

**Press Release**  
**Inland Revenue (Amendment) Bill 2016 gazetted**  
Friday, January 8, 2016

The Inland Revenue (Amendment) Bill 2016 was gazetted today (January 8).

"The Bill seeks to put in place a legal framework for Hong Kong to implement the new international standard for automatic exchange of financial account information in tax matters (AEOI) as promulgated by the Organisation for Economic Co-operation and Development (OECD)," a Government spokesman said.

Hong Kong pledged support for the AEOI standard in September 2014. The commitment was that, subject to the passage of local legislation, AEOI would be implemented on a reciprocal basis with appropriate partners which could meet relevant standards on protection of privacy and confidentiality of information exchanged and ensuring proper use of the data exchanged, with a view to commencing the first information exchanges by the end of 2018. So far, over 90 jurisdictions have committed to implementing the AEOI standard.

In very brief terms, under the AEOI standard, a financial institution (FI) is required to identify financial accounts held by tax residents of reportable jurisdictions (i.e. tax residents who are liable to tax by reason of residence in the jurisdictions with which Hong Kong has entered into an AEOI arrangement). FIs are required to collect the reportable information of these financial accounts, and furnish such information to the Inland Revenue Department (IRD). The IRD will exchange it with the tax authorities of AEOI partner jurisdictions on an annual basis.

"We adopt a pragmatic approach to incorporate into our domestic law the essential requirements of the AEOI standard, and will ensure effective implementation whilst not imposing disproportionate compliance burden on FIs. In formulating the legislative proposals, we have taken into account the views and feedback collected during the consultation exercise from April to June 2015," the Government spokesman added.

In general, whether or not an individual or entity is a tax resident of a

jurisdiction is determined by having regard to the person's physical presence or stay in a place (say, whether over 183 days within a tax year) or, in the case of a company, the place of incorporation or where the central management and control of the entity lies. That a person has paid taxes charged by a jurisdiction (say, value-added tax, withholding tax or capital gains tax) does not automatically render that person a tax resident of that jurisdiction.

"We intend to conduct AEOI only with our partners with which Hong Kong has signed comprehensive avoidance of double taxation agreements (CDTAs) or tax information exchange agreements (TIEAs), on a bilateral basis. The safeguards for exchange of information under the respective CDTAs and TIEAs will be applicable to information exchanged under the AEOI mode, alongside safeguards under the AEOI Standard", the spokesman added.

The Bill covers the following four key aspects:

(a) Scope of FIs and financial accounts to be reported: The Bill sets out the definitions alongside those provided in the AEOI standard, with adaptations where necessary by including references to Hong Kong's domestic law. The Bill provides for certain FIs and accounts (known as "non-reporting FIs" and "excluded accounts" respectively), which present a low risk of being used for tax evasion, to be exempted from reporting.

(b) Obligations on FIs to identify reportable accounts and collect information from account holders: The Bill prescribes the due diligence procedures for FIs to identify whether a financial account is a "reportable account". To meet the AEOI requirements, FIs must maintain and apply such procedures to identify accounts and collect information of account holders who are tax residents of the specific reportable jurisdictions (targeted approach). To provide flexibility for FIs in carrying out the due diligence obligations, the Bill also provides that FIs may apply the same procedures to identify accounts and collect information of account holders who are tax residents of any other jurisdiction outside Hong Kong (wider approach).

(c) Scope of information to be furnished by FIs to the IRD: As far as personal data is concerned, the information to be exchanged includes name, address, jurisdiction of residence, taxpayer identification number, and the date and place of birth. As for financial account data, it includes the account number, account

balance or value (year-end), and the gross amount of interest, dividends and sale proceeds of financial assets as appropriate.

(d) Enforcement powers for the IRD and sanctions against non-compliance: In order to ensure effective implementation of AEOI in Hong Kong, the Bill provides the IRD with necessary enforcement powers (e.g. requiring FIs to furnish information of reportable accounts in the specified format, having access to the business premises of FIs and inspecting their compliance systems and processes, and requiring FIs to rectify systems and processes if found to be non-complying). The Bill also proposes various penalty provisions for FIs, service providers and account holders.

The time frame for Hong Kong to deliver its commitment and commence the first information exchanges by the end of 2018 is very tight. It involves four key tasks:

(a) First, passage of the local legislation must be secured by the end of the legislative year in July 2016.

(b) Identification of at least one suitable candidate to be an AEOI partner is then needed, with a view to concluding the negotiations by the end of 2016. The inclusion of the relevant AEOI partner is subject to negative vetting by the Legislative Council.

(c) Once the AEOI agreement is in place, financial institutions have to put in place the due diligence procedures in order to identify and collect information of the relevant financial accounts in 2017.

(d) Finally, FIs would have to furnish the information to the IRD in 2018 for transmission to the AEOI partner.

"The Bill will be introduced into the Legislative Council on January 20. We will make the best endeavour to support the Legislative Council in scrutinising the Bill and to secure its early passage," the spokesman said.

Ends