

## **Automatic Exchange of Financial Account Information (AEOI)**

### **【Background】**

In July 2014, the Organisation for Economic Cooperation and Development (“OECD”) released an international standard for Automatic Exchange of Financial Account Information in tax matters. Governments of all jurisdictions are requested to obtain the relevant financial account information from their financial institutions. In September 2014, the Government of the HKSAR exhibited its commitment to implement AEOI in supportive of the international efforts to enhance the tax transparency and combat the cross-border tax evasion.

### **【Timeline】**

After demonstrating the support of the implementation of AEOI, the Government introduced an amendment bill in January 2016 that was passed by the Legislative Council (LegCo) on 22 June 2016. The Inland Revenue (Amendment) (No. 3) Ordinance 2016 became effective on 30 June 2016 and brought out a legislative framework which is in compliance with the Common Reporting Standard set out by the OECD for Hong Kong to implement AEOI.

In March 2017, the Government tried to expand the list who have signed agreements with Hong Kong on comprehensive avoidance of double taxation or on tax information exchange reportable jurisdictions from 42 potential economies to 75 reportable jurisdictions including those which have expressed an interest in conducting AEOI with Hong Kong to the OECD or jurisdictions suggested by the OECD, Hong Kong's tax treaty partners which have committed to AEOI and all member states of the EU. The Inland Revenue (Amendment) (No. 2) Ordinance 2017 commenced operation on 1 July 2017.

### **【Overview】**

The Amendment Ordinance imposes obligations on all Hong Kong financial institutions to identify, review and collect details of accounts held by persons that are tax residents of reportable jurisdictions; and also furnish that information to the Inland Revenue Department (“IRD”) which is responsible for onward transmission under the exchange of information articles in the various treaties to which Hong Kong is a party.

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## **【Role of Financial Institutions】**

“Reporting financial institution”, including custodial institutions, depository institutions, investment entities and specified insurance companies, is defined as a financial institution resident in Hong Kong or a branch of a non-resident financial institution located in Hong Kong. One of their responsibilities is to identify the financial accounts held by the individuals or the entities liable to tax by reason of residence in the AEOI partner jurisdictions. In accordance with the due diligence procedures set out in the Amendment Ordinance, self-certification, a formal declaration made by the account holder for verifying his/her tax residence, would be required for all new accounts (i.e. accounts opened on or after 1<sup>st</sup> January 2017). Self-certificates might also be sought from pre-existing accounts (i.e. accounts opened before 1<sup>st</sup> January 2017) to facilitate the identification if there is any doubt.

Each reporting financial institution can design its own self-certification form but they should ensure the required data is collected. Information in respect of each reportable account includes:

In respect of	Required Information
Each reportable person either holding a reportable account or as a controlling person of an entity account that is a passive non-financial entity (NFE)	<ul style="list-style-type: none"> <li>▪ Name</li> <li>▪ Address</li> <li>▪ Jurisdiction of residence</li> <li>▪ TIN</li> <li>▪ Date of birth</li> <li>▪ Place of birth</li> <li>▪ Account number or functional equivalent</li> <li>▪ Account balance or value</li> </ul>
Custodial accounts	<ul style="list-style-type: none"> <li>▪ Total gross amount of interest</li> <li>▪ Total gross amount of dividends</li> <li>▪ Total gross amount of other income paid or credited to the account</li> <li>▪ Total gross proceeds from the sale or redemption of financial assets paid or credited to the account</li> </ul>
Depository accounts	<ul style="list-style-type: none"> <li>▪ Total amount if gross interest paid or credited to the account in the calendar year or other reporting period</li> </ul>
Other accounts	<ul style="list-style-type: none"> <li>▪ Total gross amount paid or credited to the account including the aggregate amount of redemption payments made to the account holder during the calendar year or other appropriate reporting period</li> </ul>

Information of the identified account holders and the financial account is required to furnish to the IRD on an annual basis by reporting financial institutions. Exemption is given to “non-reporting financial institutions” which present a low risk of being used to evade tax and “excluded accounts” that are not subject to reporting by financial institutions.

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## **【Sanctions for financial institutions】**

To ensure effective implementation of the AEOI regime in Hong Kong, there are penalty provisions contained in the Inland Revenue Ordinance (Cap. 112) that three major categories of penalty were imposed to sanction non-compliance (penalty at Level 3/HK\$10,000), “incorrect returns” (penalty at Level 3/HK\$10,000), and fraud with willful intent (penalties at Level 3/HK\$10,000 or Level 5/HK\$50,000 with imprisonment for six months or three years).

## **【Role of Inland Revenue Department】**

The IRD acts as the bridge between the Hong Kong financial institutions and those participating jurisdictions. It sets up a secure and dedicated AEOI Portal for access by the financial institutions so as to collect information of the identified account holders and the financial account information on annual basis. The IRD would transmit the information to the tax administration of the relevant jurisdiction of which the account holder is a tax resident subsequent to the collection of information. In return, those jurisdictions supply the IRD with similar information on Hong Kong tax resident individuals and entities holding accounts with their financial institutions.

## **【Role of Individuals and Entities】**

To determine if an individual or entity is a tax resident of a jurisdiction is based on the person’s physical presence or stay in a place (e.g. whether over 183 days within a tax year) or, in the case of company, the place of incorporation or where the central management and control of the entity lies. Different jurisdictions have their own definitions of tax residence in accordance with their tax laws. Individuals or entities should provide a self-certification to a reporting financial institution when they are required to do so and to provide a suitably updated self-certificate form within 30 days of any change in circumstances that affects their tax-residency status or causes the incorrect or inaccurate information contained in a self-certification.

## **【Sanctions for Individuals and Entities】**

It is an offence with a penalty (fine at Level 3/HK\$10,000) for a person to provide, knowingly or in a reckless manner, misleading, false or incorrect information in a material particular, in making a self-certification to financial institutions. Although there is a penalty for those misbehaving account holders, it is a question that if this kind of penalty or punishment is serious enough to provide sufficient deterrent effect.

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## **【Confidentiality Rules and Data Privacy Safeguards】**

The financial institution is not required and should not report the financial account information of an individual or entity which is not a tax resident in any territory outside Hong Kong to the IRD for transmission. On the other hand, the IRD will only exchange information with AEOI partners only when an arrangement is in place with the relevant jurisdiction to provide the basis for exchange. The AEOI agreement provides that all information exchanged is subject to confidentiality rules and data privacy safeguards. Hong Kong may suspend the information exchange or terminate the AEOI agreement with the partner which breaches the rules or safeguards.

## **【Timeline for First Collection and Reporting of Information】**

January 2017	The financial institutions had to identify those financial accounts held by residents of two reportable jurisdictions, namely Japan and the United Kingdom.
July 2017	Reportable accounts of the remaining 73 reportable jurisdictions must be identified.
Mid-2018	Financial institutions have to transmit the collected data to the IRD (regarding the calendar year 2017): full year data for residents of Japan and the UK, and half year data for residents of the remaining reportable jurisdictions.
September 2018	The collected data is transmitted by the IRD to every relevant tax authority of the jurisdiction of residence (regarding the calendar year 2017).
From 2019	Identifying and transmission of reportable accounts on a regular basis (regarding the calendar year 2018 onwards).



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## **About Aoba & Hopkins Group:**

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