65 years in Hong Kong

Think Ahead ACCA

Revenue division
Financial Services and the Treasury Bureau
(Treasury Branch)
24/F, Central Government Offices,
2 Tim Mei Avenue, Tamar
Hong Kong.

(Attn: AEOI Consultation)

30 June 2015

Dear Sir \ Madam

Automatic Exchange of Financial Account Information in Tax Matters (AEOI) in Hong Kong

We refer to your letter dated 24 April 2015 on the abovementioned subject.

We understand that the Global Forum on Transparency and Exchange of Information for Tax Purposes has invited all its member jurisdictions to commit to implement the new global standard which involves systematic and periodic transmission of financial account information through reporting by financial institutions (FIs) in the source jurisdiction to the jurisdictions of residence of the account holders.

Over 90 jurisdictions, including China, Singapore and Switzerland, have already committed publicly to the implementation of the new global standard. We agree that Hong Kong could not afford to be perceived as an uncooperative jurisdiction, which may run the risk of affecting our international reputation and competitiveness as an international financial and business centre. ACCA Hong Kong shares the view that committing to the AEOI standards is an important element to reinforce Hong Kong's position as an international financial centre.

However, ACCA Hong Kong also appreciates the concerns of the public regarding the confidentiality of account holders' information which may undermine investors' confidence in Hong Kong and the burden it places on the bank account holders and FIs in identifying the tax residence, which can be understood as a complicated issue in particular from the perspective of a layman.

In view of the above, ACCA Hong Kong supports the implementation of automatic exchange of financial account information for tax matters with the following suggestions:

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1. **FIs, non-reporting FIs and excluded accounts**
   The proposed scope under paragraph 2.12 (d) (v) and (vi) in respect of "investment entity" is too wide, in particular subsection (v) which refers to any entity that primarily conducts as a business one or more of those prescribed activities for or on behalf of a customer. Implication of this subsection could be far-reaching as this customer can be an "internal customer" where a commercial entity or a subsidiary provides finance services to the other group entities. To avoid creating undue burden on the reporting entities, a clause specifically excluding entities that provide finance services to internal customers within the same group should be considered.

2. **Reporting Requirements**
   We appreciate that the information included in paragraph 2.19 is already the minimum requirements stipulated by CRS. In order to ensure our model meets the international standard, room for further trimming down the requirements could be limited. However, we will appreciate it if the views and comments of the industry, in particular of those FIs of relatively smaller scale, be considered in order not to create undue burden of compliance on them. In addition, we are of the view that information to be exchanged should be kept to minimal to protect the confidentiality of the account holders' information and to reduce their burden.

3. **Due Diligence Procedures**
   We note that the onus of ascertaining tax residence rests with the account holders. However, given the technical complexity in determining tax residence, we suggest detailed guidelines be provided.

   To assist the account holders in declaring and reporting their tax residence accurately on the self-certifications, the government should issue detailed guidelines for defining tax residence, set up hotlines and allocate adequate resources to support the process.

   Detailed guidelines should also be issued regarding reporting for passive entities, nominees, agents and beneficial owners.

4. **Requirement for FIs to identify and keep information of accounts concerning reportable jurisdictions**
   We understand some FIs' preference is to keep information of accounts concerning all non–Hong Kong tax resident accounts, notwithstanding the legislative requirement for FIs to report to IRD only information concerning reportable jurisdictions.

This will avoid requirement to further collect information again from those non-Hong Kong tax resident accounts who are currently not reportable jurisdictions but in later days become ones when the jurisdictions become our CDTA or TIEA partners (reportable jurisdictions). We suggest the arrangements should be flexible to cater for the operation needs of the industry, in particular of those FIs of relatively smaller scale.

However, jurisdictions with whom the information would be exchanged are strictly restricted to those of residence of the account holders only. And we reiterate the importance of having safeguards in place to ensure adequate protection of account holders' right and the confidentiality of their tax affairs and proper use of the information.

5. **Proposed sanctions**

The proposed penalty on the FIs stipulated in paragraph 2.24 needs to be elaborated and clarified whether the level 3 fine and the daily fine are applied to each separate bank account per each financial year or to each individual account holder who may hold several individual bank accounts or entity accounts per each financial year.

Whilst determining the account holders' tax residence could be a complicated issue, we consider that the proposed sanctions on the employees of FIs should only be restricted to responsible officers with oversight roles, but exclude frontline employees without decision making rights.

We reiterate our concern that employees of FIs may lack the knowledge and technical expertise in identifying tax residence of the account holders. In addition, where the employees fail to comply with the requirements without reasonable excuse or defraud wilfully, they could be caught and sanctioned under various other legislations. As such, we consider that execution of sanction under this proposed legislation should be applied leniently.

6. **Confidentiality and notification**

We note that under paragraph 2.33, the account holders are given chances to review and update their own personal data and financial account information to ensure its accuracy and they can always request to review the relevant information from FIs.

We fully agree that all information collected by Inland Revenue Department (IRD) should to be consolidated and a proper mechanism should be available to allow account holders to review or amend the information prior to the transfer by IRD to the AEOI partners. Account

holders should also have the right to appeal where they consider their information is inaccurate or feel that their rights are being infringed upon. We note that currently there are safeguards stated in the IRD's Departmental Interpretation and Practice Notes No 47 and suggest that similar safeguards be put in place.

This would not only ensure data accuracy and protect the confidentiality of account holders' information, but also reinforce investors' confidence in Hong Kong.

Apart from the above, we also have the following suggestions:

a. Information to be exchanged should be presented in pre-designed return formats and languages with no further requirement of translations to avoid possible distortions and increase in manpower resources of the IRD;

b. Sufficient resources, including secure and efficient transmission systems, should be invested to ensure proper implementation of the above safeguards and commitments.

Should there be any questions, please do not hesitate to contact the undersigned at 2973 1108.

Yours faithfully

Fergus Wong
Chairman