingdom). Subject to the approval of the Inland Revenue (Amendment) (No. 3) Bill 2017, commencing from July 1, 2017 the list will be expanded to include 74 jurisdictions.

³ Reportable Accounts mean the financial accounts including depository account, custodial account,

applying the due diligence procedures Reporting FIs are required, among other things, to collect self-certification forms from the account holders and controlling persons of entities with a view to verify their tax residency status.

Tax residents of the Reportable Jurisdictions mean those who are liable to tax by reason of their residence in the Reportable Jurisdictions. Generally, a person's tax residence is determined by reference to the period of his physical presence or stay in a place (e.g. whether over 183 days within a tax year) or, in the case of an entity, the place of incorporation or the place of the central management and control of the entity. Unless an account holder is a tax resident of one of the Reportable Jurisdictions, Reporting FIs do not need to report the information of such an account to the IRD.

Financial information of Reportable Accounts to be filed with the IRD includes particulars of account holder (for example, name, address, tax identification number (if any), date and place of birth), tax residence, account number, account balance/value, and income or sale or redemption proceeds.

Exchange of Information

Following receipt of the required information from Reporting FIs, the IRD will on an annual basis, commencing from the year of 2018, exchange such required information with the Reportable Jurisdictions.

Timeline

The planned implementation timetable for AEOI in Hong Kong is as follows:

Actions	Planned Timeline⁴
Reporting FIs to commence due diligence procedures for new and pre-existing accounts to identify Reportable Accounts and keep relevant information	January 2017
Reporting FIs to register with IRD	July 2017 ⁵
Reporting FIs to submit test data files of self-developed software to IRD for validation	Q4 of 2017
IRD to issue AEOI Returns to Reporting FIs	January 2018
Reporting FIs to file AEOI Returns to IRD	May 2018
IRD to pass information to the Reportable Jurisdictions	September 2018

equity and debt interest in certain investment entities; cash value insurance contract; and annuity contract, held by tax residents (whether individuals or entities) of the Reportable Jurisdictions.

⁴ Consultation Paper on Automatic Exchange of Financial Information in Tax Matter in Hong Kong, issued by the Financial Services and the Treasury Bureau (the "Consultation Paper"), Paragraph 3.11.

⁵ According to IRD comment on the Guidance Notes on Common Reporting Standard for the Automatic Exchange of Financial Account Information by The Hong Kong Association of Banks and Private Wealth Management Association, issued on 29 September 2016, such timeline for Reporting FIs to register with the IRD is July 2017, instead of September 2017, as indicated in the Consultation Paper.

Record-Keeping

Pursuant to the Amendment Ordinance, Reporting FIs are obliged to

1. secure that any evidence relied on, or a record of the steps taken, for carrying out the due diligence procedures in relation to a financial account is kept for a period of 6 years beginning on the date on which the procedures are completed; and
2. keep sufficient records to enable the correctness and accuracy of the returns furnished as required to be readily ascertained for a period of 6 years beginning on the date on which the return is furnished.

Penalties

Under the Amendment Ordinance, Reporting FIs will be sanctioned for:-

1. without reasonable excuse, failure to comply with the due diligence and reporting obligations;
2. providing the IRD with information which the Reporting FI knows to be or is reckless as to whether it is, misleading, false or inaccurate in material particular;
3. providing the IRD with information which the Reporting FI has no reasonable ground to believe to be true or accurate;
4. without reasonable excuse, failure to notify the IRD within reasonable time subsequent to the Reporting FI having discovered misleading, false or inaccurate information in the return; or
5. providing misleading, false or inaccurate information in a material particular with intent to defraud.

Further, the directors or other officers concerned in the management of the Reporting FIs or any persons purporting to act as such directors or officers are liable to the offence of the Reporting FIs if such offence was committed with those persons' consent or connivance.

This material is for general information only and is not intended to provide legal advice.
