

Common Reporting Standard

Common Reporting Standard (“CRS”) is promulgated by the Organization for Economic Co-operation and Development (“OECD”) to facilitate the exchange of financial account information between relevant jurisdictions around the world in an effort to enhance tax transparency and combat cross-border tax evasion. In response to that, the Hong Kong Government has enacted Inland Revenue (Amendment) (No. 3) Ordinance 2016 (“CRS Ordinance”) to implement CRS and the effective date of CRS in Hong Kong would be 1 January 2017.

Under CRS Ordinance, Public Finance Limited (the “Company”) may be required to collect certain tax-related information and/or documents from customers in order to identify your tax residency. In certain circumstances, the Company may be required to report and share such information and/or documents with the Hong Kong Inland Revenue Department (“IRD”) in order to ensure its compliance with CRS and applicable enabling legislation.

For more information regarding CRS, please visit the below materials for more details:

IRD AEOI Pamphlets: <http://www.ird.gov.hk/eng/tax/aeoi/pam.htm>

OECD CRS Portal: <http://www.oecd.org/tax/automatic-exchange/>

Note: The details provided on this page are intended to help customer understand the CRS requirements and are not intended to serve as tax advice. If you have any further enquiries about your CRS status or the impact of this regulation, please consult a professional tax advisor.

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CRS Frequently Asked Questions

1. What is CRS?

The Common Reporting Standard (“CRS”) is the standard for automatic exchange of financial account information (“AEOI”) developed by the Organization for Economic Co-operation and Development (“OECD”). CRS is a broad reporting regime that draws extensively on the intergovernmental approach to implement Foreign Account Tax Compliance Act (“FATCA”).

Similar to FATCA, CRS requires financial institutions (“FIs” and see FAQ #2), including trusts and trustee companies, resident in Participating Jurisdictions (see FAQ #3) to implement due diligence procedures, to document and identify Reportable Account(s) under CRS, as well as to establish a wide-ranging reporting process. CRS is intended to identify persons holding financial accounts (see FAQ #9) through financial institutions. For FIs in Hong Kong, CRS will become effective on 1st January 2017, and it requires FIs to perform due diligence on financial account holders, for both new and pre-existing account holders, and reporting of those account holders that are determined to be a tax resident in a Reportable Jurisdiction (see FAQ #4). Jurisdictions that have signed up or committed to CRS will implement CRS through the passage of local law.

Financial institutions which do not comply with CRS may result in penalty and/or imprisonment under the relevant local law, i.e. Hong Kong.

2. What is a Financial Institution (“FI”)?

A “Financial Institution” generally refers to any of the following:

- a Custodial Institution,
- a Depository Institution,
- an Investment Entity, or
- a Specified Insurance Company.

For example, by definition, a bank, restricted license bank, or deposit-taking company would be considered a depository institution as it accepts deposits in the ordinary course of a banking or similar business. Further, a custodial institution is an entity that holds, as a substantial portion of its business, financial assets (see FAQ #8) or the account of others.

3. What is a “Participating Jurisdiction”?

A “Participating Jurisdiction” means a jurisdiction with which an agreement is in place pursuant to which the jurisdiction will provide information for CRS purposes, and which is identified in a published list*.

*See here for a published list updated by OECD from time-to-time:

<https://www.oecd.org/tax/transparency/AEOI-commitments.pdf>

4. What is a “Reportable Jurisdiction”?

A “Reportable Jurisdiction” is a jurisdiction with which an agreement is in place (between the FI’s jurisdiction and a Participating Jurisdiction) pursuant to which there is an obligation in place to provide information for CRS purposes and which is identified in a published list*.

*In order to exchange financial account information with a jurisdiction, Hong Kong needs to sign a competent authority agreement (“CAA”) with that jurisdiction. The name of that jurisdiction will be added to the list of “reportable jurisdictions” in the Inland Revenue Ordinance by means of a Notice published in the Gazette.

As of April 2019, there are 75 reportable jurisdictions for Hong Kong and the number may be increased in the future. Please refer to the below for the most updated list of reportable jurisdictions for Hong Kong.

https://www.ird.gov.hk/eng/tax/aeoi/rpt_jur.htm

5. How to determine residence for tax purpose?

The domestic laws of the various jurisdictions lay down the conditions under which an individual or entity is to be treated as “resident” for tax purposes. Please refer to the following link to the OECD website which provides an overview of the tax residency rules applicable in various jurisdictions:

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

Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

Place of effective management:

- When an Entity certifies that it has no residence for tax purposes, the Reporting Financial Institutions may rely on the address of the Entity’s principal office as a proxy for determining its residence. The address of the Entity’s principal office is generally the place in which its place of effective management is situated.
- Further, the place of effective management is the place where key management and commercial decisions with respect to the essential conduct of the Entity’s business as a whole are in substance made. All relevant facts and circumstances must be examined to determine the place of effective management. An Entity may have more than one place of management, but it can have only one place of effective management at any one time.

6. How to determine Tax Identification Number (“TIN”)?

Please refer to the following link to the OECD website which provides an overview of domestic rules in various jurisdictions governing the issuance, structure, use and validity of TIN or their functional equivalents:

<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>

7. What types of information or documentation that FIs may request from customers?

For new customers starting from 1 January 2017, FIs must request customers to provide a valid self-certification form for CRS purposes. For pre-existing customers (i.e. those with accounts opened on or before 31 December 2016), FIs may also request customers to provide a valid self-certification to support the customers' tax residency status.

Further, if there is any change in circumstances that would affect the customers’ tax residence and/or entity classification for CRS purposes, customers are required to notify the FIs and provide reasonable explanation and a valid self-certification within 30 calendar days from the date that the self-certification became invalid due to the change in circumstances. It is an offence under section 80(2E) of the Inland Revenue Ordinance that if any person, in making a self-certification, makes a statement that is misleading, false or incorrect in a material particular and knows, or is reckless as to whether, the statement is misleading, false or incorrect in a material particular. A person who commits the offence is liable on conviction to a fine at level 3 (i.e. HK\$10,000).

8. What are Financial Assets?

Financial assets include a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract.

The term “Financial Asset” does not include a non-debt, direct interest in real property.

9. What are Financial Accounts?

Reportable financial account consists of financial accounts which mean any of the following accounts maintained by a financial institution:

- a) a custodial account;
- b) a depository account;
- c) any equity interest or debit interest in the financial institution;
- d) any cash value insurance contract and any annuity contract issued or maintained by the financial institution.

10. What is a “Passive NFE”?

A “Passive NFE” means (i) any Non-Financial Entity (NFE) that is not an Active NFE (See FAQ#11); or (ii) professional managed Investment Entity that is not a Participating Jurisdiction Financial Institution.

A Passive NFE is required to identify its Controlling Person(s) that are residents in a Reportable Jurisdiction.

11. What is a “Active NFE”?

An NFE is an Active NFE if it meets any of the criteria listed below. In summary, those criteria refer to:

- active NFEs by reason of income and assets;
- publicly traded NFEs;
- Governmental Entities, International Organisations, Central Banks, or their wholly owned Entities;
- holding NFEs that are members of a nonfinancial group;
- start-up NFEs;
- NFEs that are liquidating or emerging from bankruptcy;
- treasury centres that are members of a nonfinancial group; or
- non-profit NFEs.

12. Who are the Controlling Person(s)?

The term “Controlling person(s)” means the natural persons who exercise direct or indirect control over an entity. For an entity that is a legal person, such term means any natural person who ultimately has a controlling ownership in the entity. A “control ownership interest” depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk-based approach (e.g. any person owning more than a certain percentage of the legal person, such as 25%). Where no natural person exercises control through ownership interests, the Controlling Person will be the natural person who exercises control of the Entity through other means. Where no such abovementioned natural person, the Controlling Person will be any natural person that otherwise exercises control over the management of the entity (e.g., the senior managing official of the company). The term “Controlling Persons” must be interpreted in a manner consistent with the 2012 Financial Action Task Force Recommendations.

Controlling persons of Passive NFEs would need to provide FIs with self-certification as well.

The HK CRS has a more elaborated definition of the term “Controlling Person(s)”, which means:

- Where an entity is a corporation, an individual exercises control over the entity if:
 - a) the individual:
 - (i) owns or controls, directly or indirectly, including through a trust or bearer share holding, more than 25% of the issued share capital of the entity;
 - (ii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings or the entity;
 - (iii) exercises ultimate control over the management of the entity; or
 - (iv) (if no individual falls within (i) to (iii) above, holds the position of senior managing official of the entity or
 - b) the entity is acting on behalf of another person over whom the individual exercises control.
- Where an entity is a partnership, all those individuals will fall within the definition of controlling persons of that partnership, regardless of the stake held in terms of capital/profits/voting rights of/in that partnership.
- Where an entity is a trust, all controlling persons as defined by the CRS, regardless of the stake held, have to be identified by the reporting financial institutions.
- Where an entity is not a corporation, partnership or trust, an individual exercises control over the entity if:
 - a) the individual ultimately owns or controls the entity; or
 - b) the entity is acting on behalf of another person over whom the individual exercises control.

13. Who are considered Reportable Person(s)?

The term considered Reportable Person

- a) an individual or entity that is a resident for tax purposes of a reportable jurisdiction; or
- b) an estate of a decedent who was a resident for tax purposes of a reportable jurisdiction;

but does not include—

- a) a corporation the stock of which is regularly traded on an established securities markets;
- b) a corporation that is a related entity of a corporation mentioned in subparagraph (a);
- c) a governmental entity;
- d) an international organization;
- e) a central bank; or
- f) a financial institution.

14. What information is required to report about the Reportable Account(s)?

The following information may be required for reporting under CRS:

- Name,
- Current business or residence address,
- Jurisdiction(s) of residence,
- Taxpayer Identification Number(s) (TIN(s)),
- Date of birth and Place of birth (in the case of an individual);
- The name, address, jurisdiction(s) of residence and TIN(s) of the Passive NFE, and the name, address, jurisdiction(s) of residence, Type of Controlling Person and TIN(s) of each Controlling Person that is

- a Reportable Person (in the case of a Passive NFE);
- Account number;
- Account balance or value at the end of the year or (if the account was closed during such period) the closure of the account; and
- Total amount of gross interest paid or credited to the account (for depository accounts) during the reporting period.