

# Common Reporting Standard (CRS) in Hong Kong 2017







## Preface

The purpose of this publication is to provide foreign investors with a general understanding of Common Reporting Standard (CRS) in Hong Kong (HKSAR). It is not written as a comprehensive guide, but rather it is designed to provide information on material issues that foreign Individual or Entity should consider when doing business and investing in Hong Kong.

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice or legal opinion. The information contained in this publication should not form the basis of any decision as to a particular course of action. You should not act upon the information contained in this publication without obtaining specific professional advice.

Common Reporting Standard (CRS) in Hong Kong has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

By taking advantage of the Global CPA worldwide network and with our understanding of the Mainland China and Hong Kong culture and business environment, we are able to provide comprehensive services to our clients, helping them in setting up their business, exploring opportunities and minimum risk in Asia. We look forward to co-operating with any international business and assisting the said international business to grow globally and achieve shareholder success in the future.

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# 1. International and Hong Kong Local Environment

CRS is an initiative by the G20 and Organization for Economic Co-operation and Development (OECD) aimed at detecting and deterring tax evasion by taxpayers through the use of offshore accounts. Jurisdictions that commit to the CRS must adopt its requirements via local legislation and/or guidance.

The Inland Revenue Department (IRD) of Hong Kong has proposed regulations to allow Hong Kong to implement the Standard for Automatic Exchange of Financial Account Information in Tax Matters (AEOI), also known as the Common Reporting Standard (CRS), with effect from 1 January 2017.

The CRS is an internationally agreed standard for automatic exchange of information AEOI, endorsed by the OECD and the Global Forum for Transparency and Exchange of Information for Tax Purposes. The CRS sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as the customer due diligence procedures to be followed by the financial institutions. More than 100 jurisdictions, including major financial

centers such as Singapore, Luxembourg and Switzerland, have endorsed the CRS and will commence AEOI in either 2017 or 2018. Hong Kong will do so in 2018.



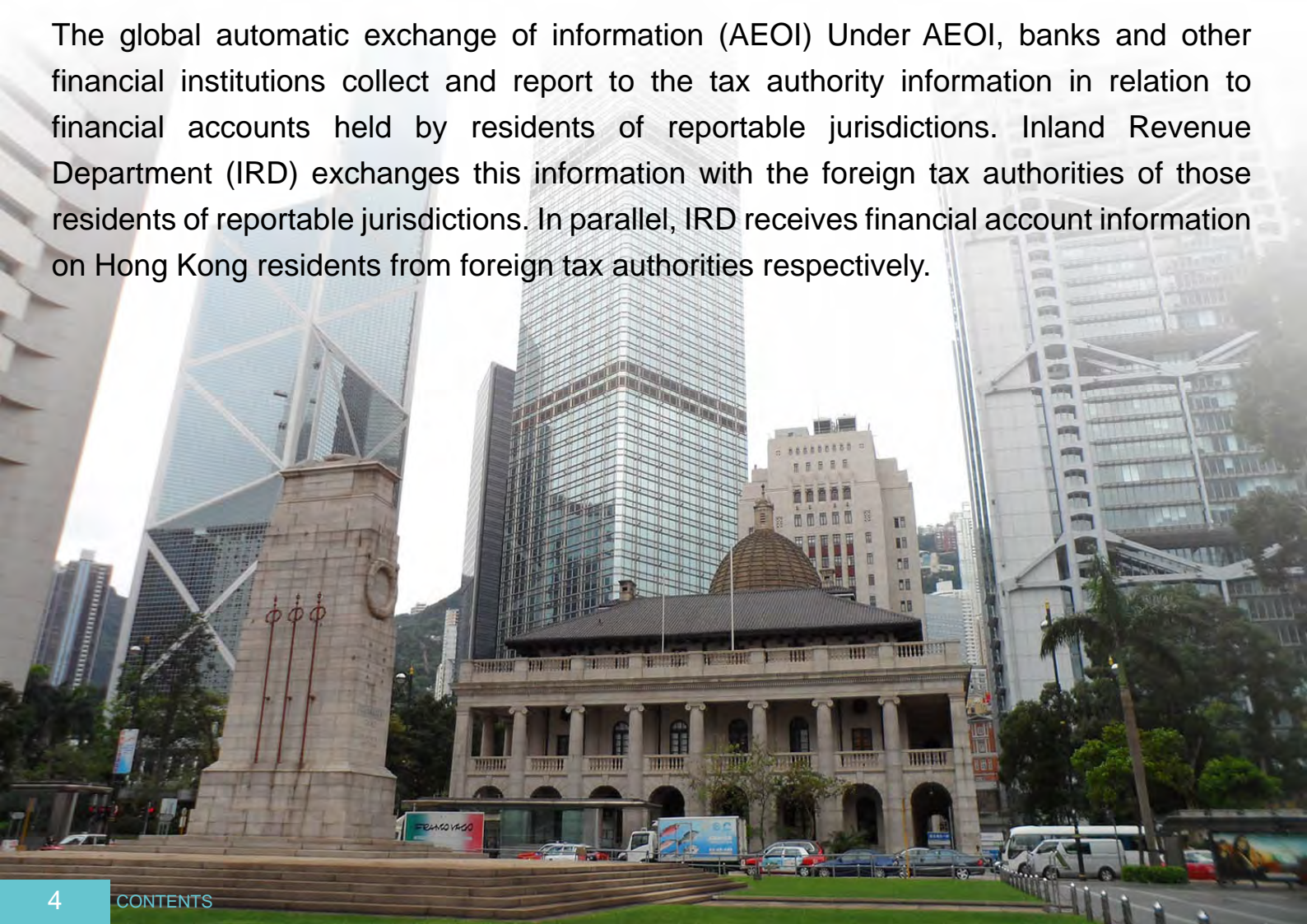


## 2. CRS' Principle in Hong Kong

More than 100 jurisdictions including Hong Kong have committed to a global action to ensure compliance.

As the world becomes increasingly globalized and cross-border activities become the norm, global tax authorities need to work together to ensure that taxpayers pay the right amount of tax to the jurisdictions concerned. A key aspect for making global tax authorities ready for the challenges of the 21st century is equipping them with the necessary legal, finance, administrative and IT tools for verifying compliance of their taxpayers. From year 2018 Hong Kong will start exchanging financial account information with other jurisdictions, thereby enabling it to know taxpayers who place their assets abroad. This is the result of a G20-led initiative carried out by the Organization for Economic Cooperation and Development (OECD). The world is getting global so tax authorities go global.

The global automatic exchange of information (AEOI) Under AEOI, banks and other financial institutions collect and report to the tax authority information in relation to financial accounts held by residents of reportable jurisdictions. Inland Revenue Department (IRD) exchanges this information with the foreign tax authorities of those residents of reportable jurisdictions. In parallel, IRD receives financial account information on Hong Kong residents from foreign tax authorities respectively.



### 3. Disclosure Requirement of CRS in Hong Kong

A broad range of financial institutions in Hong Kong are covered by the CRS including custodial institutions, depository institutions, investment entities and specified insurance companies.

#### Scope of Accounts

The Organization for Economic Co-operation and Development (OECD) released two reports to help jurisdictions and financial institutions implement the Common Reporting Standard (CRS), a global standard for automatic exchange of financial account information. Furthermore, the OECD released a publication which provides an up-to-date review of voluntary disclosure programs respectively.

The accounts to be disclosure including Individual and Entity accounts held by tax residents of any CRS participating jurisdiction or Passive NFEs with controlling persons that are resident in any CRS participating jurisdiction.

#### Information to be reported

The financial institutions have to identify the reportable accounts according to the CRS which distinguishes between different categories of accounts and customers. Reportable accounts can be accounts held by individuals or entities (including trusts and foundations), and passive non-financial entities must be looked through to report on the relevant controlling person.

The financial information to be reported include 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 payments made with respect to the account.

#### Hong Kong Law

The Inland Revenue (Amendment) (No.3) Ordinance 2016 was introduced specifically for the purpose of implementing CRS in Hong Kong. Hong Kong law on personal data privacy strictly. Restricts disclosure of personal data of data subject, therefore the proposed disclosure of financial information for AEOI needs to be specifically authorized by law.



## 4. Financial information Disclosure and Exchange in Hong Kong

The CRS requires global financial institutions to perform due diligence procedures and to transmit systematically financial data from their non-resident customers. The type of information and the due diligence to put in place for all financial accounts are defined by the CRS.

### Example

- Mr A, tax resident of jurisdiction France, has an account with a bank in Hong Kong;
- The bank in Hong Kong applies the due diligence procedures which are outlined by the CRS;
- The Hong Kong bank communicates in an electronic format to the IRD of Hong Kong the information concerning the financial accounts of Mr A;
- The IRD of Hong Kong transmits the information of Mr A automatically and electronically to the tax authority of France;
- The tax authority of France could use the information to check whether the tax affairs of Mr A are in proper order.

The global tax authorities recognize the importance of financial institutions' role and financial institutions around the world will soon be collecting the data.

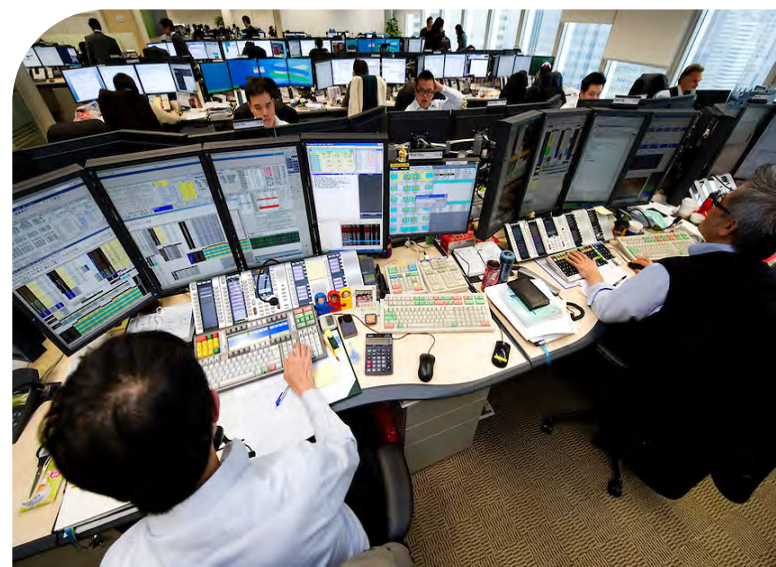
It is also important that financial institutions' customers are aware that their data may be shared with their jurisdictions of residence, and of how this data will be used by tax authorities across the world to identify the few whose tax affairs are not compliant.

The CRS make it easier for the global tax authorities to know where and how much, such taxpayers have been holding assets. It is a major step forward in terms of tax fairness.

### Data privacy and confidentiality

Hong Kong will send out and receive data through the Common Transmission System, which will be developed by the OECD.

A jurisdiction which does not comply with confidentiality standards cannot receive any data under the Common Transmission System.



## 5. CRS Tax Guidance for Hong Kong Financial Institutions

This Guidance is intended to aid financial institutions in complying with their obligations under Part 8A of the Inland Revenue Ordinance (Cap. 112). It contains the Department's views on the due diligence procedures required by the Common Reporting Standard of the Organization for Economic Co-operation and Development (OECD). While every effort is made to ensure that the information given in this Guidance is accurate, it is not a legal document. It is also important for financial institutions to make reference to the materials published by the OECD at the Automatic Exchange Portal.

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## 6. CRS Time frame for Collection and Reporting of information in Hong Kong

### January year 2017

The CRS data capture obligation is introduced: reportable accounts must be identified by financial institutions. In Hong Kong's case, the financial institutions will identify those financial accounts held by residents of the reportable jurisdictions (i.e. jurisdictions with which Hong Kong has signed the competent authority agreement). The CRS data continues to be captured in 2017 in EU member states and jurisdictions of early adopters where this obligation was introduced in 2016 (this data is reported and exchanged in 2017).

### Mid-year 2018

Financial institutions have to transmit the collected data to the tax authority of their jurisdiction (regarding calendar year 2017).

### September Year 2018

The collected data is transmitted by the tax authority to every relevant tax authority of the jurisdiction of residence (regarding calendar year 2017). In Hong Kong's case, the data is transmitted to the tax authorities of the jurisdictions with which

Hong Kong has signed the competent authority agreement.

### From year 2019 on

Identifying and transmission of reportable accounts on a regular basis (regarding calendar year 2018 onwards: EU member states, jurisdictions of early adopters and other adopters). In Hong Kong's case, information of the financial accounts held by residents of reportable jurisdictions (i.e. jurisdictions with which Hong Kong has signed the competent authority agreement) is transmitted to the relevant tax authorities.



## 7. Practice of Financial Institution in Hong Kong

Relevant Hong Kong legislation and regulations will require financial Institution in Hong Kong to begin collecting certain information from account holders as early as 1 January 2017 and to report information on reportable account holders in 2018. In this regard, the financial Institution in Hong Kong will contact their clients to request certain information including your tax residence status. Reportable account holders may include both individual and entity account holders, including trust.

The reportable information will be reported under CRS includes:

- Name
- Address
- Jurisdiction(s) of tax residence
- Tax Identification Numbers (TINs)
- Date and place of birth (for individuals)
- Account number
- Account balance
- Certain payments made into the account.

\*these may be subject to changes under local legislation or guidance.

It is advised to contact a professional tax adviser if any individual or entity has any specific questions regarding their tax residence. For general information regarding tax residency, please refer to information made available by the OECD:<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/>





## 8. Responsibility of Financial account's Holders in Hong Kong

### 8.1 Response, FCAT and Change

The account holders do not respond to their Hong Kong financial Institution's request for information

The IRAS requires financial Institution's to report the account information of certain non-responsive account holders. If a client does not respond to his/her/their financial Institution's request for information, the IRAS may require client's financial Institution to treat these account as a reportable account. There may be a penalty for account holders who willfully provide false or misleading information on their tax residence(s).

Information have previously provided I under the Foreign Account Tax Compliance Act (FATCA) provisions

CRS and FATCA are separate regulatory requirements. Financial Institutions are obligated to comply with both regimes.

Changes in circumstances that affect tax residencies

Every individual or entity must notify his/her/their financial institution so that their details can be updated.

### 8.2 Due diligence requirements for financial account's holders in Hong Kong

The due diligence requirements applicable to financial institutions in Hong Kong are set out in the CRS.

The due diligence requirements distinguish between pre-existing and new accounts and between individual accounts and entity accounts. This will require financial institutions to have processes to cross-validate information received against the information held for Know Your Client/ Anti-Money Laundering purposes.



For all accounts, financial institutions may not rely on certifications or documentary evidence if the financial institution (or, in the case of certain high-value accounts, a relationship manager) knows or has reason to know the certification or documentary evidence is incorrect or unreliable.

## 8.2.1 Individual financial account in Hong Kong

### 1. Existing individual accounts in Hong Kong

The CRS does not define the date when an account is to be classified as a pre-existing account, leaving this to the jurisdictions entering into the agreement. It does, however, distinguish between high-value accounts (over US\$ 1million in value on the last day of any calendar year) and lower-value accounts.

For pre-existing lower-value accounts, if a financial institution in Hong Kong has a current residence address for an account holder; it may treat the account holder as tax resident at that address. If no such address is held, a search of electronic records for one of six defined indicia must be performed.

The deadline for completion of the indicia review is not defined by the CRS. For subsequent years, any account in Hong Kong that becomes a high-value account must have the relevant review completed within the calendar year following the year in which the account became a high-value account. Once the review is complete, no further action will be required until there is a change of circumstances.

### 2. New individual accounts in Hong Kong

For new individual accounts in Hong Kong, the CRS requires the financial institution to obtain a self-certification from the account holder in order to determine where the individual is tax resident. The financial institution must then confirm the reasonableness of the self-certification based on the information obtained by it in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures.

Once the review has been completed, no further action in Hong Kong is required until there is a change of circumstances.



## 8.2.2 Entity financial account in Hong Kong

### 1. Existing entity accounts in Hong Kong

For classification of entity accounts, the CRS focuses on self-certification and other information, such as that collected for local Anti-Money Laundering/Know Your Client purposes. If the account balance exceeds US\$250,000 value in subsequent years, a classification will then be required in Hong Kong.

If a existing entity account is held by a non-financial entity (NFE), a financial institution will be required to determine if the entity is active or passive in Hong Kong. If the entity is a passive NFE, the financial institution in Hong Kong will be required to identify the “controlling persons” of such an entity and to determine the residency of such persons. The identification of the controlling persons can be done through a review of documentation obtained under existing AML/KYC procedures. In determining the residency of the controlling persons, for accounts with a value of less than US\$ 1million, the financial institution may rely on information collected under its AML/KYC procedures. For accounts with a value of over US\$ 1million, a self-certification on behalf of the NFE will be required. If any controlling person of the NFE in Hong Kong is a resident of another jurisdiction, the account is to be treated as an account of that jurisdiction.

### 2. New entity accounts in Hong Kong

For new entity accounts in Hong Kong, the financial institution will be required to determine the entity’s status. A self-certification of the entity’s residence is required. The financial institution may then treat the account holder as a financial institution or active NFE if the account holder is generally known as such. In all other cases, the account holder must provide a self-certification of its classification.

Once the entity has been classified, no further action is required until there is a change of circumstances.



## 9. Global CPA - CRS Solution

It is definitely time for individual or entity with a “Passive Non-Financial Entity (NFE)” or an “Active Non-Financial Entity (NFE)” that could be deemed to have its “place of effective management and operation” in a country where the Active NFE is not filing a tax return at present to consider restructuring the entity in such a way that it removes or at least reduces to the greatest extent possible the chances of it being deemed a tax resident in an undesired jurisdiction.

Any oversea individual or entity with accounts under a Financial Institution in Hong Kong needs to ensure their global investment and operating structure are established in a compliance manner avoid international tax risks.

Each situation must be considered independently, but where tax mitigation or deferral is an objective, there are generally four main criteria to consider as a starting point:

1. The “residency” of the entity. This requires consideration of the rules on establishing “residency” of a foreign company in any jurisdiction where any connected party is located.
2. Consideration of any “controlled foreign corporation” rules where a shareholder/beneficial owner/beneficiary is a resident.
3. Any “anti-avoidance” rules where a shareholder/beneficial owner/beneficiary is a resident.
4. Any existing bilateral treaties (DTAA / TIEA) between the countries and terms of same as these countries will likely be the first to conclude AEOI agreements.





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