

Automatic Exchange of Information (AEOI) – Questions on “The Common Reporting Standard and the Due Diligence Procedures for Financial Account Information” (CRS)

(First published in July 2017)

Background of Implementation and Scope of Application:

1. What are AEOI and CRS?

“The Global Forum on Transparency and Exchange of Information for Tax Purposes”, an international taxation organization, released the CRS in July 2014, regulating the governments of all participating jurisdictions to obtain information of financial accounts held by foreign tax residents through their local financial institutions, and to conduct the exchange of information with other jurisdictions on an annual basis. Therefore, financial institutions need to report the information of the involved financial accounts to their respective competent authorities annually. The respective jurisdictions will conduct the exchange of information with the jurisdictions with which agreements have been entered into under the AEOI mechanism.

2. Why should AEOI be implemented?

AEOI is a global mechanism, which has been committed to participate and implement by more than a hundred tax jurisdictions to enhance tax transparency and combat cross-border tax evasion activities in various countries around the world. Meanwhile, being a responsible member of the Global Forum, Macao SAR conducted the first automatic exchange of information in 2018. For effective implementation of the mechanism, financial institutions in Macao SAR have conducted their due diligence according to the CRS starting from 1st July, 2017 to identify financial accounts held by foreign tax residents, and reported the information of the involved financial accounts to Financial Services Bureau (FSB) for automatic exchange under the AEOI mechanism.

3. What types of information are covered by AEOI?

The financial account information related to the application of AEOI includes: name, address, jurisdiction(s) of residence and tax identification number (TIN), and date and place of birth of the account holder (in the case of a natural person), the account number, balance or value of the account as of the end of the preceding calendar year (including information regarding the amount of interest, dividends,

income from the sale of assets, etc.).

(updated in December 2020)

4. Who will be the reportable person for AEOI?

If an individual or an entity is tax resident of a foreign jurisdiction, which has signed with Macao SAR any agreement with automatic exchange of information provision, financial institutions shall report the information of the financial account of that relevant individual or entity to FSB annually. FSB will transmit the information to the competent authority of the foreign jurisdiction to which the account holder belongs, for tax purposes.

Questions related to account holder(s) and account opening procedures:

5. How will financial institutions' clients be affected by AEOI while opening accounts?

According to the CRS, for financial institutions to determine whether account holders have foreign jurisdiction tax residency, their clients have been required to provide a self-certification as part of the documentation for opening new financial accounts starting from 1st July, 2017. For new accounts where the self-certification is not provided, financial institutions shall not provide account services to new clients. Moreover, financial institutions can require preexisting account holders to provide a self-certification if necessary.

(updated in December 2020)

6. For Macao residents who do not have foreign tax residency, is it necessary for them to complete and submit self-certification when opening new accounts with the financial institutions?

Financial institutions shall require their clients to provide a self-certification which can prove their tax residency, as an integral part of the required documentation for opening new financial accounts. Therefore, even if Macao residents who do not have foreign tax residency, they are still required to complete and submit a self-certification when opening new accounts with the financial institutions.

(updated in December 2020)

7. For Macao residents who do not have foreign tax residency, is it necessary for their account information to be reported to Financial Services Bureau (FSB)?

For Macao residents who do not have foreign tax residency, their account

information is not necessary to be reported to FSB.

(added in December 2020)

8. Is it necessary for the clients to update their self-certification on a regular basis?

The self-certification provided by the account holders is not subject to periodic updating if the status of the account holders remains unchanged. However, if there are changes in circumstances which result in the previously submitted self-certification become incorrect, the account holders are required to provide an appropriately updated one to the respective financial institutions. Similarly, if the financial institutions have reasonable grounds to believe there are changes in the account holders' status, financial institutions may require the account holders to update the self-certification.

9. How can the clients of financial institutions know if they are tax residents of a foreign jurisdiction and their account information is required to be reported?

According to the interpretation of the CRS, "an individual usually has only one jurisdiction as the place of residence for tax purposes. However, the individual may also belong to more than one jurisdiction depending on whether the internal law of particular jurisdiction considers that individual as its tax resident." Generally speaking, it depends on the place in which one resides or the duration of stay in one place. (e.g., whether exceeds 183 days within a tax year); in the case of a company, it depends on the place where the company is established or where its central management and control is conducted. Therefore, even if an individual pays tax in a particular jurisdiction (such as withholding tax, consumption tax or capital gain tax), it does not necessarily constitute that he/she is a tax resident in that jurisdiction. If an individual does not have any foreign tax residency status, the information of his or her financial account will not be reported to the competent authority of other tax jurisdictions. For details, please refer to:

<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/#d.en.347760>

Example 1:

If you are deemed to be a tax resident under the law of Country A, and have a joint account with your spouse with the financial institution in Macao SAR, the respective financial institution will report your personal and account information (joint account information will be treated as a whole and will not be apportioned) to FSB. FSB will transmit the relevant information to the competent authority of

Country A in accordance with the agreement for automatic exchange of information. However, if your spouse is not a tax resident of any foreign jurisdictions, the financial institution will only need to report your own information to FSB.

Example 2:

If you are not deemed to be a tax resident under the law of Country B, you will not automatically become a tax resident of Country B simply because you own a property in Country B and are required to pay capital gain tax locally. So it is not necessary for the financial institutions to report your information to FSB.

Questions related to financial institutions while performing the obligations of AEOI:

10. Which types of financial institutions are obliged to conduct the AEOI due diligence and report information to the Financial Services Bureau (FSB)?

Financial institutions that are obliged to conduct the AEOI due diligence include custodial institutions, depository institutions, investment entities, or specified insurance companies. Under the framework of the AEOI in Macao SAR, only financial institutions established or have branches located in Macao SAR shall perform the obligations of the AEOI and report relevant account information to FSB. Reporting financial institutions include banks, financial intermediaries, investment funds and investment fund management companies, life insurance companies, finance companies, management companies established for managing pension fund, pension funds, etc. Institutions which satisfy the definition of non-reporting financial institutions are not obliged to perform due diligence procedures.

(updated in December 2020)

11. With what approach shall financial institutions apply to identify the tax residency of the account holders?

From 1st July, 2017, financial institutions have identified financial accounts held by foreign tax residents using wider approach in accordance with the CRS. A wider approach means that regardless of whether Macao SAR has signed any exchange of tax information agreement with relevant jurisdictions, financial institutions shall consistently identify if the accounts are held by foreign tax residents, which can be reported to FSB once such kind of agreement is signed in the future, without having to re-conduct the due diligence procedures.

(updated in December 2020)

12. How will reporting financial institutions be affected by AEOI in handling new accounts?

Reporting financial institutions shall require their clients to provide a self-certification which can prove their foreign tax residency, as an integral part of the required documentation for opening new financial accounts. For new accounts where self-certification is not provided, financial institutions shall not provide account services to new clients. Moreover, financial institutions can require preexisting account holders to provide a self-certification if necessary. Regarding the format and design of the self-certification form, financial institutions can optionally adopt the sample provided by FSB, or they can devise their own self-certification form under their internal procedures.

(updated in December 2020)

13. How can financial institutions verify if the information claimed by their clients in the self-certification is reasonable?

To verify whether the self-certification from their clients is reasonable, financial institutions can consider the documentary evidence obtained through other sources, including documentation collected pursuant to AML/KYC procedures. If there is no anomaly found, the self-certification can be considered reasonable. Therefore, reporting financial institutions are not expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification.

14. Are there any particular financial accounts granted an exemption from reporting?

Financial accounts that satisfy the requirement and definition of ‘excluded accounts’ stated in the CRS are exempted from reporting.

(updated in December 2020)

15. How do reporting financial institutions determine the aggregate balance and value of the financial accounts?

The aggregate balance or value of the account is determined on the last day of the calendar year. For the aggregate balance or value of the financial accounts held by individuals or entities, reporting financial institutions are required to aggregate all financial accounts they maintained, or by their related entities, but only to the extent that their computerized system can link the financial accounts by reference to a data element such as the client number or TIN, and allow the account balance or value to be aggregated. Aggregate balance or value of the account does not include any accounts that are defined as “Excluded Accounts”.

16. When shall reporting financial institutions report the information to the Financial Services Bureau (FSB)?

Reporting financial institutions shall report the reportable account information of the preceding calendar year to FSB through the AEOI System not later than 30th June each year.

(updated in December 2020)

17. What shall reporting financial institutions do if there are no reportable accounts identified after conducting due diligence procedures?

If reporting financial institutions confirm that the financial accounts maintained are non-reportable after conducting due diligence procedures, they shall notify FSB by sending an official letter not later than 30th June of each calendar year, stating that there is no reportable account information in the preceding year. Reporting financial institutions are required to submit the above-mentioned letter annually even if the circumstance remains unchanged in subsequent year(s).

(updated in December 2020)

18. What will be the consequences if reporting financial institutions fail to fulfill their reporting obligations?

Reporting financial institutions shall provide FSB with information about the preceding calendar year by means of electronic encryption at the latest on 30th June of each calendar year. If the financial institutions fail to report information within the period as stated in the regulation or reported information is incomplete, incorrect or fraudulent, this may lead to a fine of MOP6,000.00 to MOP60,000.00 according to the provisions of Law No. 5/2017 “Legal Regime for the Exchange of Tax Information”.

Safeguard of Information:

19. How will information involved in the AEOI be protected?

Our AEOI is carried out in accordance with the Information Security Management Standard (ISO 27001) and the standard of internet security promulgated by Macao SAR, which include independent and highly secure protective information network and computing system, security monitoring equipment, system application or authorization of use, data storage records, risk and control management, backup plans and procedures of handling confidential documents, to avoid the possibility of any leakage or malicious intrusion during data transmission and storage. At the same time, staff must comply with relevant

standards and procedures in handling information. In addition, FSB will only transmit information requested by the competent authorities of the contracting countries, which have signed automatic exchange of information agreements with Macao SAR. The agreement also requires the competent authorities of the contracting parties to have the same level of information security standards. The security standard in various jurisdictions will be assessed by international organizations to ensure that the information involved in the AEOI will be protected in a highly confidential environment.

Note:

If any doubts arise, please refer to the comments and implementation manual of the “ Common Reporting Standard and Due Diligence Procedures for Financial Account Information” published by the Organization for Economic Co-operation and Development (OECD).