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EDITORIAL NOTE

Welcome to the latest issue of our Tax Newsletter. In this issue, we have covered a number of developments and cases in the PRC and Hong Kong which could impose legal and tax implications to your business.

On the PRC side, following the national rollout of the Value-Added Tax ("**VAT**") reform, the State Administration for Taxation ("**SAT**") issued additional clarifications primarily to address the criteria of various VAT incentives across industries and services under the new law. The SAT shows determination to streamline the tax audit procedures by issuing two circulars on the topic. Further, developments have been seen on the preferential enterprise income tax treatments for Software and Integrated Circuits industries, and the long-waited reform on resource tax has finally came out. For the Hong Kong residents working in the PRC, a very good news was announced regarding the application procedures to enjoy treaty benefit.

In Hong Kong, the Hong Kong Special Administrative Region ("**HKSAR**") Government has streamlined the administrative arrangement for the application for Hong Kong Resident Status and entered into double taxation agreements with Romania and Russia. In addition, the Inland Revenue Department ("**IRD**") has updated its Departmental Interpretation and Practice Notes ("**DIPN**") no. 43 and issued DIPN no. 51 to provide clearer guidelines for extension of tax exemption for offshore private equity funds. Further, the IRD issued the tax returns for individuals in May and published its Performance Pledge Annual Report 2015/16. Finally, we wrap up this issue of Tax Newsletter with a brief introduction of the Common Reporting System in Hong Kong.

We welcome your feedback and any question you may have about this issue of the Tax Newsletter.

PRC

FURTHER CLARIFICATION ON VAT REFORM

On May 6, 2016, the SAT released SAT Announcement [2016] No. 29, titled *Announcement of the State Administration of Taxation on Promulgating the Administrative Measures for the Exemption of Value-Added Tax on Cross-border Taxable Activities under the Collection of Value-Added Tax in Lieu of Business Tax* ("**Circular 29**").

As background, since the VAT reform has been fully rolled out under "**Caishui [2016] No. 36**", Circular 29 was issued to replace the original SAT Announcement [2014] No. 49 and clarify administrative procedures especially related to cross-border services for VAT exemption purposes.

Apart from the inclusion of the construction, real estate, financial industry and the life service industries into the scope of cross-border services, and clarification on the corresponding VAT incentives available to these new sectors, Circular 29 provides guidance on some of the following key matters:

- Circular 29 stipulates that the services or intangible properties provided to entities or individuals within the special areas supervised by customs (such as bonded zones) shall not be classified as cross-border activities. Such provision is arguably crucial since bonded zones are popular for China supply chain planning.
- Circular 29 emphasizes that cross-border activities shall be supported by proper structured agreement, and shall be submitted to the PRC tax authority for review upon application of relevant VAT incentives.
- Circular 29 provides a more detailed definition of "offshore consumption" as compared with Circular 36 for each of the service categories. For instances, if the actual service recipient is located in China, such service will not be qualified as a cross-border service under Circular 29.
- Circular 29 gives taxpayer an option of waiving the zero-rated VAT incentive, but choosing VAT exemption. Application form of such waiver is also attached to the circular.

Circular 29 has been effective retrospectively from May 1, 2016. Taxpayers that have already completed the VAT exemption filings are not required to make the filing again under Circular 29; whereas for taxpayers that have not completed relevant filings but are qualified for VAT incentives, applications shall be submitted for VAT refund.

JOINT TAX AUDITS BY THE STATE AND THE LOCAL TAX BUREAUS

The SAT issued the *Circular on Issuing the Working Measures for the Joint Tax Audits by the State and the Local Tax Bureaus (for Trial Implementation)* (*Shui Zong Fa [2016] No. 84*, hereinafter referred to as the "**Working Measures**") on June 6, 2016. The Working Measures are issued for the purpose of streamlining the tax audits performed by the state and the local tax bureaus and reducing the burden of the taxpayers by avoidance of duplicate tax audits. Joint tax audits refer to tax audits performed by the state tax bureau and local tax bureau jointly towards the same taxpayer. According to the Working Measures, joint tax audits involve establishment of coordination system, sharing of tax information, allocation of investigation tasks, joint onsite inspection and examination by the state tax bureau and local tax bureau.

For joint tax audits launched by the state tax bureau and local tax bureau, each bureau should send at least two tax officers so as to form an audit team. The tax officers of the state tax bureau and local tax bureau shall perform the audit together and reach consensus on the tax treatment and penalties. The state tax bureau and local tax bureau shall then issue the Tax Assessment Notice and/or Penalty Notice separately and copy each other within 10 working days.

RANDOM CHECKLIST OF TAX INVESTIGATION TARGETS

The SAT issued the *Circular on Issuing the Administrative Measures for the Random Check List of Tax Investigation Targets (for Trial Implementation)* (*Shui Zong Fa [2016] No. 73*, hereinafter referred to as the "**Administrative Measures**") on May 24, 2016. The Administrative Measures are formulated for the purpose of improving the nationwide tax investigation random check system by exchanging and sharing information and data among all the municipal and upper level tax bureaus.

Under the Administrative Measures, tax investigation targets subject to random check include all the registered taxpayers and tax withholding agent, as well as other parties that are involved in the tax disputes.

CLASSIFICATION

All the tax investigation targets are classified into two categories, namely, Priority Investigation Targets and Non-priority Investigation Targets, determined based on a series of criteria such as tax payment amount, industry sector, location of business, registration type, whether the target belongs to group company or not, etc. Non-corporate taxpayers are generally classified as Non-priority Investigation Targets.

The tax bureaus should conduct tax investigations against the targets according to the following rules:

- Generally, all the Priority Investigation Targets shall be screened once every 5 years.
- The random check ratio of the Non-priority Investigation Targets should be 3% or less, among which the random check ratio of non-corporate taxpayers should be 1% or less.

ABNORMAL LIST

Tax Investigation Targets which meet any one of the following conditions shall be included in the Abnormal List, including:

- Tax risk rating is high;
- Has been reported for violation for twice within the past two years and has been proved true;
- Has committed tax violations during the investigation;
- The regular tax filing status is abnormal;
- Tax credit rating is Grade D;
- Has been reported for violations by other government department and is put on the jointly penalized list;
- Other abnormal conditions.

Taxpayers on the Abnormal List should be subject to more random check more frequently.

APPLICATION PROCEDURES SIMPLIFIED FOR HONG KONG RESIDENTS

WORKING IN MAINLAND CHINA TO ENJOY TREATY BENEFITS

On March 16 and April 15, 2016, the SAT and the IRD of HKSAR exchanged letters and reached a consensus on issuance of the Hong Kong Resident Identity Document in order to simplify the application procedures for treaty benefits under the *Agreement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Incomes* ("**DTA**").

Accordingly, the SAT issued the *Announcement on Issues Concerning the Use of Hong Kong Resident Identity Document in Mainland China,* SAT Announcement [2016] No. 35 ("**Announcement 35**"), effective on April 15, 2016, to clarify that the Hong Kong resident identity certificate issued by the HKSAR IRD for a Hong Kong resident for a particular calendar year may be used as the Hong Kong resident identity of the Hong Kong resident during the calendar year and the subsequent two calendar years. For example, if the HKSAR IRD, in year 2016, retroactively issued Hong Kong resident identity certificate to a Hong Kong resident for the calendar year of 2014, the Hong Kong resident may use the issued Hong Kong resident identity certificate to apply for DTA benefits for the calendar years of 2014, 2015 and 2016.

The purpose of this Announcement 35 is to simplify the application procedures for the DTA benefits, and with the introduction of the Announcement, it will significantly reduce the administrative burden of taxpayers. It is also worth noting that, if there is any change to the status of the Hong Kong resident after the IRD issues the Hong Kong resident identity certificate, which disqualifies the HK resident from the benefits in the DTA, the Hong Kong resident identity certificate that has been issued and is still within the 3-year valid period may no longer be used to certify the Hong Kong resident identity. The Announcement 35, however, fails to provide more details on the implementation of this requirement. Taxpayers may need to clarify this with the HKSAR IRD if there is such a change in the resident status.

CHINA KICKS OFF RESOURCE TAX REFORM

On 9 May 2016, the China SAT and the China Ministry of Finance ("**MOF**") announced the commencement of the reform of China's Resource Tax system ("**Resource Tax Reform**"). The following three new tax circulars have been released by the SAT and the MOF, setting out the purpose, principles, contents and guidelines for the Resource Tax Reform (together as the "**Circulars**").

- The Notice on the Promotion of Resource Tax Reform ("**Caishui [2016] No. 53"**);
- The Notice on the Policies for Resource Tax reform ("**Caishui [2016] No. 54"**); and
- The Provisional Measures for the Trial Reform of Water Resource Tax ("**Caishui [2016] No. 55"**).

According to these Circulars, the first stage of this Resource Tax Reform focuses on converting the tax basis of China's Resource Tax from quantity to price, and the implementation of a water resource tax pilot program in the Hebei Province. Local tax authorities at the province level have been required to formulate their corresponding local tax rules and start implementation from 1 July 2016.

The Circulars set out the following new policies for implementation in the first stage of the reform.

- Change the tax basis from quantity to price. Except for certain low value items such as clay, sandstones, non-metallic ores, all the natural resources will be taxed based on their sales price and the applicable tax rates.
- Grant provincial governments the power to determine the applicable local tax rates within the range indicated by the SAT and the MOF, subject to the final approval of the SAT and the MOF.
- Eliminate the Mineral Resource Compensation Surcharge ("**MRCS**") and the Price Regulation Fund Surcharge ("**PRFS**"). MRCS and PRFS, together with some other local surcharges identified as inconsistent with the China tax laws and regulations, will be formally cleared from the Resource Tax system.
- Trial Water Resource Tax Pilot Program in the Hebei Province. As a pilot program, the Hebei Province will start to levy resource tax on the consumption/use of both surface water and groundwater, and the resource tax will be calculated based on water quantity and corresponding tax rates. Punitive tax rates may also be imposed if a taxpayer exceeds the prescribed water consumption quotas.

To encourage resource saving and environment protection, the Circulars also provide some preferential treatments. For example, resources extracted by way of filling mining may enjoy a 50% reduction on the resource tax payable, and resources extracted from a depleting mine may enjoy a 30% reduction. At the same time, provincial governments are also allowed to formulate other preferential tax treatments for extraction/utilization of low grade ores and wastes.

For taxpayers, the actual impacts of Resource Tax Reform could be fairly different depending on their locations, target natural resources and applicable local tax rates. Taxpayers are suggested to keep good communication with the local authorities to cope with the incoming changes arising from the new local policies.

CHINA CONTINUES PREFERENTIAL ENTERPRISE INCOME TAX TREATMENTS FOR SOFTWARE AND INTEGRATED CIRCUIT INDUSTRIES AND SIMPLIFIES PROCEDURES FOR PREFERENTIAL TREATMENTS

The China National Development and Reform Commission ("**NDRC**"), the MOF, the Ministry of Industry and Information Technology ("**MIIT**"), and the SAT released *The Preferential Enterprise Income Tax Policies for Software and Integrated Circuit Industries* ("**Circular 49**") on 4 May, 2016 and also *The Key Software Enterprise and Integrated Circuit Design Enterprises Within the National Planning Area* ("**Circular 1056**") on 10 May, 2016. According to these two circulars, the existing preferential Enterprise Income Tax ("**EIT**") treatment for software and integrated circuit enterprises will continue, and the previous application procedures will be replaced by a simplified recordal process.

Starting from 2012, newly established integrated circuit enterprises and eligible software enterprises in China may enjoy a preferential EIT treatment of two-year exemption followed by three-year 50% reduction, starting from the first profit-making year. Key Software Enterprises and Key Integrated Circuit Design Enterprises certified based on the China national development plan, on the other hand, may enjoy a more favourable EIT rate of 10% after the 2-year exemption.

Circular 49 confirms that the current preferential EIT treatment will continue. Key criteria stay unchanged, and ownership of core intellectual property is still required in order for an applicant enterprise to enjoy the relevant preferential EIT treatment. The key change under Circular 49 is that the certification and pre-approval procedures would be replaced by a recordal and follow-up management process. Enterprises no longer need to go through the prolonged and burdensome application and certification procedures. Instead, they only need to conduct a recordal with their in-charge tax authority for entitlement of the EIT treatment. The provincial counterparts of NDRS, MOF and MIIT will jointly undertake to establish a monitoring mechanism to strengthen the relevant follow-up management.

Together with Circular [2016] 1056, Circular 49 also further specifies the detailed sectors of key software enterprises and integrated circuit design enterprises within the national planning layout, the qualification criteria, and documents to be submitted to the tax authority for recordal. These details in practice will serve as very useful guidelines for enterprises to conduct self-assessment on their qualification and to attempt the preferential EIT treatments.

It should be noted that according to Circular 49, provincial tax authorities are required to submit the software and integrated circuit enterprise list to the authorities at a higher level for verification in two batches before 20 March and 20 June of each year respectively. If an enterprise is uncertain about its qualification, it is advisable to carry out the recordal procedure by 20 March, so that any outstanding issues and queries may be settled with the tax authorities before the annual income tax filing. It is also worth mentioning that Circular 49 will retroactively apply to the year of 2015, and the deadline of conducting the recordal for enjoying the preferential income tax treatment for 2015 would be 20 June 2016.

NATIONWIDE REFORM TO RELAX CONTROL ON FOREX CONVERSION UNDER CAPITAL ACCOUNT

On June 9, 2016, the State Administration of Foreign Exchange ("**SAFE**") released the *Notice on Reform and Regulating of Administrative Policies over Foreign Exchange Conversion under Capital Account* ("**Notice**") which took immediate effect. The Reform expands the applicable scope of entities and source of capital for the discretionary conversion.

The highlights of the Notice are summarized as below:

- **Discretionary Conversion of Foreign Debts Expanded to Nationwide**

After the pilot schemes carried out in Free Trade Zone ("**FTZ**") in Shanghai and other regions, PRC non-financial institutions ("**PRC Companies**") in the country (including domestic enterprises and foreign invested enterprises ("**FIEs**") would be permitted to convert their foreign exchange ("**Forex**") raised from overseas debts on a discretionary basis since the date upon which the Notice was issued.

- **Unified Rules on Discretionary Conversion of Forex Income under Capital Account**

To the extent that the existing Forex rules expressly allow, PRC Companies are permitted to convert their Forex income under capital account according to their operational needs. The Forex income in this context includes the registered capital of FIEs, fund raised from overseas debts and funds generated and repatriated from overseas listing, etc.

The Forex income under capital account can be 100% converted into RMB but this proportion may be adjusted by SAFE as needed. Nevertheless, PRC Companies may still opt to convert their Forex income on a "payment basis" according to the applicable rules.

- **Receipt and Use of RMB Converted Fund via A Special Payment Account**

RMB converted from Forex Income under Capital Account on a discretionary basis shall be deposited to a special payment account ("**Payment Account**") opened with the bank. Other capital accounts opened with the same bank of the Payment Account can be connected to the same Payment Account (i.e. one single Payment account is used for all capital account items).

RMB fund converted from Forex income under the Payment Account can be used for current account payment in accordance with the PRC Companies' business scope or capital account permitted by law. RMB converted fund by PRC Companies are forbidden as follows:

a) Direct or indirect payment beyond the business scope or forbidden by laws;

b) Direct or indirect investment in securities market or investment products except for bank investment products which are "principal guaranteed", unless expressly stipulated by laws;

c) Loans to non-affiliated enterprises, unless expressly permitted by business scope;

d) Payment in construction or purchasing for non-self-use real estate (real estate enterprises excluded).

- **Payment Administration**

The Notice provides that PRC companies are not required to provide certificate for the use of the funds when the RMB fund converted from Forex income is deposited to the Payment Account. By the time when the payment is made from this Payment Account, the appropriate documents to support the authenticity of the use of the funds are required to be provided.

In addition, when PRC Companies use funds under capital account in name of reserve funds, the bank may exempt the requirement for the authentic proof. A PRC Company may have a quota of USD 200,000 equivalent covering both discretionary conversion and payment based conversion for payment in name of reserve funds. Previously, such quota for FIEs was USD 100,000.

It appears that this Notice is in consistent with the SAFE's recent attitude in "loosening inflow" and "tightening money outflow". Nevertheless, we believe the local banks might take some time to get familiar with and implement the new rules in practice.

HONG KONG

EASING TAXPAYERS' ADMINISTRATIVE BURDEN: REVISED CERTIFICATE OF HONG KONG RESIDENT STATUS APPLICATION

In order to claim tax benefits under the Comprehensive Arrangement for the Avoidance of Double Taxation signed between Hong Kong and mainland China ("**CDTA**"), eligible taxpayers have to obtain a Certificate of Resident Status ("**CoR**") issued by the IRD, which constitutes a proof of the resident status of the taxpayer.

Previously, a CoR issued with respect to a given calendar year is only valid for that particular year. The Mainland and Hong Kong agreed a streamlined administrative arrangement for the CoR in respect of the CDTA. Under the new arrangement, a CoR issued to an applicant for a particular calendar year can serve as a proof of the Hong Kong resident status of the applicant for that calendar year and the two succeeding calendar years. This eases the administrative burden of taxpayers seeking to claim tax benefits under the CDTA.

The new arrangement took effect on 15 April 2016, and applies to all CoRs issued in respect of the CDTA, including those issued before 15 April 2016.

In order to prevent treaty abuse in the post-BEPS (Base Erosion and Profit Shifting Project) environment, it is anticipated that the IRD would increase scrutiny on each application. Hence, when making an application for the CoR, an applicant should make sure that it qualifies as a Hong Kong resident and has satisfied all other conditions for enjoying the tax benefits under the CDTA.

TWO ORDERS ON AVOIDANCE OF DOUBLE TAXATION AGREEMENTS GAZETTED

On the 13 March 2016, Chief Executive in Council made two orders under the Inland Revenue Ordinance concerning the CDTA with Romania and Russia. These orders will be tabled at the Legislative Council on 18 May 2016 for negative vetting.

After Hong Kong and the treaty partners complete their ratification procedures, the CDTAs will enter into force.

A brief summary of benefits of the CDTAs are set out below:-

	Double taxation avoidance[1]	Royalties[2]	Interests[2]	Dividends[2]
CDTA with Romania	credit against any tax payable in respect of the same income in Roumania	3%	– 3% or 0%[3] – Exemption[4]	– 3% or 5%[5] – Exemption[6]
CDTA with Russia	credit against any tax payable in respect of the same income in Russia	3%		– 5% or 10%[7] – Exemption[8]

[1] Romanian or Russian residents (individuals and companies).

[2] Royalties/interests/dividends derived by Hong Kong residents in Romania/in Russia.

[3] Only shall zero rate apply when Hong Kong levies no withholding tax on interest otherwise the rate will be capped at 3%.

[4] If it is derived and beneficially owned by the Government of the Hong Kong Special Administrative Region ("HKSAR"), Hong Kong Monetary Authority ("**HKMA**"), Exchange Fund or such other financial institutions wholly or mainly owned by HKSAR and mutually agreed upon by both Parties.

[5] Only shall rate of 3% apply when the beneficial owner is a company which holds directly at least 15% of the capital of the company paying the dividends. Otherwise, the rate is 5%.

[6] Refer to (4) for exemption conditions.

[7] When the beneficial owner is a company which holds directly at least 15% of the capital of company paying the dividends, rate of 5% shall apply, otherwise the rate is 10%.

[8] Refer to (4) for exemption conditions.

CLEARER GUIDELINES FOR EXTENSION OF TAX EXEMPTION

As mentioned in our earlier issues (Please refer to our March/April 2015 issue and July/August 2015 issue), in order to attract private equity ("**PE**") fund business to Hong Kong, the HKSAR launched a regime to exempt non-resident persons from tax in profits derived from specified transactions carried by specified persons back in 2006. The Inland Revenue (Amendment) (No.2) Ordinance was enacted in July 2015 to expand such profits tax exemption to "qualifying" offshore PE funds and their special purpose vehicles ("**SPVs**").

IRD has updated its DIPN no. 43 and issued a DIPN no.51 to explain the new regime. The key points of the DIPNs are highlighted below:

- The interest income derived from the holding of debentures, loan stocks, bonds, notes or other debt securities does not involve two transacting parties; therefore, it is not a specified transaction. Such interest income is subject to 5% threshold of incidental transactions to decide whether it is taxable in Hong Kong.
- The totality of facts, including the constitutive documents, the investment mandate and the management agreements would be examined to determine the independent existence of feeder vehicles and parallel funds when counting the number of investors.
- The activities of SPVs are defined:-
  - SPVs should not engage in an active business of trading transactions;
  - SPVs cannot derive service fees from the offshore private equity fund and can only derive passive dividend income from excepted private companies ("**EPCs**");
  - SPVs cannot partake in the management, maintenance or administration of the business of EPCs;
  - SPVs are to hold and administer EPCs in the capacity as a shareholder or a holder of participation or equity interest; and
  - SPVs can only review financial statements of EPCs normally made available to shareholders or investors, attend shareholders' meetings of EPCs, open bank accounts for collection of dividends or investment receipts, and appoint company secretary and auditor.
- In considering whether an SPV is qualified for a tax certificate of residence, IRD will consider whether the SPV has a permanent office or employs staff in Hong Kong to decide whether it has substantial business activities in Hong Kong or whether it is a mere conduit.
- In an attempt to attract investment managers and advisors to Hong Kong, DIPN no.51 also stated that such managers and advisors, if any, should be adequately compensated or remunerated on an arm's length basis. Since such investment managers perform significant functions and bore considerable risks in Hong Kong to generate profits, management fees based on a cost-plus basis is unlikely to be arm's length in nature. However, the carried interest and performance fees may be taxable in Hong Kong under the general anti-avoidance provisions and the attraction to investment managers and advisors is still to be seen in the future.

Despite of the review and issue of the DIPNs, many important points are still unclear. We are waiting to see if further clarification is needed yield the desired result of attracting more private equity funds to invest in Hong Kong.

HIGHLIGHTS OF THE IRD ANNUAL REPORT ON PERFORMANCE PLEDGE 2015-16

According to the recently published Performance Pledge Annual Report 2015/16, all the targets of the IRD's performance pledges in the year ended 31 March 2016 have been achieved, with noteworthy results in some of the targeted performances.

For instance, the IRD has exceeded its target by 4.4% with a target of replying 95% of the written enquiries on simple matters within 7 working days. Having reviewed its performance pledges in 2015, the IRD has further raised the service standard for simple matters enquiries in Performance Pledge 2016-17 to 96%. The revised target took effect from 1 April 2016.

It was also mentioned in the report that information technology has been used extensively to enhance operational efficiency and provide a broad spectrum of electronic services to the public, such as by allowing taxpayers to fulfill their tax obligations under eTAX through the Internet.

OVER 2.5 MILLION TAX RETURNS FOR INDIVIDUALS ISSUED

On 3 May 2016, 2.54 million tax returns were issued by the IRD. Individuals taxpayers shall file their tax returns before 3 June 2016 unless extension is granted.

Tax measures introduced in this year Budget applies to the 2015/2016 tax year:

- increase in basic allowance, married person's parent/grandparent allowance;
- the deduction ceiling for elderly residential care expenses was raised; and
- reduction of profit tax, salaries tax and tax under personal assessment, subject to a ceiling of $20,000 per case.

We will have to wait for next year's Budget to see whether similar or better measures will apply to the 2016/17 tax year.

COMMON REPORTING STANDARD IN HONG KONG

The Organization for Economic Cooperation and Development ("**OECD**") Council has approved the Standard for Automatic Exchange of Financial Account Information in Tax Matters ("**AEOI**"), which contained Common Reporting Standard ("**CRS**"), developed in response to the G20 request in July 2014 and to combat cross-border tax evasion.

Hong Kong is devoted to commence AEOI by the end of 2018 and has gazetted the Inland Revenue (Amendment) (No.3) Ordinance 2016 (the "**Ordinance**") on 20 June 2016 to cover five key areas in the implementation of CRS in Hong Kong. These areas are:-

- Scope of FIs and Non-Financial Entities ("**NFEs**")

  Financial institution means (i) a custodial institution; (ii) a depository institution; (iii) an investment entity; and (iv) a specified insurance company, which is authorized under the Insurance Companies Ordinance (Cap.41) or more than 50% of its gross income arises from insurance, reinsurance and annuity contracts.

  If a financial institution is resident in Hong Kong or has a branch in Hong Kong, it is a reporting financial institution unless it is in the list of non-reporting financial institution in Schedule 17C of the Ordinance (which includes government entities, international organizations and HKMA).

  An entity that is not a financial institution is regarded as a NFE. NFEs are further divided into active NFEs and passive NFEs. An active NFE is one that derives less than 50% of income or assets from dividends and interests, its stock is regularly traded on an established securities market, or one that does not hold itself out as an investment fund. A passive NFE is one that is not an active NFE.

- Scope of Reportable Information and Reportable Person

  The IRD may send an AEOI return to reporting FIs, and FIs are required to furnish personal data and financial data of reportable persons and reportable accounts.

  Personal data includes name; address; jurisdiction of residence; and Taxpayer Identification Number ("**TIN**") of both individuals and entities. Date and place of birth are also required if the account holder is an individual.

  Financial data includes account number; account balance (including the cash value of cash value insurance contract or the surrender value of an annuity contract); the total gross amount paid into a depository account, if any; and the total gross amount of interests, dividends and income generated in respect of the holding, sale and redemption of financial assets under the custodial account, if any.

  Reportable person means a resident for tax purposes of a reportable jurisdiction but exclude a listed corporation, international organization or central bank. The reportable account is one that is held by a reportable person.

- Due Diligence Requirements

  A reporting FI must establish, maintain and apply due diligence procedures to identify the jurisdiction of residence of the account holder and the controlling person of the passive NFE, identify whether a financial account is a reportable account, secure any evidence for carrying out due diligence procedures for a period of 6 years, collect reportable information stated above, and follow the due diligence procedures in Schedule 17D regarding pre-existing and new individual accounts and entity accounts.

- Enforcement Provisions

  The Ordinance introduces sanctions for non-compliance on the part of reporting FIs, its service providers, its employees, directors and management officers, and account holders in order to ensure effective implementation of CRS.

- Scope of Reportable Jurisdictions

  A reportable jurisdiction is one that has entered into a CDTA or tax information exchange agreement and a competent authority agreement for AEOI with Hong Kong. At publication date, there are 35 reportable jurisdictions.

  Reporting FIs should start conducting due diligence procedures in 2017, and expect to file the first AEOI returns by May 2018. However. many procedural requirements are still unclear, and so we would welcome a DIPN from the IRD to provide further guidance.

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