



Tax Newsflash

Hong Kong Tax News: A step to pave the way for AEOI and BEPS actions



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德勤百年庆 开创新纪元

The Inland Revenue (Amendment) (No. 5) Bill 2017 ("2017 Amendment Bill") is passed to the Legislative Council for reading and debate today.

Hong Kong has implemented the Common Reporting Standard (CRS), which is the standard for automatic exchange of financial account information (AEOI) developed by the Organization for Economic Co-operation and Development (OECD), effective from 1 January 2017. The financial institutions (FIs) in Hong Kong should have been well prepared for this new regulatory requirements.

Under the OECD CRS framework, jurisdictions could conduct AEOI with each other on either a bilateral or multilateral basis. The bilateral approach involves the signing of bilateral Competent Authority Agreements (CAAs) for AEOI with other jurisdictions; whereas the multilateral approach involves the signing of a multilateral CAA under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention).

Hong Kong has been relying on the bilateral approach to implement AEOI and has signed 15 bilateral CAAs as of today. However, since there are constraints for signing bilateral CAAs and the negotiations of bilateral CAA between jurisdictions often take time, Hong Kong would not be able to

expand the AEOI network quickly to meet with the global standard. In the absence of a wider AEOI network and not being a participant in the Multilateral Convention, Hong Kong faces a risk of being treated as a “non-cooperative tax jurisdiction”. In view of this, Hong Kong is seeking to participate in the Multilateral Convention and modify the approach in implementing AEOI in Hong Kong from a bilateral to a multilateral basis.

Based on the above, the 2017 Amendment Bill was gazetted on 6 October 2017, which paves the way for Hong Kong's participation in the Multilateral Convention. Furthermore, certain legislative amendments were proposed in the 2017 Amendment Bill to align the Inland Revenue Ordinance (IRO) with the OECD standard by removing inconsistencies identified, which includes some technical corrections to certain terms under the AEOI. It is anticipated that once the 2017 Amendment Bill is enacted, the volume of reportable information for financial institutions in Hong Kong might further increase, which may create additional burdens for the FIs when complying with AEOI.

The 2017 Amendment Bill is also relevant to the Government's proposals to implement Base Erosion and Profit Shifting (BEPS) actions in Hong Kong and, in particular, the measures relating to Country-by-Country Reports (CbCRs). Hong Kong's anticipated participation in the Multilateral Convention would also allow the territory to sign a separate multilateral CAA to enable the automatic exchange of CbCRs with other jurisdictions. This is one of the four minimum standards of the OECD's inclusive framework to address BEPS, to which Hong Kong has committed. The Hong Kong Government has expressed its intention to require CbCRs for accounting periods beginning on or after 1 January 2018, with the first filings occurring in 2019. However, the enactment of the 2017 Amendment Bill and subsequent participation in the CbCR CAA would allow the Inland Revenue Department (IRD) to accept parent surrogate filing of CbCRs for 2016 and 2017 (enabling multinational groups headquartered in Hong Kong to meet their filing obligations elsewhere) and exchange them with partner jurisdictions, even before taxpayers are legally required to file CbCRs in Hong Kong.

Apart from the 2017 Amendment Bill, the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) (Amendment) Order 2017 (the "2017 Amendment Order") was also gazetted on 6 October 2017, which implement the second protocol to Hong Kong – New Zealand tax treaty in order to allow AEOI with New Zealand on a bilateral basis. Please refer to the IRD's website for the most updated list of reportable jurisdictions and signed bilateral CAAs:

http://www.ird.gov.hk/eng/tax/aeoi/rpt_jur.htm

consult their tax advisors before acting on any information contained in this newsletter.

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