

IRD issues CRS Notices to licensed financial institutions

21 August 2024

In brief

In the past weeks, the Hong Kong Inland Revenue Department (IRD) has sent notices (Notices) to certain entities licensed by or registered with the Securities and Futures Commission (SFC) and/or the Insurance Authority (IA) that are not registered as a financial institution (FI) on the IRD's automatic exchange of financial account information (AEOI) portal. The Notice requires the entity receiving the Notice to complete and furnish a questionnaire within 21 days from the day of the Notice. Failure to comply with the Notice could result in a potential fine of HK\$10,000.

This news flash provides a summary of the Notice and questionnaire along with our observations. For a detailed discussion, please contact our FATCA/CRS team based in Hong Kong.

In detail

Background

AEOI or Common Reporting Standard (CRS) is a global initiative by the Organisation for Economic Co-operation and Development (OECD) with the objective to combat tax evasion through global automatic exchange of information. FIs are required to identify financial accounts held by tax residents of reportable jurisdictions or held by certain entities whose controlling persons are tax residents of reportable jurisdictions in accordance with due diligence procedures (Reportable Accounts). Required information of these accounts must be collected and furnished to the IRD annually. Hong Kong FIs are required to notify the Commissioner of Inland Revenue via the IRD's AEOI portal within three months from the date on which they commence maintaining a Reportable Account.

The IRD continues to undertake certain proactive measures to enhance compliance with AEOI, including but not limited to, identifying potential reporting FIs that may be required to register and report for AEOI purposes. Source of information used to identify potential Reporting FIs may include SFC register of licensees and registered institutions, IA register of authorised insurers, US Foreign Account Tax Compliance Act (FATCA) foreign financial institution list and other regulatory information.

In the past weeks, the IRD has sent Notices to certain entities licensed by or registered with the SFC and/or IA that are not registered as an FI on the IRD's AEOI portal. The Notice requires the entity receiving the Notice to complete and furnish a questionnaire within 21 days from the date of the Notice. The questionnaire requires the entity to:

1. state whether an AEOI account has been registered;
2. state whether the entity is an FI and specify the type of FI;
3. If the entity is an FI, explain the reason(s) for not registering an AEOI account; and
4. If the entity is an FI but has not yet commenced maintaining any Reportable Accounts, state the positions of financial accounts maintained by the entity as at 31 December of the preceding year.

Failure to comply with the Notice could result in a potential fine of HK\$10,000. There are other punitive provisions in the Inland Revenue Ordinance (IRO) to sanction FIs, service providers and others for offences committed.

There are three main categories of penalties that deal with non-compliance, submission of incorrect returns, and defrauding with intent. The levels of penalties (generally, a fine at Level 3 (HK\$10,000) for the first two categories, and a fine at Level 3 (HK\$10,000) or Level 5 (HK\$50,000) with imprisonment for six months or three years for the last category) are laid down in sections 80B to 80F of the IRO.

Our observations

While the definition of FI in section 50A of the IRO is largely consistent with the definition in the CRS and Commentary on the CRS issued by the OECD, the IRO defines FI to include certain entities licensed or registered under the SFC or authorised under the Insurance Ordinance by default.

Hong Kong entities licensed by or registered with the SFC and/or IA that have not registered an AEOI account should review or confirm their current CRS entity classifications and determine whether financial accounts or Reportable Accounts are maintained.

Certain investment managers and investment advisors may have relied on an exception to exclude debt and equity interests in the investment entity from being viewed as a 'financial account'. We recommend that these investment managers and investment advisors revisit and confirm whether they can continue to rely on this exception based on their current fact patterns.

As scrutiny increases on FATCA and CRS compliance (such as mandatory compliance forms and periodic certifications, mandatory implementation of written policies and procedures, enquiries on entity classification and registration and imposing penalties on non-compliance), FIs are strongly encouraged to review their FATCA and CRS compliance programmes, to ensure that they have robust up-to-date policies, procedures, and controls in place to mitigate the risk of penalties and regulatory enforcement actions.

The takeaway

Hong Kong entities licensed by or registered with the SFC and/or IA that have not registered an AEOI account should review immediately their CRS entity classifications and determine whether financial accounts or Reportable Accounts are maintained. Entities that have received IRD Notices should respond in timely manner.

We are pleased to offer our assistance including:

- CRS and FATCA entity classification
- CRS and FATCA health check
- Preparation and review of written policies and procedures
- Registration, account due diligence and reporting
- FATCA periodic certification
- Respond to regulatory authorities' queries
- Ad-hoc advisory support

Let's talk

For a deeper discussion of how this impacts your business, please contact:

PwC FATCA/CRS team based in Hong Kong

Vivien Lau
Partner
+852 2289 1845
vivien.cw.lau@hk.pwc.com

Marcus Chan
Partner
+852 2289 3645
marcus.mk.chan@hk.pwc.com

Ivan Lam
Director
+852 2289 3057
ivan.wm.lam@hk.pwc.com



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The information contained in this publication is for general guidance on matters of interest only and is not meant to be comprehensive. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PwC's client service team or your other tax advisers. The materials contained in this publication were assembled on 21 August 2024 and were based on the law enforceable and information available at that time.

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