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# OECD Common Reporting Standard

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## Implementation of the OECD Standard for Automatic Exchange of Tax Information in Hong Kong

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## Introduction: The OECD Standard for Automatic Exchange of Tax Information and its context

Following the example of the US and its FATCA regulations, the Organization for Economic Cooperation and Development (OECD), with strong support from the G20 countries, has developed **the Standard for Automatic Exchange of Information (AEI)**, with the aim of combating cross-border tax evasion. The standard includes, among other legal documents, **the Common Reporting Standard (CRS)**, which sets out the due diligence rules to be followed by financial institutions to identify accounts that will be reported. The AEI ensures that all participating jurisdictions exchange the same information.

To date, more than 100 countries and territories have committed to implementing the AEI standard. Before two countries start exchanging information, they need to enshrine the CRS into local law and to inform the OECD with which countries they agree to exchange information as well as the date of the beginning of the exchange. Hong Kong tax authorities will exchange information only with other participating jurisdictions with an agreement in place. The “early adopter” countries have already introduced the AEI and intend to begin exchanging information in 2017 on 2016 fiscal year account information. The “late adopter” countries such as Hong Kong will implement the AEI from 2017 and start exchanging information in 2018 based on the 2017 fiscal year. Hong Kong presently intends to sign agreements for the introduction of the AEI with jurisdictions which have signed a comprehensive avoidance of double taxation agreement (“CDTA”) or tax information exchange agreement (“TIEA”) with Hong Kong in the first place. In identifying potential candidates for the AEI, Hong Kong’s current guiding principles are that they should have put in place the relevant legal framework for implementing the AEI which can meet the international standard and relevant safeguards in their domestic law for protecting data privacy and confidentiality of the information exchanged. Hong Kong will announce, by the end of 2016, the list of the jurisdictions with which Hong Kong has entered into the AEI agreements, for exchange of information in 2018.

The CRS is largely inspired by FATCA rules in terms of identifying individuals and entities. In application of the OECD Standard, the beneficial owner of the financial account has to be identified and the data will be exchanged electronically through national tax authorities. Therefore, the agreements on the introduction of the AEI signed by Hong Kong with the partner jurisdictions require Hong Kong and these jurisdictions to exchange information on residents reciprocally.

## Purpose of this document

This document gives an overview of the implementation of the OECD AEI in Hong Kong, in particular the CRS requirements as well as the implications for financial intermediaries and their clients.

The document is divided into the following sections:

### SECTION 1

- Accounts that are reported

### SECTION 2

- Information that is reported

### SECTION 3

- Self-certification of tax residence

### SECTION 4

- Interaction of the AEI with the other existing agreements

### ANNEX

- Glossary of OECD CRS Key Terms

**This document gives just an overview of the OECD AEI; the entire legislation is extremely complex and involves numerous other cases that are not described here. The onus is on clients to contact and seek advice from a tax expert or lawyer and, if necessary, to determine whether the account(s) has to be reported and when appropriate the related obligations.**

## Section 1

### Accounts that are reported

An account has to be reported if the account holder – whether an individual or an entity – is tax-resident in a jurisdiction with which the country where the financial institution is located has agreed to exchange information based on the OECD standard (a so-called “reporting jurisdiction”).

If the account holder is an **entity**, the essential distinction to be made under CRS is to determine whether an entity qualifies as a **Financial Institution (FI)** or as a **Non-Financial Entity (NFE)**.

#### 1. Financial Institution (FI)

The definition of **FI** covers financial institutions such as banks, asset managers, insurance companies, pension funds, investment funds and investment entities.

The term Investment Entity is defined as follows:

- a) **Managing Investment Entity:** entity that primarily conducts as a business one or more of the following activities: (i) trading in securities, foreign currencies, commodities, etc. (ii) individual and collective portfolio management or (iii) investing, administering or managing financial assets or money. Entities that are typically treated as such include Asset Managers.
- b) **Professionally Managed Investment Entity:** entity that is managed by another Financial Institution and whose gross income is primarily attributable to investing, reinvesting or trading in financial assets. Entities that are typically treated as such include private and collective investment vehicles (e.g. private investment companies, trusts, foundations or funds) that have a discretionary management mandate with another Financial Institution.

The term **Investment Entity** does not include an entity that is an active NFE (see below).

FIs are not usually reportable persons from a bank perspective, which means that they are responsible for their own reporting. However, Professionally Managed Investment Entities located in non-participating jurisdictions are to be considered as Passive NFEs and treated as such (see below 2.2 for further details).

#### 2. Non-Financial Entity (NFE)

An **NFE** is any entity that is not a Financial Institution. Once identified as an NFE, an additional distinction should be made between an **active NFE** and a **passive NFE**.

##### 2.1. Active NFEs

Are considered to be active entities that are engaged in a business (apart from financial) or industrial activity and have their own personnel and infrastructure, **listed companies, holding companies, governmental entities, international organisations, central banks** or an entity wholly owned by one or more of the foregoing, **treasury centres** of non-financial groups or **tax-exempt organisations**.

**Start-up companies** that were organised within the previous 24 months ago, are not yet operating a business and have no prior operating history but are investing capital in assets with the intent to operate a business other than that of an FI, are considered as **active NFEs**. The same is also the case for **entities in liquidation** that were not an FI in the past five years and are in the process of liquidating their assets or are reorganising with the intent to continue or recommence operations in a business other than that of an FI.

**Active NFEs** will be reported in their countries of incorporation if these countries are reportable jurisdictions.

Please note, however, that the following active NFEs are considered as non-reportable persons:

- A corporation whose stock is regularly traded on one or more established securities markets or an affiliated company of such listed entities
- A governmental entity
- An international organisation, or
- A central bank

## 2.2.Passive NFEs

NFEs not considered as Active NFEs, as well as Investment Entities located in non-participating jurisdictions are generally classified as **passive NFEs**.

**Passive NFEs** will be reported in their countries of incorporation if these countries are reportable jurisdictions. The controlling persons of these entities also have to be reported in their countries of residence if the controlling persons are tax-resident in a reportable jurisdiction.

The term **Controlling Persons** means the individuals that control the account holder, including through intermediary structures.

The table below provides the different type of entities and the controlling persons concerned:

Type of entity	Controlling persons
Company	Ultimate shareholders or Person controlling the entity by other means or Person managing the entity (e.g. CEO)
Partnership	Partners
Trust	Settlor, and Protector (if any), and Trustee, and Beneficiaries
Foundation	Founder, and Council members, and Beneficiaries

In a nutshell, the **reportable persons** are as follows:

- Individuals
- Active NFEs
- Passive NFEs (Investment Entities in non-participating jurisdictions are generally treated as passive NFEs)
- Controlling persons of passive NFEs

The Bank will therefore determine the tax residence of thereportable personslisted above and report information on their accounts if they are residents of a country subject to reporting with Hong Kong.

FIs, governments, international organisations and central banks are **not reportable persons**. Moreover, certain categories of accounts are excluded from reporting such as retirement and pension accounts, accounts held by estates, escrow accounts and other low-risk accounts excluded under local implementations rules.

## Section 2

### Information that is reported

Once the Bank has determined that an account needs to be reported, it will transmit the following data to its local tax authorities **annually**:

INDIVIDUAL ACCOUNT HOLDERS + CONTROLLING PERSONS	ENTITY ACCOUNT HOLDERS
<ul style="list-style-type: none"> <li>• Name</li> <li>• Address</li> <li>• Jurisdiction of tax residence</li> <li>• TIN</li> <li>• Date of Birth</li> </ul>	<ul style="list-style-type: none"> <li>• Name of entity</li> <li>• Address</li> <li>• Jurisdiction of tax residence</li> <li>• TIN</li> </ul>
<ul style="list-style-type: none"> <li>• Account</li> <li>• Name of reporting FI</li> <li>• Year-end account value (or "Closure")</li> <li>• Gross amount of:               <ul style="list-style-type: none"> <li>– interest</li> <li>– dividends and</li> <li>– other income</li> </ul> </li> <li>• Gross proceeds</li> <li>• Reporting currency</li> </ul>	

The Bank will transfer this data to its local tax authority which, in turn, will forward it to the relevant reportable jurisdiction's tax authority.



## Section 3

### Self-certification of tax residence

FIs have to obtain a **self-certification**, confirming the country of tax residence and TIN (Taxpayer Identification Number) of the account holder, as well as from controlling persons of passive NFEs. Such self-certification is compulsory for all accounts that are opened after the AEI entered into force.

For accounts opened before the entry into force of the AEI, a self-certification has to be obtained only from entity account holders as well as for individuals' accounts where the client file contains so-called "indicia", i.e. information relating to different reportable jurisdictions (e.g. mailing address in reporting jurisdiction A and phone number of reporting jurisdiction B). In the absence of such self-certification, the account will be reported to all jurisdictions where indicia exist.

Self-certifications have also to be gathered and/or renewed during the lifetime of the account if there is a change of circumstances, e.g. when a new mailing address outside the current country of tax residence is provided to the FI.

## Section 4

### Interaction of the OECD AEI with other existing agreements

Hong Kong currently intends to implement the AEI and exchange information with only jurisdictions which have signed a CDTA or TIEA with Hong Kong in the first place.

Under the Exchange of Information article in a CDTA or TIEA, Hong Kong's relevant treaty partner may make a request to the Hong Kong competent authority for exchange of information.

Up to the end of June 2016, Hong Kong has signed 35 CDTAs with Austria, Belgium, Brunei, Canada, Czech, France, Guernsey, Hungary, Indonesia, Ireland, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Luxembourg, Mainland of China, Malaysia, Malta, Mexico, the Netherlands, New Zealand, Portugal, Qatar, Romania, Russia, South Africa, Spain, Switzerland, Thailand, United Arab Emirates, United Kingdom and Vietnam.

Up to the end of June 2016, Hong Kong has signed 7 TIEAs with Denmark, Faroes, Greenland, Iceland, Norway, Sweden and the US.

Hong Kong has signed an agreement with the US on cooperation in order to simplify the implementation of FATCA (Foreign Account Tax Compliance Act) and the TIEA entered into force on 20 June 2014. The worldwide implementation of FATCA began on 1 July 2014. By the FATCA agreement, the US aim to ensure that all accounts held or beneficially owned abroad by US taxpayers can be taxed. The foreign financial institutions are required to disclose information on US accounts to the IRS (Internal Revenue Service) or levy a high tax.

Since the US has not signed the MCAA, FATCA will continue to exist despite the introduction of the OECD AEI.

#### DISCLAIMER

**This document is for general information only and aims to remain as objective as possible regarding the key elements of AEI. The content is provided by way of example and does not claim to be exhaustive. It should not be interpreted as advice or guidance in respect of the actions to be taken by clients concerning AEI. Moreover, the information contained herein is likely to change in the future.**

## Appendix – Definition of Key Terms

<p>Active Non-Financial Entity (Active NFE)</p>	<p>The term Active NFE is an entity where:</p> <ul style="list-style-type: none"> <li>a) <b>operating entity</b>: less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income (e.g. certain dividends, interest, rents and royalties not derived in the active conduct of a trade or business) and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income (calculated as a weighted average of the percentage of passive assets measured quarterly);</li> <li>b) <b>listed company</b>: the stock of the NFE is regularly traded on an established securities market or the NFE is an affiliated company of such listed entity;</li> <li>c) the NFE is a <b>governmental entity, an international organisation, a Central Bank</b>, or an Entity wholly owned by one or more of the foregoing;</li> <li>d) the NFE is a <b>holding company</b> owning (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution;</li> <li>e) <b>start-up company</b>: the NFE was organised less than 24 months ago, is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution;</li> <li>f) <b>entity in liquidation</b>: the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;</li> <li>g) <b>group treasury center</b>: the NFE primarily engages in financing and hedging transactions exclusively with, or for, related group entities that are not Financial Institutions, provided that the group is primarily engaged in a business other than that of a Financial Institution; or</li> <li>h) <b>non-profit organisation</b>: the NFE meets all of the following requirements: <ul style="list-style-type: none"> <li>i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;</li> <li>ii) it is exempt from income tax in its jurisdiction of residence;</li> <li>iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;</li> <li>iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property that the NFE has purchased; and</li> <li>v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision.</li> </ul> </li> </ul>
<p>Common Reporting Standard (CRS)</p>	<p>The standard set of rules developed by the OECD on which the automatic exchange of financial account information is based.</p>
<p>Controlling Person</p>	<p>Controlling Persons are the natural persons who exercise control over an entity. Generally, these will be the individuals who ultimately have a (direct or indirect) controlling ownership interest in the Entity (e.g. shareholder of a company or partner of a partnership).</p> <p>In the case of a trust, the term Controlling Person includes all the following individuals: the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust.</p>
<p>Custodial Institution</p>	<p>Means any Entity that holds, as a substantial portion of its business, financial assets for the account of others.</p>
<p>Depository Institution</p>	<p>Means any Entity that accepts deposits in the ordinary course of a banking or similar business.</p>

Documentary Evidence	The term “Documentary Evidence” includes – for an individual – any of the following: a) a certificate of residence issued by an authorised government body of the jurisdiction in which the payee claims to be a resident; b) any valid identification issued by an authorised government body that includes the individual’s name and is typically used for identification purposes.
Entity	The term “Entity” means a legal person or a legal arrangement, such as a corporation, organisation, partnership, trust or foundation.
Financial Institution (FI)	The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
Investment Entity	The term “Investment Entity” means any Entity of the two following Types: a) Type A: Entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer: i) trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities or commodity futures; ii) individual and collective portfolio management; or iii) otherwise investing, administering, or managing financial assets or money on behalf of other persons; or b) Type B: Entity that is managed by another Financial Institution and whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets. The term “Investment Entity” does not include an Entity that is an Active NFE. The term “Investment Entity” does not include an Entity that is an Active NFE.
Non-Financial Entity (NFE)	Means any Entity that is not a Financial Institution.
Participating Jurisdiction	A Participating Jurisdiction is a jurisdiction (i) with which a reciprocal agreement is in place pursuant to which it will provide the information specified in section I of the Common Reporting Standard and (ii) which is identified in a published list.
Passive Non-Financial Entity (Passive NFE)	Means: (i) an NFE that is not an Active NFE; or (ii) an Investment Entity incorporated or established in a country which is not a Participating Jurisdiction and which are therefore deemed to be Passive NFEs.
Reportable Jurisdiction	A Reportable Jurisdiction is another jurisdiction with which an obligation to provide financial account information is in place, pursuant to the requirements set out in the Common Reporting Standard. Each government will publish a list of the jurisdictions for which it has agreed to exchange information and which therefore qualify as Reporting Jurisdictions.
Reportable Person	A Reportable Person is an individual or Entity that is a tax resident in a Reportable Jurisdiction under the laws of that jurisdiction.
Reporting Financial Institution	Means a Financial Institution that is subject to the reporting requirements under the Common Reporting Standard or equivalent legislation.
Self-Certification	A certification (that can be part of the account-opening documentation) that provides the account holder’s status and any other information that may be reasonably requested by the Financial Institution to fulfil its reporting and due diligence obligations, such as whether the account holder is resident for tax purposes in a Reportable Jurisdiction.
Specified Insurance Company	The term “Specified Insurance Company” means any Entity that is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to cash value insurance contracts or annuity contracts.
Tax Identification Number (TIN)	Is a unique combination of letters or numbers, however described, assigned by a jurisdiction to an individual or an entity and used to identify the individual or entity for purposes of administering the tax laws of such jurisdiction.
Tax Residence	For individuals, the Tax Residence is the jurisdiction in which the individual is subject to taxation on their worldwide income; except in rare exceptions, this is usually the country in which the individual has their permanent home. Countries where individuals are subject to limited tax liability (e.g. limited to the ownership of real estate) are not considered a Tax Residence under the Common Reporting Standard. For entities, the Tax Residence is usually their jurisdiction of incorporation or organisation. However, entities that are fiscally transparent (e.g. some partnerships) are considered to have their Tax Residence in the jurisdiction where their effective management is located. Trusts are deemed resident in the jurisdiction(s) where the trustee(s) is (are) resident, unless the trust itself is subject to taxation.



