

Extensive exchange of information for tax purpose will soon take place in Hong Kong

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In brief

Further to the enactment of the Inland Revenue (Amendment) Ordinance 2018 on 2 February 2018 which enabled Hong Kong to expand its automatic exchange of financial account information (AEOI) network more effectively by taking a multilateral instead of a bilateral approach, the HKSAR Government and the Central People's Government have taken a number of steps ensuring the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention)¹ will enter into force in Hong Kong on 1 September 2018. Hong Kong has now become signatories of the Multilateral Competent Authority Agreement (MCAA) on AEOI (CRS MCAA) and the MCAA on the exchange of country-by-country reports (CbC MCAA) and activated exchange relationship with 42 jurisdictions for AEOI purpose and three jurisdictions for exchange of country-by-country (CbC) reports.

As the next step, the HKSAR Government plans to increase the number of reportable jurisdictions for AEOI purpose from the current 75 to 126 jurisdictions so that Hong Kong can conduct AEOI with most of the AEOI-committed jurisdictions.

We are pleased to see the HKSAR Government honouring its commitment to meeting the international standards on exchange of information for tax purpose. With the additional disclosure of information and increased tax transparency, business groups and individuals should carefully assess whether AEOI as well as exchange of CbC reports and tax rulings will have any potential impacts on their tax exposure in their resident jurisdictions and overseas jurisdictions where they have business operations or investment activities. On the other hand, financial institutions should regularly review their internal compliance process and client data system to ensure they can fully comply with the Common Reporting Standard (CRS) reporting requirements in a cost-effective manner.

In detail

In recent years, developments in international tax cooperation, especially exchange of tax related information, have been taken in a rapid pace. After the launch of the AEOI initiative by the Organisation for Economic Co-operation and Development (OECD) in 2014, the HKSAR Government has indicated its support for implementing AEOI on a reciprocal basis with appropriate partners with a view to commencing the first exchange by the end of 2018. Since then, the HKSAR Government has been actively refining its

domestic legal framework to fulfil its commitments to international tax cooperation, including that on implementing AEOI.

This issue of *Hong Kong Tax News Flash* discusses the legal framework under which AEOI as well as exchange of CbC reports and tax rulings can take place and the current status of implementing such information exchanges in Hong Kong.

Exchange of information under the Convention

For two jurisdictions to exchange information under

the Convention with each other, the following steps need to be taken by each jurisdiction in order to establish a bilateral exchange relationship:

- (1) join the Convention;
- (2) sign the applicable MCAA; and
- (3) activate the bilateral exchange relationship by submitting a notification to the OECD.

The Convention

The Convention was developed

jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010. It is a comprehensive multilateral instrument that provides a legal framework for offering different forms of tax cooperation to tackle tax evasion and avoidance, including the standardisation of the intergovernmental approach on information exchange.

The Convention stipulates three different modes of information exchange i.e. (1) exchange of information on request, (2) automatic exchange of information and (3) spontaneous exchange of information. Accordingly, jurisdiction which is a signatory to the Convention can conduct AEOI, automatic exchange of CbC reports and spontaneous exchange of tax rulings with another signatory jurisdiction.

MCAAs

Signatories to the Convention need to enter into different MCAAs depending on the information to be exchanged e.g. financial account information and CbC reports. Currently, two MCAAs have been developed under the Convention, namely the CRS MCAA and CbC MCAA.

The MCAA contains the detailed provisions on how information exchange will take place in practice (e.g. time and manner of the exchange, confidentiality and safeguards). Signing of the MCAAs only means the signatory jurisdiction agrees to exchange the relevant information. In order for exchange of information between two jurisdictions to take place, both jurisdictions must separately activate the exchange relationship by filing a notification with the OECD.

Filing of notification with the OECD

The notification filed with the OECD contains the specified information (e.g. a confirmation that domestic CRS legislation is in place and a specification of the applicable data protection requirements) and a list of its intended exchange partner jurisdictions.

Where Hong Kong stands now

Please refer to the Appendix for a list of events that have taken place to give effect to the Convention as well as the CRS MCAA and CbC MCAA in Hong Kong.

Exchange of CRS information

Before 2016, as a matter of policy, Hong Kong would only conduct

information exchange upon request and on a bilateral basis with jurisdictions having a Comprehensive Avoidance of Double Taxation Agreement (CDTA) or Tax Information Exchange Agreement (TIEA) with Hong Kong. Although Hong Kong has now signed bilateral competent authority agreements (bilateral CAAs) on AEOI with 15 countries, it remains impractical for Hong Kong to cope with the latest international standard on AEOI by solely riding on bilateral agreements.

To enable Hong Kong to expand its AEOI network more effectively by taking a multilateral instead of bilateral approach, three pieces of legislation have been enacted since 2016². The latest one is the recent Inland Revenue (Amendment) Ordinance 2018 which was gazetted on 2 February 2018. This latest Ordinance provides the legal framework for Hong Kong to implement multilateral tax arrangements under the amended Inland Revenue Ordinance (IRO), thereby allowing more effective implementation of the arrangements relating to AEOI as well as automatic exchange of CbC reports and spontaneous exchange of information on tax rulings under the Base Erosion and Profit Shifting (BEPS) project. It empowers the Chief Executive to issue Order to give effect to the any multilateral convention signed by Hong Kong or signed by the Central People's Government and applicable to Hong Kong.

As Hong Kong is not a sovereign state, it cannot sign the Convention by itself. Upon the request of Hong Kong, the Central People's Government has extended the application of the Convention to Hong Kong on 29 May 2018 by registering a "Declaration for Extension" at the OECD. The Declaration of Extension includes a list of reservations and declarations applicable to Hong Kong³ e.g. Hong Kong will only provide assistance to the minimum tax types under the Convention (i.e. profits tax, salaries tax and property tax) and would not assist in recovery of tax claims, service of documents or tax examinations abroad, etc.

On 13 July 2018, an Order made by the Chief Executive⁴ under section 49(1A) of the IRO to give effect to the Convention and the relevant reservations and declarations in Hong Kong was gazetted. To enable Hong Kong to commence the first CRS

information exchange by the end of 2018, the Convention will enter into force in Hong Kong on **1 September 2018**. According to the information published by the OECD as of 2 July 2018, Hong Kong is now listed as a signatory to the Convention⁵.

In addition, Hong Kong signed a declaration to join the CRS MCAA on 20 March 2018⁶. According to the information available on the OECD's website⁷, Hong Kong has currently activated CRS exchange relationships with 42 jurisdictions (but not with the Mainland), the legal basis being either CRS MCAA or bilateral CAA.

First exchange of CRS information by Hong Kong

Commencing in September 2018, Hong Kong will start exchanging CRS information with the reportable jurisdictions having an activated exchange relationship with Hong Kong. The key features of the first exchange are summarised as follows:-

- The Convention will have effect for taxable periods beginning on or after 1 January 2019 in general, unless the parties concerned mutually agree that the Convention shall have effect for earlier taxable periods. This governs the time by which the first exchange can take place.
- The information period covered in the first exchange will vary depending on the terms agreed with each reportable jurisdiction i.e.:
 - 1 January 2017 to 31 December 2017 for Japan and the United Kingdom
 - 1 January 2018 to 31 December 2018 for Korea
 - 1 July 2017 to 31 December 2017 for all other reportable jurisdictions

Currently, there are 75 reportable jurisdictions for Hong Kong. The HKSAR Government plans to expand the list of reportable jurisdictions from 75 to 126 jurisdictions (i.e. by including another 51 jurisdictions) so that Hong Kong can conduct AEOI with most of the AEOI-committed jurisdictions. The first information period for these 51 additional jurisdictions is expected to be 1 January to 31 December 2020.

Exchange of CbC reports

Hong Kong may exchange CbC reports with other jurisdictions under a

bilateral CDTA or TIEA. According to the Inland Revenue Department (IRD)'s website, bilateral agreements for exchange of CbC Reports have been made with four jurisdictions, namely France, Ireland, South Africa and the United Kingdom⁸. On 26 July 2018, Hong Kong became a signatory of the CbC MCAA⁹.

Exchange of tax rulings

One of the minimum standards under OECD's BEPS Action 5 is to conduct spontaneous exchange of certain tax rulings (e.g. rulings related to a preferential regime and any cross-border unilateral transfer pricing rulings). For those Hong Kong CDTAs which do not restrict exchange of information only on request basis (the one with the Mainland is one of the examples), it is possible for the HKSAR Government to exchange information spontaneously, including information on tax rulings, under these CDTAs. Going forward, the Convention provides an alternative legal basis for spontaneous exchange of tax rulings.

The takeaway

We are pleased to see the HKSAR Government honouring its commitment to meeting the international standards on exchange of information for tax purpose. With the additional disclosure of information and increased tax transparency, business groups and individuals should carefully assess whether AEOI as well as exchange of

CbC reports and tax rulings will have any potential impacts on their tax exposure in their resident jurisdictions and overseas jurisdictions where they have business operations or investment activities. On the other hand, financial institutions should regularly review their internal compliance process and client data system to ensure they can fully comply with the CRS reporting requirements in a cost-effective manner.

Endnotes

1. Please refer to Schedule 1 of the Order made by the Chief Executive on 13 July 2018 (see Note 4 below) for the Convention via this link: <https://www.gld.gov.hk/egazette/pdf/20182228/es220182228142.pdf>
2. These legislations and the links are as follows:
 - Inland Revenue (Amendment) (No. 3) Ordinance 2016 (effective 30 June 2016) (<http://www.gld.gov.hk/egazette/pdf/20162026/es12016202622.pdf>)
 - Inland Revenue (Amendment) (No. 2) Ordinance 2017 (came into operation on 1 July 2017) (<http://www.legco.gov.hk/yr16-17/english/ord/2017ord004-e.pdf>)
 - Inland Revenue (Amendment) Ordinance 2018 (<http://www.legco.gov.hk/yr17-18/english/ord/2018ord005-e.pdf>)
3. The list of reservations and declarations under the *Convention* is enclosed as Annex C to the paper issued by Financial Services and The Treasury Bureau [LC Paper No. CB(1)1166/17-18(03)], which can be accessed via this link: <http://www.legco.gov.hk/yr17-18/english/panels/fa/papers/fa20180703cb1-1166-3-e.pdf>. The same has also been reproduced in Schedule 2 of the Order (see Note 4 below).
4. The Order can be accessed via this link: <https://www.gld.gov.hk/egazette/pdf/20182228/es220182228142.pdf>
5. The OECD's list of status of jurisdictions participating in the Convention can be accessed via this link: https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf
6. The list of signatories of the *CRS MCAA* and intended first information exchange date can be accessed via this link: <https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/MCAA-Signatories.pdf>
7. The list of the activated exchange relationships for CRS information and the effective dates can be accessed via this link: <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/>
8. Please refer to this link to the IRD's website for the list of jurisdictions that Hong Kong has made bilateral agreements for exchange of CbC reports: https://www.ird.gov.hk/eng/tax/dta_cbc.htm#auto
9. The list of signatories of the *CbC MCAA* can be accessed via this link: <http://www.oecd.org/ctp/beeps/CbC-MCAA-Signatories.pdf>

Appendix

Please refer to the table below for a list of events that have taken place to give effect to the Multilateral Convention (the Convention), the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA) and the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) in Hong Kong:

2 February 2018	<p>The Inland Revenue (Amendment) Ordinance 2018 (the Ordinance) was gazetted</p> <p>This Ordinance provides the legal framework for Hong Kong to implement multilateral tax arrangements under the amended Inland Revenue Ordinance (IRO), thereby allowing more effective implementation of the arrangements relating to automatic exchange of financial account information (AEOI) as well as automatic exchange of country-by-country reports and spontaneous exchange of information on tax rulings under the BEPS package. It empowers the Chief Executive to issue Order to give effect to any multilateral convention signed by Hong Kong or signed by the Central People's Government (CPG) and applicable to Hong Kong.</p>
20 March 2018	<p>Hong Kong became a signatory to the CRS MCAA</p> <p>Hong Kong signed a declaration on joining the CRS MCAA.</p>
29 May 2018	<p>The application of the Convention was extended by the CPG to Hong Kong</p> <p>As Hong Kong is not a sovereign state, it cannot sign the Convention by itself. The CPG extended the application of the Convention signed by it in August 2013 to Hong Kong by registering a "Declaration for Extension" at the Organisation for Economic Co-operation and Development (OECD).</p>
25 June 2018	<p>The CPG made a declaration at the OECD in respect of effective date for exchanges of information under the CRS MCAA</p> <p>The CPG made a declaration on the effective date for exchanges of information under the CRS MCAA. The main effect of the declaration is that Hong Kong can exchange information under the Convention/CRS MCAA irrespective of the taxable periods or charges to tax to which such information relates. As such, Hong Kong can exchange financial account information relating to the period from 1 July to 31 December 2017 as previously committed after the Convention/CRS MCAA become effective.</p>
13 July 2018	<p>The Chief Executive made an Order under the IRO to give effect to the Convention in Hong Kong</p> <p>An Order was made by the Chief Executive under section 49(1A) of the IRO and published in the Gazette to give effect to the Convention and the relevant reservations and declarations in Hong Kong.</p> <p>To allow the Convention to enter into force in Hong Kong on 1 September 2018, a special arrangement was made so that the Order (which is a piece of subsidiary legislation) came into force on the date of gazette (i.e. 13 July 2018) without waiting for the expiry of the negative vetting period.</p>
26 July 2018	<p>Hong Kong became a signatory to the CbC MCAA</p> <p>Hong Kong signed a declaration on joining the CbC MCAA.</p>

Let's talk

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* These results are based on an independent survey of 100 primary buyers of tax services in Hong Kong, conducted by research agency Jigsaw Research (Q1-Q4 2016).

In the context of this News Flash, China, Mainland China or the PRC refers to the People's Republic of China but excludes Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan Region.

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