Exchange of Tax Information and Its Development

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Deputy Commissioner of Inland Revenue
Agenda

1. Hong Kong’s Tax Treaty Policy
2. The Current EOI Mechanism
3. From FATCA to CRS
4. Hong Kong’s Commitment
5. The AEOI Standard
6. Possible Legal Framework for AEOI
1. Hong Kong’s Tax Treaty Policy
Tax Treaty Policy and Exchange of Tax Information

Current policy only allows EOI upon request under DTAs and TIEAs.

• EOI Article based on OECD’s Model Tax Convention of 2010 version; and EOI arrangement based on OECD’s TIEA Model of 2002 version.

Efforts made to meet evolving international standards.

• Removal of domestic tax interest requirement in 2010; and enactment of legislation for TIEAs in 2013.

Policy priority remains unchanged.

• Expanding network of DTAs with major trading and investment partners while signing TIEAs on a need basis.
Hong Kong’s Progress on DTAs/TIEAs

**DTAs**
- 31 signed – 11 of top 20 major trading partners (i.e. Mainland, Japan, Korea, Thailand, Malaysia, UK, Switzerland, Vietnam, France, Italy and the Netherlands)
- 5 to be concluded – UAE, Russia, Latvia, India, Romania
- 9 under negotiation – Bahrain, Bangladesh, Finland, Germany, Israel, Macao, Mauritius, Pakistan, Saudi Arabia

**TIEAs**
- 7 signed – US, Denmark, Norway, Sweden, Greenland, Iceland and Faroe Islands
- 5 under planning – Argentina, Brazil, Poland, Philippines and Ukraine
Hong Kong’s DTA Network


Brunei Netherlands Indonesia Hungary Kuwait Austria United Kingdom Ireland Liechtenstein France Japan New Zealand Portugal Spain Czech Republic Switzerland Malta Jersey Malaysia Mexico Canada Italy Guernsey Qatar Korea South Africa Bahrain Bangladesh Finland Germany India Israel Latvia Macao SAR Mauritius Pakistan Romania Russia Saudi Arabia United Arab Emirates
2. The Current EOI Mechanism
EOI Platforms

**DTA**

EOI Article in Double Taxation Agreement

**TIEA**

Tax Information Exchange Agreement
# Comparison between DTA and TIEA

<table>
<thead>
<tr>
<th></th>
<th>DTA</th>
<th>TIEA</th>
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<tbody>
<tr>
<td><strong>EOI Obligation</strong></td>
<td>EOI article in DTA</td>
<td>TIEA</td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td>Cover comprehensive tax matters including -</td>
<td>Provide for EOI only</td>
</tr>
<tr>
<td></td>
<td>- assignment of taxing rights</td>
<td></td>
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<tr>
<td></td>
<td>- provision of double taxation relief and tax benefits</td>
<td></td>
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<tr>
<td></td>
<td>- MAP procedure to resolve difficulties or doubts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- exchange of information</td>
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<tr>
<td><strong>Safeguards</strong></td>
<td>Safeguards to protect confidentiality of information and taxpayers’ right of privacy</td>
<td>Same level of protection as DTA</td>
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Protection Given

- Exchange information only upon request.
- Only disclose information which is “foreseeably relevant”.
- Treat information received as confidential.
- Disclose information to tax authorities concerned but no release to their oversight bodies unless there are legitimate reasons given.
- No disclosure of information to a third jurisdiction.
- No obligation to supply information under certain circumstances, e.g. where information will disclose any trade, business, industrial, commercial or professional secret or trade process, or which will be covered by legal professional privilege, etc.
Example – Foreseeable Relevance

- Company F resident in Country F, a DTA partner jurisdiction
- Lower withholding tax on royalties paid to Hong Kong residents
- Country F requested Hong Kong to confirm whether Company HK was
  - a resident of Hong Kong
  - the beneficial owner of royalties
Example – Foreseeable Relevance

- Country F is a DTA or TIEA partner jurisdiction
- Income derived by residents of Country F is subject to income tax
- Country F requested Hong Kong to provide the details of royalties paid to Company F
Rules of Confidentiality

- Confidentiality rules apply to all types of information including:
  - information provided in an EOI request;
  - information transmitted in response to a request.
- Information received is treated as confidential.
- Disclosure to persons or tax authorities concerned with assessment, collection and enforcement of tax.
- No disclosure to any other person, entity, authority or jurisdiction.
- No disclosure to third jurisdiction.
- Confidentiality provisions under DTAs and TIEAs create obligations under international law.
Reasons for EOI

- Granting tax treaty benefits
- Preventing tax treaty abuses
- Determining correct transfer prices
- Carrying out tax audits
Types of Information Exchanged

- Bank statements
- Ownership records
- Accounting records
Major EOI Partners

- France
- Japan
- Mainland China
- Netherlands
Notification and Review System

Subject person has right

To be informed about EOI request

Prior to the disclosure of information

To request a copy of information

Within 14 days after notice of disclosure request is given

To request CIR to amend the information to be exchanged

Within 21 days after copy of information is provided

To request Financial Secretary to review CIR’s decision

Within 14 days after CIR refuses to amend the information

Exceptions

• Time constraint (no prior disclosure)
• Inadequate address (no disclosure)
• Undermining investigation (no disclosure)

Two grounds

• Not related to subject person
• Factually incorrect

Financial Secretary’s decision is final
Overview of Incoming EOI Process

*Note: Subject person and information holder can be the same person.

Financial Secretary

Request for review

Request for Amendment / Accept or Refuse to Amend

Decision

Subject Person*

Information Holder*

Notification

Formal Notice

Information

Hong Kong

Competent Authority

Incoming EOI Requests

Draft Reply

Foreign Competent Authority

Treaty Partner

Request for copy / Copy of Information

Assessing Units

Tax Treaty Section

Incoming EOI Requests

Final Reply

Incoming EOI Requests
### Incoming EOI Process

<table>
<thead>
<tr>
<th>Stage</th>
<th>Activity</th>
<th>Document</th>
<th>Responsible Unit/Section</th>
<th>Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipt of Request</td>
<td>Update Incoming EOI Register</td>
<td>Incoming EOI Register</td>
<td>TT Section</td>
<td>10 days</td>
</tr>
<tr>
<td>Validity Check</td>
<td>Check against DTA/TIEA and Disclosure Rules</td>
<td>Acknowledgement, clarification, letter declining request</td>
<td>TT Section</td>
<td>17 days</td>
</tr>
<tr>
<td>Issue of Notification</td>
<td>Issue notification to subject person</td>
<td>Notification</td>
<td>Assessing Unit</td>
<td>52 days</td>
</tr>
<tr>
<td>Collection of Information</td>
<td>Gather requested information</td>
<td>Formal notice</td>
<td>Assessing Unit</td>
<td>90 days</td>
</tr>
<tr>
<td></td>
<td>Prepare a draft reply</td>
<td>Draft reply</td>
<td>Assessing Unit</td>
<td></td>
</tr>
<tr>
<td>Issue of Reply</td>
<td>Send copy of information and follow up request for amendment</td>
<td>Copy of information, Reply to request for amendment</td>
<td>TT Section</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Issue the reply</td>
<td>Final/Interim reply</td>
<td>TT Section</td>
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3. From FATCA to CRS
Out of the Blocks - FATCA

- The Global Banking Crisis 2007/08 had a major impact on tax revenues and government borrowing around the globe. Significant political recognition that all should pay their fair share.

- USA concerned at significant funds held offshore and not being reported by US taxable persons. Particularly marked by the US system of taxing individuals on basis of citizenship rather than tax residence.

- March 2010 – USA enacted the Hiring Incentives to Restore Employment Act (HIRE Act) that contained powers to introduce regulations to require overseas financial institutions to report details of accounts held by US specified persons.

- February 2012 – USA published draft regulations for the Foreign Account Tax Compliance Act. FATCA had arrived.
The Way FATCA Works

Approach aimed at –

- Avoiding the 30% withholding tax by removing it for financial institutions in territory with an IGA with the USA.
- Managing and reducing the costs to business by controlling the process domestically.
- Exchanging data under cover of EOI Articles and/or FFI agreements.
HK-US TIEA and Model 2 IGA

- HK-US TIEA was signed on 25 March 2014 and came into force on 20 June 2014.

- HK-US Model 2 IGA was signed on 13 November 2014.
April 2013 – G20, supported by EU Commission, asked OECD to consider developing a model for automatic exchange based on FATCA. Proposals endorsed by G20 in September 2013.

February 2014 – OECD delivered the Common Reporting Standard.

July 2014 – OECD delivered the commentary on the CRS.

September 2014 – G20 signed off the model that will be the global standard for automatic exchange.

29 October 2014 – 93 countries committed to exchanging under the CRS in 2017 (58) or 2018 (35) with 51 of them signing the multilateral competent authority agreement that starts the implementation process for the CRS.
The AEOI Timeline

- Sept 13: G20 endorsed AEOI as new global standard
- Feb 14: G20 endorsed AEOI as new global standard
- Mar 14: OECD approved and G20 endorsed first part of standard
- May 14: OECD Ministerial Declaration (OECD members + 14 other countries)
- Jul 14: OECD released the full version of standard
- Sept 14: G20 Finance Ministers endorsed full version of standard
- Oct 14: Global Forum gauged commitments and agreed on terms of reference and methodology for review
- Nov 14: Multilateral Competent Authority Agreement signed by early adopters
- 2016: G20 Leaders noted the status of commitments
- 2017: Start of country reviews
- 2018: Latest timetable allowable for the first exchange under the new standard

Start of country reviews
First exchange under the new standard (for early adopters)
## Status of AEOI Commitments

<table>
<thead>
<tr>
<th>Jurisdictions undertaking first exchanges by 2017</th>
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<tbody>
<tr>
<td>Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Chile, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, the Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks and Caicos Islands, United Kingdom, Uruguay</td>
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<thead>
<tr>
<th>Jurisdictions undertaking first exchanges by 2018</th>
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<tbody>
<tr>
<td>Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Belize, Brazil, Brunei Darussalam, Canada, China, Costa Rica, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Marshall Islands, Macau (China), Malaysia, Monaco, New Zealand, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Turkey, United Arab Emirates</td>
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<tr>
<th>Jurisdictions that have not indicated a timeline or that have not yet committed</th>
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<tr>
<td>Bahrain, Cook Islands, Nauru, Panama, Vanuatu</td>
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4. Hong Kong’s Commitment
Reasons for Commitment

International landscape leading to positive response
- 93 jurisdictions have committed publicly, of which 15 are among Hong Kong’s top 20 trading partners.
- International consensus forged and standard prescribed and unified.

Adverse consequences of not committing
- Sidelined by other members of the international community.
- Perceived as uncooperative jurisdiction.

Commitment with conditions
- AEOI is conducted on a reciprocal basis with appropriate partners which can meet relevant requirements on protection of privacy and confidentiality of information exchanged and ensuring proper use of data.
Hong Kong’s Support for New Standard

- Hong Kong Government indicated on 15 September 2014 to Global Forum Hong Kong's support for the new global standard on AEOI for the purpose of enhancing tax transparency and combating cross-border tax evasion.

- It is crucial for Hong Kong to adopt the latest global standard on tax transparency in order to maintain our international reputation and competitiveness as an international financial and business centre.
Work in Progress

IRD is working on a number of areas in preparation for AEOI:

- System building to enable reporting of information to IRD – CRS registration and reporting will be available.
- Legislation for CRS will be enacted and involves interaction with other legislation as well.
- New guidance will be prepared to cover AEOI agreements.
- Test and learn on existing data to develop processes for handling the data once received.
- Interactions with other tax administrations to develop best practice in using the data.
- Continuing interaction with stakeholders as we move towards first exchange.
- Continuing to engage at OECD/Global Forum working groups to monitor and improve the AEOI processes.
5. The AEOI Standard
Three Key Foundations

- Secure Automatic Exchange
- INFORMATION
- Availability
- Reporting by Financial Institutions
AEOI Standard
Basic Approach: Leveraging on FATCA

1. Model 1 IGA reporting
2. Model 1 IGA exchanges
3. Leveraging on Model 1 IGA implementation to develop standardised automatic exchange in a multilateral context
Automatic Exchange Standard
Basic Approach: CRS + CAA = Exchange Standard

Reporting of information based on Common Reporting Standard (CRS) implemented via domestic law

AEOI based on EOI Article under DTA, TIEA or Multilateral Convention on Mutual Administrative Assistance in Tax Matters plus Multilateral Competent Authority Agreement

Reporting of information based on CRS implemented via domestic law
CRS: Building on FATCA

Scope of information reported
• Personal data: name, address, tax residence, taxpayer identification number
• Financial data: account balance, investment income, sales proceeds from financial assets

Scope of financial institutions required to report
• Banks, custodians, insurance companies and investment entities (e.g. certain collective investment vehicles)

Scope of account holders subject to reporting
• Individuals
• Entities (including trusts and foundations)
• Controlling persons (i.e. beneficial owners) of entities

Due diligence procedures
• Distinction between pre-existing and new, individual and entity, lower value and high value accounts
6. Possible Legal Framework for AEOI
Possible Legal Framework

Existing Framework for EOI on Request

- Enabling provisions for EOI on request
- DTA or TIEAs by way of Order under IRO

Notification and Review Mechanism under Inland Revenue (Disclosure of Information) Rules

IRD’s information-gathering powers on identified persons for the purpose of EOI on request remains unchanged

Proposed Enabling Framework for AEOI

Inland Revenue Ordinance
- Enabling provisions for AEOI
- Legal basis: DTAs or TIEAs (bilateral)

Due diligence procedures for financial institutions to identify reportable accounts and furnish annual returns

IRD’s information-gathering powers on financial institutions

Record-keeping and return requirements for financial institutions

Safeguards to protect data privacy and confidentiality following international standards

To review if there would be any interfacing issues with other relevant ordinances
## Time Table

<table>
<thead>
<tr>
<th><strong>International front</strong></th>
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<tbody>
<tr>
<td><strong>Oct 2014</strong></td>
<td>To commit to the new standard at the Global Forum plenary</td>
</tr>
<tr>
<td><strong>Oct 2015</strong></td>
<td>To submit initial implementation plan</td>
</tr>
<tr>
<td><strong>2016 &amp; 2017</strong></td>
<td>To provide annual report to the Global Forum on progress of implementation</td>
</tr>
<tr>
<td><strong>End 2018</strong></td>
<td>To commence the first automatic exchange (the latest)</td>
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<table>
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<tr>
<th><strong>Domestic front</strong></th>
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<tr>
<td><strong>Q4 of 2014</strong></td>
<td>To gauge initial views from local stakeholders/LegCo</td>
</tr>
<tr>
<td><strong>2015</strong></td>
<td>To prepare detailed legislative proposals and engage local stakeholders</td>
</tr>
<tr>
<td><strong>2016</strong></td>
<td>To introduce relevant Bill into LegCo</td>
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</table>
End