

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance (Chapter 112)

**Inland Revenue Ordinance
(Amendment of Schedule 17E) Notice 2016**

INTRODUCTION

The Secretary for Financial Services and the Treasury (“SFST”) has made the Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2016 (the “Notice”) (**Annex A**) to set out a list of reportable jurisdictions and a list of participating jurisdictions for the implementation of automatic exchange of financial account information in tax matters (“AEOI”) in Hong Kong.

CONSIDERATIONS

Hong Kong’s commitment to AEOI and policy approach

2. The Organisation for Economic Co-operation and Development (“OECD”) promulgated the new international standard for AEOI in July 2014. In September 2014, Hong Kong indicated its support for implementing AEOI on a reciprocal basis with appropriate partners with a view to commencing the first exchanges by the end of 2018, on the condition that we could put in place necessary domestic legislation by 2017. So far, 101 jurisdictions have signed up for this global initiative.

3. Hong Kong has all along been supportive of the international efforts to enhance tax transparency and combat cross-border tax evasion. Timely implementation of AEOI is important for Hong Kong to comply with the international standards and maintain our reputation as an international financial centre and a responsible member of the international community.

4. We intend to conduct AEOI only with our partners with which we have signed comprehensive avoidance of double taxation agreement (“CDTA”) or tax information exchange agreement (“TIEA”) on a bilateral

basis¹. CDTAs are tax agreements which seek to minimize incidence of double taxation between the contracting parties and provide a mechanism for exchange of information between tax authorities, whereas TIEAs serve purely as instruments for exchange of information without offering any taxation relief. At present, Hong Kong has signed CDTA with 35 jurisdictions and TIEA with seven jurisdictions. A list of our CDTA and TIEA partners is at **Annex B**.

5. Hong Kong will rely on the bilateral CDTAs or TIEAs signed and having effect by way of Orders made under section 49(1A) of the Inland Revenue Ordinance (the “IRO”) (Cap.112) as the basis for implementing AEOI. The Inland Revenue Department (“IRD”) needs to sign a Competent Authority Agreement (“CAA”), which sets out the modalities of transfer of information collected pursuant to the AEOI standard, with the tax authority of the CDTA/TIEA partner concerned before the exchange of the relevant information takes place.

6. Following several rounds of engagement with stakeholders over the past two years and the public consultation exercise from April to June 2015, the Government introduced an amendment bill into the Legislative Council (“LegCo”) in January 2016, which was passed by the LegCo on 22 June 2016. The Inland Revenue (Amendment) (No.3) Ordinance 2016 (the “Amendment Ordinance”) came into effect on 30 June 2016.

AEOI Regime under the Amendment Ordinance

7. The Amendment Ordinance has put in place a legal framework for Hong Kong to implement AEOI on the basis of the OECD standard. In short, under the AEOI standard, a Financial Institution (“FI”)² is required to identify financial accounts held by tax residents³ of reportable jurisdictions (i.e. jurisdictions with which Hong Kong will conduct AEOI) in accordance with the due diligence procedures set by OECD. FIs are required to collect the reportable information of these accounts, and furnish such information to IRD starting from the reporting year. Upon receipt of

¹ All CDTAs signed embody a mechanism for exchange of information with our treaty partners. In addition, we have signed TIEAs purely as instruments for such exchanges (which do not offer taxation relief). Hong Kong is able to enter into CAAs with respective treaty partners as long as the relevant CDTAs/TIEAs allow for AEOI.

² For the purpose of implementing AEOI, FIs comprise custodial institutions, depository institutions, specified insurance companies, and investment entities; and only FIs which are resident in Hong Kong will be subject to the reporting requirements.

³ “Tax residents of reportable jurisdictions” refers to those who are liable to tax by reason of residence in the jurisdictions with which Hong Kong will conduct AEOI. In general, whether or not an individual is a tax resident of a jurisdiction is determined by having regard to 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 a company, the place of incorporation or where the central management or control of the entity lies.

such information, IRD will exchange the information with the tax authorities of the AEOI partner jurisdictions on an annual basis. The Amendment Ordinance has amended the IRO to incorporate the essential requirements of the AEOI standard, namely key provisions of CAA and due diligence requirements as laid down in the Common Reporting Standard.

8. The Amendment Ordinance has added a new section 50J to the IRO, which empowers SFST to amend, among others, Schedule 17E to set out a list of reportable jurisdictions and a list of participating jurisdictions. Hong Kong can deliver its commitment to the international community on AEOI implementation in a timely manner, with names of the reportable jurisdictions and participating jurisdictions included in the two lists before 1 January 2017. FIs may then conduct the due diligence procedures required in 2017, so that the information is furnished to IRD for transmission to the AEOI partners concerned in 2018.

Reportable jurisdictions

9. We informed the LegCo earlier that we would take a progressive approach in identifying our AEOI partners and would start with a few jurisdictions at the outset. Following the enactment of the Amendment Ordinance in June 2016, we have approached ten jurisdictions for CAA discussions. In identifying our AEOI partners, we have followed the guiding principles that the jurisdictions should have put in place relevant legal framework for implementing AEOI which meets the OECD standard, and have relevant safeguards in their domestic law for protecting data privacy and confidentiality of information exchanged.

10. So far, IRD has signed bilateral CAAs, based on the model CAA promulgated by OECD, with Japan and the United Kingdom respectively with a view to commencing automatic exchanges from 2018 onwards. Accordingly, the Notice puts these two jurisdictions into Part 1 of Schedule 17E to the IRO as “reportable jurisdictions”, with “2018” as the corresponding “reporting year”.

Participating jurisdictions

11. The AEOI standard imposes a requirement for FIs, when performing due diligence procedures, to “look through” an account holder which is a professionally managed investment entity, with its income primarily attributable to investing, reinvesting, or trading in financial assets (“relevant entity”), **if** the relevant entity is resident in a non-participating

jurisdiction.⁴ Under the “look through” requirement, FIs are required to see if any of the controlling persons of such a relevant entity is a tax resident of a reportable jurisdiction. If affirmative, the FI concerned is required to report such information to IRD for exchange with the reportable jurisdiction concerned.

12. The above “look through” requirement seeks to prevent controlling persons from “hiding” their identity behind the relevant entities residing in a non-participating jurisdiction. This requirement would **not** apply if the relevant entity is a resident in a participating jurisdiction. Hence, the extent to which FIs in Hong Kong are required to conduct “look through” checks depends on the list of participating jurisdictions.

13. In setting out the list of participating jurisdictions, OECD allows for the following options –

- (a) jurisdictions having in place a CAA for AEOI;
- (b) all jurisdictions committed to adopting AEOI by 2018 (i.e. 100 jurisdictions excluding Hong Kong); or
- (c) jurisdictions having signed the Multilateral CAA (i.e. 84 jurisdictions, according to the latest list available from OECD).

Having regard to OECD’s requirements and the compliance burden of FIs in Hong Kong, we propose to adopt Option (b), i.e. putting all the 100 committed jurisdictions in the list in Part 2 of Schedule 17E as participating jurisdictions.

Latest international developments

14. It has all along been Hong Kong’s plan to conduct AEOI on a bilateral basis, which is an option allowed by OECD. However, as envisaged in our LegCo Brief issued in January 2016 on this matter, the pressure for jurisdictions to conduct AEOI on a multilateral basis is indeed mounting. Among the 101 jurisdictions committed to AEOI, 84 have signed the Multilateral CAA, and the number is expected to rise further. Even for jurisdictions working on the bilateral approach, OECD is expecting them to conduct a wider scope of AEOI to ensure a level playing field amongst the participating jurisdictions. The Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) has put in place a monitoring system where all committed

⁴ See the definition of “passive NFE” in section 50A of the IRO, paragraphs 6 to 9 under Part 5 of Schedule 17D to the IRO, and paragraphs 3 to 6 under Part 6 of Schedule 17D to the IRO regarding the “look through requirement”.

jurisdictions are required to report the progress of implementing AEOI to the Global Forum.

15. Since the passage of the Amendment Ordinance in June 2016, there have been two notable developments on the international front –

- (a) The **Group of Twenty** (“G20”) Finance Ministers endorsed in July 2016 the three **criteria** proposed by OECD for **identifying non-cooperative tax jurisdictions**, namely exchange of information on request (“EOIR”), AEOI and participation in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters⁵. A jurisdiction would be considered “non-cooperative” if it fails to meet the benchmarks of at least two of these three criteria⁶. G20 endorsed the proposal at the Leaders’ Summit at Hangzhou in September 2016, and OECD would prepare a list for the G20 Summit in 2017⁷.

Since Hong Kong is not a party to the Multilateral Convention, our ability to pass the G20/OECD criteria so as not to be considered as “non-cooperative” depends on our performance on EOIR and AEOI.

- (b) In September 2016, the European Commission (“EC”) published a “scoreboard” and put Hong Kong together with about 80 other jurisdictions thereon⁸. This kicks off the first stage by the European Union (“EU”) in developing its first **common list of non-cooperative tax jurisdictions**. The EU will conduct a screening exercise and the result will be available in June/July 2017. It will put jurisdictions which cannot satisfy its requirements on “tax transparency” on a list scheduled to be

⁵ The Convention is a free-standing multilateral agreement designed to promote international cooperation for better operation of national tax laws, while respecting the fundamental rights of taxpayers. It provides for all forms of administrative cooperation between countries in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. The administrative assistance that the Convention envisages includes EOI, simultaneous tax examinations, tax examinations abroad, assistance in recovery and service of documents. The Convention advocates AEOI for the purpose of combating tax evasion.

⁶ According to OECD’s Report, “[b]enchmarks for a first assessment against the above criteria would be: (i) a “Largely Compliant” rating with respect to the EOIR standard; (ii) a commitment to implement the AEOI standard, with first exchanges in 2018 (with respect to the year 2017) at the latest; and (iii) participation in the multilateral Convention or a sufficiently broad exchange network permitting both EOIR and AEOI. Those benchmarks would be adjusted over time according to an agreed plan as implementation of the standards progresses.”

⁷ See OECD’s press release “OECD to help put innovation at heart of G20 global growth strategy” published on 5 September 2016.

⁸ See EC’s press release “Fair Taxation: Commission launches work to create first common EU list of non-cooperative tax jurisdictions” published on 15 September 2016.

published by the end of 2017. The EU has also indicated that **common counter-measures** will then be taken by all its Member States against the listed jurisdictions. These measures, serving to make it much less attractive for companies to invest or do business in the listed jurisdictions, might include charging withholding taxes and non-deductibility of costs of transactions⁹.

The EU is the second largest trading partner of Hong Kong. We would do all we can to demonstrate Hong Kong's commitment towards tax transparency and avert risks of the unilateral imposition of the common counter-measures by the EU and its Member State.

Way forward

16. Hong Kong is fully geared up to deliver the commitment of commencing first automatic exchange in 2018. The domestic legal framework for supporting AEOI has been in place since June 2016. So far, we have signed two CAAs. Data collection would start as from January 2017.

17. To demonstrate our full commitment to AEOI, we will commence AEOI discussions with all other CDTA / TIEA partners (excluding Thailand, Vietnam and the United States which are not amongst the jurisdictions committed to adopting AEOI by 2018) as soon as practicable and seek to conclude as many CAAs as practicable within 2017. We are using the OECD CAA model text as template and will seek help from OECD to facilitate our work under the concurrent bilateral approach.

THE NOTICE

18. The Notice seeks to set out a list of reportable jurisdictions (comprising Japan and the United Kingdom) in Part 1 of Schedule 17E, and a list of participating jurisdictions (comprising all jurisdictions which have committed to adopting AEOI by 2018) in Part 2 of Schedule 17E.

LEGISLATIVE TIMETABLE

19. The Notice will be published in the Gazette on 28 October 2016,

⁹ See Section 5.3 of EC's report "Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation" published on 28 January 2016.

and tabled at the LegCo at its sitting of 2 November 2016 for negative vetting. The relevant provisions will come into operation on 31 December 2016.

IMPLICATIONS OF THE PROPOSAL

20. The Notice is in conformity with the Basic Law, including the provisions concerning human rights. The Notice will not affect the current binding effect of the IRO. The Notice does not have financial, civil service, economic, environmental, sustainability, productivity, gender or family implications.

PUBLIC CONSULTATION

21. We have been engaging relevant stakeholders such as FIs, business chambers and professional associations all along. To prepare for the Amendment Ordinance, we launched a consultation exercise from April to June 2015 to gauge views on how we should adopt the new standard on AEOI in Hong Kong. In general, stakeholders support the overall direction to catch up with the latest international standard and implement AEOI in Hong Kong. They also noted that Hong Kong will implement AEOI in a progressive manner, starting with a few AEOI partners at the initial stage.

PUBLICITY

22. We will issue a press release on 26 October 2016. A spokesperson will be available to answer media enquiries.

ENQUIRIES

23. In case of enquiries about this Brief, please contact Mr Gary Poon, Principal Assistant Secretary for Financial Services and the Treasury (Treasury) at 2810 2370.

Financial Services and the Treasury Bureau
26 October 2016

Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2016

(Made by the Secretary for Financial Services and the Treasury under section 50J of the Inland Revenue Ordinance (Cap. 112))

1. Commencement

This Notice comes into operation on 31 December 2016.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in section 3.

3. Schedule 17E amended (reportable jurisdictions and participating jurisdictions)

(1) Schedule 17E, Part 1—

Repeal

“Column 1	Column 2
Reportable jurisdiction	Reporting year”

Substitute

“Column 1	Column 2
Reportable jurisdiction	Reporting year

Japan	2018
United Kingdom of Great Britain and Northern Ireland	2018”.

(2) Schedule 17E, Part 2, after the heading—

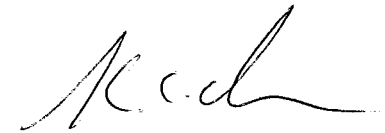
Add

- “Albania, Republic of
- Andorra, Principality of
- Anguilla
- Antigua and Barbuda
- Argentina, Republic of
- Aruba
- Australia, Commonwealth of
- Austria, Republic of
- Bahamas, Commonwealth of the
- Bahrain, Kingdom of
- Barbados
- Belgium, Kingdom of
- Belize
- Bermuda
- Brazil, Federative Republic of
- British Virgin Islands
- Brunei Darussalam
- Bulgaria, Republic of
- Canada
- Cayman Islands
- Chile, Republic of
- China, Mainland of
- Colombia, Republic of
- Cook Islands
- Costa Rica, Republic of

Croatia, Republic of
Curacao, Country of
Cyprus, Republic of
Czech Republic
Denmark, Kingdom of
Dominica, Commonwealth of
Estonia, Republic of
Faroes
Finland, Republic of
French Republic
Germany, Federal Republic of
Ghana, Republic of
Gibraltar
Greenland
Grenada
Guernsey
Hellenic Republic (Greece)
Hungary, Republic of
Iceland, Republic of
India, Republic of
Indonesia, Republic of
Ireland
Isle of Man
Israel, State of
Italian Republic
Japan

Jersey
Korea, Republic of
Kuwait, State of
Latvia, Republic of
Lebanon, Republic of
Liechtenstein, Principality of
Lithuania, Republic of
Luxembourg, Grand Duchy of
Macao Special Administrative Region
Malaysia
Malta
Marshall Islands, Republic of the
Mauritius, Republic of
Monaco, Principality of
Montserrat
Nauru, Republic of
Netherlands, Kingdom of the
New Zealand
Niue
Norway, Kingdom of
Panama, Republic of
Poland, Republic of
Portuguese Republic
Qatar, State of
Romania
Russian Federation

Saint Kitts and Nevis, Federation of
Saint Lucia
Saint Vincent and the Grenadines
Samoa, Independent State of
San Marino, Republic of
Saudi Arabia, Kingdom of
Seychelles, Republic of
Singapore, Republic of
Sint Maarten
Slovak Republic
Slovenia, Republic of
South Africa, Republic of
Spain, Kingdom of
Sweden, Kingdom of
Swiss Confederation
Trinidad and Tobago, Republic of
Turkey, Republic of
Turks and Caicos Islands
United Arab Emirates
United Kingdom of Great Britain and Northern Ireland
United Mexican States
Uruguay, Oriental Republic of
Vanuatu, Republic of



Secretary for Financial Services and
the Treasury

25 October 2016

Explanatory Note

This Notice amends Schedule 17E to the Inland Revenue Ordinance (Cap. 112) in relation to automatic exchange of financial account information in tax matters.

2. The Schedule is amended by—
 - (a) adding 2 jurisdictions to the list of reportable jurisdictions; and
 - (b) adding 100 jurisdictions to the list of participating jurisdictions.

List of jurisdictions with which Hong Kong has entered into CDTAs
(as at 30 September 2016)

	Jurisdictions	Date of Signing (month and year)
1	Belgium	December 2003
2	Thailand	September 2005
3	Mainland China	August 2006
4	Luxembourg	November 2007
5	Vietnam	December 2008
6	Brunei	March 2010
7	The Netherlands	March 2010
8	Indonesia	March 2010
9	Hungary	May 2010
10	Kuwait	May 2010
11	Austria	May 2010
12	The United Kingdom	June 2010
13	Ireland	June 2010
14	Liechtenstein	August 2010
15	France	October 2010
16	Japan	November 2010
17	New Zealand	December 2010
18	Portugal	March 2011
19	Spain	April 2011
20	The Czech Republic	June 2011
21	Switzerland	October 2011
22	Malta	November 2011
23	Jersey	February 2012
24	Malaysia	April 2012
25	Mexico	June 2012
26	Canada	November 2012
27	Italy	January 2013
28	Guernsey	April 2013
29	Qatar	May 2013
30	Korea	July 2014
31	South Africa	October 2014
32	United Arab Emirates	December 2014
33	Romania	November 2015*
34	Russia	January 2016
35	Latvia	April 2016*

*Not yet entered into force

List of jurisdictions with which Hong Kong has entered into TIEAs
(as at 30 September 2016)

	Jurisdictions	Date of Signing (month and year)
1	USA	March 2014
2	Denmark	August 2014
3	Faroese	August 2014
4	Greenland	August 2014
5	Iceland	August 2014
6	Norway	August 2014
7	Sweden	August 2014