

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION Common Reporting Standard FACT SHEET

自動交換財務賬戶資料 共同匯報標準 資料便覽

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1 何謂AEOI/CRS?

- AEOI全稱為“Automatic Exchange of Financial Account Information”[《自動交換財務帳戶資料》]。
- CRS全稱為“Common Reporting Standard”[《共同匯報標準》]。它確立了不同國家/稅務管轄區執行AEOI的標準。
- AEOI/CRS是一項新的國際標準，由經濟合作與發展組織(「經合組織」)於2014年7月頒布，旨在提高稅務透明度及打擊跨境逃稅。

2 AEOI為何與香港有關?

- 全球已有大概100個稅務管轄區承諾實施AEOI。作為國際社會負責任的成員及國際金融中心，香港已承諾實施AEOI (http://www.fstb.gov.hk/tb/tc/docs/pr_20151012_c.pdf)。
- 《2016年稅務(修訂)(第3號)條例》(「《修訂條例》」)為香港自2017年1月1日起應用盡職審查程序並分階段實施AEOI提供了法律框架。為兌現承諾，香港於2018年9月進行首次自動交換資料。
- 《修訂條例》主要規定香港的財務機構(包括銀行)須從財務帳戶持有人中識辨出「申報稅務管轄區」的稅務居民，並向香港稅務局(「稅務局」)申報其帳戶資料。根據《2017年稅務(修訂)(第2號)條例》，截至2017年7月1日，共有75個管轄區被納入申報稅務管轄區。
- 香港稅務局已根據雙邊主管當局協議或多邊主管當局協議，跟與香港已啟動AEOI自動交換資料關係的稅務管轄區進行資料交換ⁱ。
- 截至2018年11月9日，香港已與54個管轄區啟動自動交換資料關係，並預計未來將啟動更多此類自動交換資料關係。

- 客戶如欲了解「申報稅務管轄區」及現時已與香港啟動自動交換資料關係的管轄區的詳細名單，可參考稅務局網站：www.ird.gov.hk/chi/tax/aeoi/rpt_jur.htm，稅務局會適時更新此網站內容。

- 為釐定是否需要作出申報及向稅務局提供準確資料以進行交換資料，銀行須確認客戶的稅務居留地，並可能需要向客戶索取額外的資料或文件。

3 在哪些情況下，香港的銀行會要求客戶提供AEOI相關資料或文件?

- 銀行需在開立新帳戶時確認該個人(包括獨資商號)或實體(例如有限公司及信託等)的稅務居留地。銀行可以透過要求客戶填寫自我證明表格及在有需要情況下提供相關證明文件(統稱「AEOI文件」)來取得有關資料。
- 銀行亦可向先前個人及實體客戶(即2017年1月1日前開立帳戶的客戶)索取AEOI文件。銀行可能要求先前客戶提供進一步資料的常見情形如下：
 - (a) 銀行發現客戶資料顯示該客戶與某申報稅務管轄區有關聯(例如擁有某申報稅務管轄區的稅務居民身份、地址、一個或以上電話號碼(但該客戶並無香港電話號碼)，將資金轉至於某申報稅務管轄區維持的帳戶的常設指示，地址位於某申報稅務管轄區的獲給予授權書的某人或獲授權簽署人，保留郵件指示或轉交地址等)；
 - (b) 銀行發現客戶資料顯示該客戶與外國居留地有關聯(例如擁有非香港的稅務居民身份、地址、一個或以上電話號碼(但該客戶並無香港電話號碼)，將資金轉至於香港以外的帳戶的轉帳資金常設指示，地址位於香港以外的獲給予授權書的某人或獲授權簽署人，保留郵件指示或轉交地址等)ⁱⁱ；

- (c) (僅適用於實體客戶)銀行內部沒有足夠客戶資料以確認客戶的AEOI分類及/或其控權人^{iv}；
- (d) 該客戶以往提供的AEOI文件不再可靠。

4 為甚麼銀行會要求我/本公司填寫自我證明表格?何謂自我證明表格?

- 銀行需要足夠的相關資料以識辨個人或實體客戶的稅務居留地。
- 自我證明表格是一份幫助銀行向客戶蒐集相關資料的重要文件。它是客戶作出的有關其稅務居留地及AEOI分類(就實體客戶而言)的正式聲明。根據《修訂條例》，帳戶持有人向銀行在作出自我證明時，如明知或罔顧實情地作出在要項上具誤導性、虛假或不正確的陳述，便屬違法。一經定罪，可處第三級罰款(即10,000元)。
- 根據《修訂條例》訂明的盡職審查程序，所有新帳戶(即2017年1月1日或之後開立的帳戶的客戶)均須提交自我證明表格。至於先前帳戶(即2017年1月1日以前開立的帳戶)，作為其盡職審查程序的一部分，銀行可根據其客戶資料記錄(例如地址)要求客戶提供自我證明表格以確認其稅務居留地。

5 如果客戶未能向銀行提供AEOI相關資料或文件，會有甚麼後果?

- 《修訂條例》規定財務機構有法律責任取得新客戶的自我證明表格。如果新客戶未能按要求提供自我證明表格，銀行很可能無法接受其開戶申請。
- 對未能按要求提供自我證明表格及/或其他證明文件的先前客戶，根據《修訂條例》的規定，銀行需根據現有的資料記錄識辨其稅務居留地，如屬申報稅務管轄區，則銀行須向稅務局申報相關的帳戶資料。稅務局會跟已與香港啟動了AEOI自動交換資料關係的稅務管轄區交換資料。

- 關於銀行需申報的資料，請參閱問題7。

6 我已經提供了自我證明表格，為甚麼銀行還向我提出其他問題?

- 根據《修訂條例》，銀行必須根據在開立帳戶過程中所獲取的資料(包括在打擊洗錢暨認識客戶(AML/KYC)程序中收集的任何文件)，確定該自我證明表格的合理性(即「合理性測試」)。
- 若發現自我證明表格的任何部分有錯誤、缺失、或與銀行持有的資料明顯不符，則銀行必須要求客戶提供一份新的自我證明表格或取得合理解釋及/或證明文件。

7 銀行需要向稅務局申報哪些客戶的何種資料?

- 銀行需申報屬於申報稅務管轄區稅務居民的個人及實體(包括某些實體類型的控權人)的財務帳戶資料。
- 需要申報的資料如下：
 - (1) 帳戶資料(例如：姓名/名稱、地址、出生日期(適用於個人)、稅務居留地和稅務編號(TIN))；及
 - (2) 財務資料(例如：帳戶編號、利息、股息、帳戶的結餘或價值、從某些保險產品所得的收入、出售財務資產所得收益，以及其他來自有關帳戶的資產或存入有關帳戶的款項所產生的收入)。
- 若客戶的唯一稅務居留地是香港，則根據自動交換資料制度，銀行無需向稅務局申報該客戶的財務帳戶資料。

8 我能否以及如何向銀行查詢其掌握我的稅務居民身份資料?

- 根據《個人資料(私隱)條例》(「《私隱條例》」)，客戶有權要求查閱其個人資料。

- 客戶可利用銀行的客戶服務渠道，根據需要查詢及/或更新其稅務居民身份資料。

9 我為何需要向銀行更新我的稅務居民身份(例如：終止/新成為一個非香港稅務管轄區的稅務居民(包括須申報及非申報稅務管轄區))?

- 銀行每年須向稅務局申報身為「申報稅務管轄區」稅務居民的客戶所持有的財務帳戶資料。
- 《修訂條例》容許財務機構向顯示與海外稅務居留地(即使該海外稅務管轄區尚未是申報稅務管轄區)有關聯的客戶收集相關資料。其原因在於將有更多的稅務管轄區加入申報稅務管轄區名單。因此，為確保申報資料的準確性和時效性，客戶需將其稅務居民身份的變化(包括已不再為某稅務居留地的稅務居民)告知銀行。
- 一般而言，客戶需要在出現此類變化的30日內向銀行提供一份已適當更新的自我證明表格。

10 客戶可從哪些途徑獲得更多關於AEOI的協助?

- 稅務局已發出指引及參考資料，例如單張及常見問題(FAQs)。若客戶想了解更多的資訊，請參閱稅務局網站：http://www.ird.gov.hk/chi/tax/dta_aeoi.htm。
- 此外，若客戶想了解不同稅務管轄區內稅務居留地和TIN的定義，請參閱經合組織的AEOI網站。網址：<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/>。
- 請注意銀行不應向客戶提供任何稅務建議，尤其是關於確定客戶稅務居留地或實體客戶分類的建議。因此，若有任何稅務問題，客戶應根據自身情況諮詢專業法律及/或稅務顧問的意見。

i 《2018年稅務(修訂)條例》於2018年2月2日刊憲，其：
a) 為香港參與《多邊稅收徵管互助公約》(參見腳註ii)奠定基礎；以及
b) 就自動交換資料的部分條文作出技術修訂，令《稅務條例》與經合組織所頒布的共同標準一致。
該等技術修訂(即第5至11條)於2019年1月1日生效，而其他條文則於2018年2月2日生效。

ii 《稅務(稅收徵管互助公約)令》於2018年7月13日刊憲並開始實施。使香港可有效落實OECD所提出的AEOI事宜。
《稅收徵管互助公約》於2018年9月1日在香港生效，提供多方平台，讓參與的稅務管轄區可與其他參與方就詳稅和徵稅事宜商定各種方式的徵管合作，包括自動交換財務帳戶資料。
如欲獲取更多資訊，客戶可以透過以下連結閱覽稅務局的新聞稿：<https://www.ird.gov.hk/eng/ppr/archives/18071301.htm>。

iii 《修訂條例》允許財務機構向資料顯示帳戶與海外稅務居留地有關聯的客戶收集相關資料(即使該海外稅務管轄區現時並非申報稅務管轄區)。其原因在於將有更多的稅務管轄區加入申報稅務管轄區名單。

iv 「控權人」指對該實體行使控制權的自然人。就信託而言，「控權人」指屬該信託的財產授予人、受託人、保護人(如有的話)、受益人或某類別受益人的成員的個人；或任何自然人對該信託的管理行使最終控制權(包括透過一連串的控制或擁有權)。財產授予人、受託人、保護人(如有的話)、受益人或某類別受益人的成員的個人會被視為信託的「控權人」，不論該等人士是否對該信託的活動行使控制權。如財產授予人、受託人、保護人或受益人為實體，財產授予人、受託人、保護人或受益人的「控權人」會被視為信託的「控權人」。就並非信託的法律安排，「控權人」指相等於或處於一個相類於信託的人士。(資料來源：<http://www.ird.gov.hk/chi/pdf/2016/terms.pdf>)
《2018年稅務(修訂)條例》的技術修訂(即第5至11條)於2019年1月1日生效，屬信託的被动非財務實體的控權人也包括執行者。執行者是授予權力及職責去執行信託的人士。執行者的委任通常見於非慈善信託。執行者的職責是監督受託人的行為，以確保那些行為符合信託文件裡敘明的目的。(資料來源：https://www.ird.gov.hk/chi/faq/dta_aeoi.htm)

資訊來源：香港銀行公會

更多關於自動交換資料的詳情
http://www.ird.gov.hk/chi/tax/dta_aeoi.htm
<http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/>

查詢熱線：

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www.shacombank.com.hk

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Important Notice

The contents of this Fact Sheet are for general reference purposes only. This Fact Sheet should not be considered as a comprehensive statement on any matter and should not be relied upon as such. This Fact Sheet does not take into account the specific requirements of any individual bank in implementing their AEOI protocols. It does not consider any particular customer requirements or treatments.

Specific independent legal and/or tax advice about your treatment under the Inland Revenue Ordinance (Cap.112) (including in respect of the Inland Revenue (Amendment) (No.3) Ordinance 2016, any further changes to the Inland Revenue Ordinance for the purposes of the AEOI and any associated regulations) and your obligation to make disclosures to your financial institution should be sought separately. You should ensure that you consider the latest legislative requirements and guidance.

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The English version of this Fact Sheet shall prevail whenever there is any discrepancy between the English and the Chinese versions.

1 What is AEOI/CRS?

- AEOI stands for automatic exchange of financial account information.
- CRS stands for Common Reporting Standard. It establishes the standard by which different countries/ jurisdictions can perform AEOI.
- AEOI/CRS is an international standard established by the Organisation for Economic Cooperation and Development ("OECD") in July 2014 to enhance tax transparency and combat cross-border tax evasion.

2 Why is AEOI relevant to Hong Kong?

- Around 100 jurisdictions have committed to implementing AEOI. As a responsible international citizen and a leading financial centre, Hong Kong has committed to implement AEOI (http://www.fstb.gov.hk/tb/en/docs/pr_20151012_e.pdf).
- The Inland Revenue (Amendment) (No. 3) Ordinance 2016ⁱ (the "Amendment Ordinance") sets out the legislative framework for Hong Kong to implement AEOI under a phased timeline with due diligence procedures commencing from 1 January 2017. To deliver its commitment, Hong Kong commenced the first information exchanges in September 2018.
- The Amendment Ordinance essentially requires financial institutions in Hong Kong, including banks, to identify and report information relating to financial accounts held by customers that are tax residents of reportable jurisdictions to the Hong Kong Inland Revenue Department ("IRD"). There are a total of 75 reportable jurisdictions according to the Inland Revenue (Amendment) (No.2) Ordinance 2017 as of 1 July 2017.
- The IRD performs information exchange with a reportable jurisdiction if Hong Kong has activated exchange relationship, under AEOI, with that jurisdiction. on the basis of a bilateral or multilateral competent authority agreementⁱⁱ.
- Hong Kong has activated exchange relationships with 54 jurisdictions as of 9 November 2018, and more exchange relationships are expected in future.

- Customers may refer to the IRD website, which the IRD updates from time to time, for the list of reportable jurisdictions and the current list of jurisdictions with which Hong Kong has activated exchange relationships, at http://www.ird.gov.hk/eng/tax/aeoi/rpt_jur.htm.
- In order to determine whether reporting is required and to provide accurate information to the IRD for information exchanges, banks are required to ascertain the tax residency of their customers and may need to obtain additional information or documentation from them.

3 Under what circumstances will customers be requested by their banks in Hong Kong to provide AEOI-related information or documents?

- During new account opening, banks are required to ascertain the tax residency of individuals (including sole proprietors) and entities (e.g. limited companies, trusts, etc.). Banks may obtain this information by asking customers to complete self-certification forms and provide other supporting documentation where necessary (collectively "AEOI documentation").
- Pre-existing individual and entity customers (i.e. customers whose accounts were opened before 1 January 2017) may also be contacted for AEOI documentation. Common scenarios where a bank may require further information from pre-existing customers include:
 - (a) The bank identifies customer information on file that indicates a connection with a reportable jurisdiction (e.g. identification of the account holder as a tax resident of a reportable jurisdiction, an address in a reportable jurisdiction, one or more telephone numbers in a reportable jurisdiction with no telephone number in Hong Kong, standing instructions to transfer funds to an account maintained in a reportable jurisdiction, a power of attorney or signatory authority granted to a person whose address is in a reportable jurisdiction, a hold mail or in-care-of address in a reportable jurisdiction with no other address on file for the customer.);

- (b) The bank identifies customer information on file that indicates a connection with a foreign residence (e.g. identification of the account holder as a non-Hong Kong tax resident, a non-Hong Kong address, one or more non-Hong Kong telephone numbers with no telephone number in Hong Kong, standing instructions to transfer funds to an account maintained outside Hong Kong, a power of attorney or signatory authority granted to a person whose address is not in Hong Kong, a non-Hong Kong hold mail or in-care-of address with no other address on file for the customer.)ⁱⁱⁱ,
- (c) [Applicable to entity customers only] The bank does not have sufficient customer information on hand to internally determine the customer's entity classification under AEOI and/or that of the customer's controlling persons^{iv},
- (d) AEOI documentation previously provided by the customer is no longer reliable.

4 Why are banks asking me / my company to fill in a self-certification form? What is this form about?

- Banks will need to have sufficient information about the individual or entity customer to identify the tax residency of the customer.
- The self-certification form is an important document that enables banks to collect relevant information from their customers. It is a formal declaration that customers make in connection with their tax residency(ies) and (in relation to an entity customer) the entity classification for AEOI purposes. Under the Amendment Ordinance, an account holder who knowingly or recklessly provides a statement that is misleading, false or incorrect in a material particular in making a self-certification is liable on conviction to a fine at level 3 (\$10,000).
- According to the due diligence procedures set out in the Amendment Ordinance, self-certifications are required from customers for all new accounts (i.e. accounts opened on or after 1 January 2017). For pre-existing accounts (i.e. accounts opened before 1 January

2017), depending on the customer information on record (e.g. address), banks can seek self-certifications from the customers to determine their tax residency as part of their due diligence procedures.

5 What happens if a customer does not provide the required AEOI-related information or documents?

- The Amendment Ordinance imposes a legal obligation on financial institutions to obtain a self-certification from new customers. If a new customer does not provide the self-certification as required, the account application will likely not be accepted.
- For a pre-existing customer that does not provide self-certification and/or other supporting documents when requested, as prescribed by the Amendment Ordinance, the bank will need to determine the customer's tax residency based on the information currently on record, and if this is in a reportable jurisdiction, the bank will need to report the relevant account information to the IRD. The IRD will in due course, perform information exchange with jurisdictions that have activated AEOI exchange relationships with Hong Kong.
- Please refer to Question 7 for information that will be reported by the banks.

6 Why are banks asking me additional questions even after I provided a self-certification form?

- In accordance with the Amendment Ordinance, banks must confirm the reasonableness of the self-certification received based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures (i.e. the "reasonableness" test).
- If any part of the self-certification is found to be incorrect, incomplete, or apparently in conflict with the information held by the banks, they must obtain a new self-certification form or an explanation and/or supporting documents from the customer.

7 What customers and what information are banks required to report to the IRD?

- Banks are required to report financial accounts held by individuals and entities (including controlling persons of certain types of entities) that are tax residents of reportable jurisdictions.
- Information to be reported include the following:
 - (1) account data (such as name, address, date of birth (for individuals), jurisdiction of residence and taxpayer identification number ("TIN") of the account holder); and
 - (2) financial data (such as account number, 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).
- Financial account information of customers whose sole tax residency is Hong Kong will not be reported to the IRD under the AEOI regime.

8 Can I check my tax residency status held with my bank(s), and how?

- In accordance with the Personal Data (Privacy) Ordinance ("PDPO"), customers have the right to request access to their personal data.
- Customers can make use of account servicing channels of banks to check and/or update their tax residency status as needed.

9 Why is it important to update my bank(s) of any change in circumstances which affects my tax residency status (e.g. cease to be / newly become a tax resident of a non- Hong Kong jurisdiction (including reportable and non-reportable jurisdiction)?

- Banks are required to report the financial accounts of customers that are tax residents of reportable jurisdictions to the IRD on an annual basis.

- The Amendment Ordinance allows a financial institution to collect information from a customer that indicates a connection with a foreign residence (even though this overseas jurisdiction may not be a reportable jurisdiction yet). This is because more jurisdictions may be added to the list of reportable jurisdictions. It is therefore important that customers advise banks of any change in (including cessation of) their tax residency status to ensure accurate and up-to-date information is being reported as required.
- Generally, a customer should provide the bank with a suitably updated self-certification form within 30 days of such change in circumstances.

10 How and where can customers get additional assistance regarding AEOI?

- The IRD has issued guidance and reference materials such as pamphlets and frequently asked questions ("FAQs"). Customers should refer to the IRD website for more details: http://www.ird.gov.hk/eng/tax/dta_aeoi.htm.
- In addition, customers may refer to the OECD's AEOI portal for information regarding the definition of tax residency and TINs in different jurisdictions. The website is <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/>.
- Please note that banks are not to offer any tax advice, notably the determination of tax residency or entity classification, to their customers. As such, for any tax related questions that cannot be resolved, customers should seek advice according to their own circumstances from professional legal and/or tax advisors.

ⁱ The Inland Revenue (Amendment) Ordinance 2016 was gazetted on 2 February 2016 which:-

a) paves the way for Hong Kong to participate in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (see footnote ii); and
b) makes technical amendments to certain provisions on AEOI, to align the Inland Revenue Ordinance with the OECD CRS standard.

The technical amendments (i.e. sections 5 to 11) under the Inland Revenue (Amendment) Ordinance 2016 commenced operation on 1 January 2019, while other provisions were effected on 2 February 2018.

ⁱⁱ The Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order was gazetted and came into operation on 13 July 2018 to allow Hong Kong to effectively implement the AEOI promulgated by the OECD.

The Convention on Mutual Administrative Assistance in Tax Matters entered into force in Hong Kong on 1 September 2018 and provides a multi-party platform for participating jurisdictions to mutually agree with each other on various forms of administrative co-operation in the assessment and collection of taxes, including AEOI.

Customers may refer to the following Press Release for more information: <https://www.ird.gov.hk/eng/ppr/archives/18071301.htm>.

ⁱⁱⁱ The Amendment Ordinance allows a financial institution to collect information from an account holder that indicates a connection with a foreign residence (even though this overseas jurisdiction may not be a reportable jurisdiction yet). This is because more jurisdictions may be added to the list of reportable jurisdictions.

^{iv} "Controlling Persons" are the natural person(s) who exercise control over an Entity. In the case of a trust, the Controlling Person(s) are 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. Where the settlor, trustee, protector or beneficiary of a trust are themselves Entities then the Controlling Persons of the settlor, trustee, protector or beneficiary must be treated as Controlling Persons of the trust. In the case of a legal arrangement other than a trust, Controlling Person(s) means persons in equivalent or similar positions to those of a trust. (Source: <http://www.ird.gov.hk/eng/pdf/2016/terms.pdf>)

With the technical amendments (i.e. sections 5 to 11) under the Inland Revenue (Amendment) Ordinance 2016 commenced operation on 1 January 2019, the "Controlling Person" of a passive nonfinancial entity that is a trust is defined to also include an enforcer. An enforcer is a person who is given the power and duty to enforce the trust. The appointment of enforcer is commonly found in noncharitable trusts. The enforcer's role is to oversee the actions of the trustee to ensure those actions are in line with the purposes stated in the trust instrument. (Source: https://www.ird.gov.hk/eng/faq/dta_aeoi.htm#tech_exp)

Source: The Hong Kong Association of Banks

More about AEOI

http://www.ird.gov.hk/eng/tax/dta_aeoi.htm

<http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/>

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