

CHAPTER 15

REQUIRED INFORMATION

Introduction

The regime for AEOI requires specific information to be reported in respect of account holders who are identified by financial institutions as holding reportable accounts.

2. The following information is required from financial institutions in respect of any person identified as holding reportable accounts:

- (a) name;
- (b) address;
- (c) TIN(s);
- (d) date of birth (for individuals);
- (e) place of birth (for individuals);
- (f) jurisdiction(s) to which the information is reportable;
- (g) the account number (or a functional equivalent in the absence of an account number);
- (h) the name and identifying number of the reporting financial institution;
- (i) the account balance or value as of the end of the calendar year or other appropriate period.

3. There are also additional reporting requirements depending on the type of account that is being reported on. The additional items for custodial accounts are dealt with at paragraphs 48 to 52, depository accounts at paragraph 53 and other types of account at paragraphs 54 to 57.

Reportable account holders

4. The objective in defining reportable person under the AEOI regime is to identify whether the account holder is linked to the jurisdiction receiving the information in a way that indicates that he may be subject to taxation in that jurisdiction or, for an entity that has no residence for tax purposes, the jurisdiction in which its place of effective management is situated.

5. The definition of reportable person is, however, subject to a list of exclusions. This covers corporation, the stock of which is regularly traded on an established

securities market (and its affiliate), governmental entity, international organization, central bank and financial institution.

Reportable account holders: residence

Individuals

6. In most circumstances, an individual will be tax resident in the jurisdiction where they live and work. If an individual files a tax return or pays tax in a jurisdiction, including direct payment of employment taxes, then they are likely to be a tax resident there.

7. However, in special cases where an individual has ties to more than one jurisdiction that individual may be “dual resident”, a tax resident of more than one jurisdiction. For example, the USA, always treats their citizens as tax resident regardless of whether they are living. This means that a US citizen is always a US tax resident, even if they are living and working in Hong Kong and also Hong Kong tax resident. Where an individual is tax resident in more than one reportable jurisdiction then any accounts will be reportable accounts for each jurisdiction where they are tax resident.

Entities

8. In most circumstances, an entity will be tax resident where it is incorporated and is managed and controlled (although this will depend on the domestic legislation of that jurisdiction).

9. If the entity is not managed and controlled in the same place that it is incorporated then the entity may be “dual resident”, a tax resident of more than one jurisdiction.

10. A reportable entity also includes entity that is typically tax transparent (partnership, trust, etc.). For reporting purposes, an entity will be held to be “tax resident” in the jurisdiction in which its place of effective management is situated, e.g. a partnership managed and controlled in the UK will be “tax resident” in the UK even though the taxable persons are the partners rather than the partnership itself.

11. If an individual of entity is not certain where they are tax resident then they should ask their tax adviser. The OECD has also developed a portal which contains

information of tax residency rules of all committed jurisdictions. The website is as follows:

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

Address

Individual account holders

12. Where the reportable person is an individual who is an account holder or is a controlling person of an entity, the address to be reported is the individual's current residence address. If the financial institution does not hold this address in its records then it should report the mailing address it has on file for that person.

13. In general, an "in-care-of" address or a post office box is not a residence address. A post office box that forms part of an address that also includes details such as a street, apartment or suite number or a rural route such that a place of residence can be clearly identified can be accepted as a residence address. In special circumstances such as that of military personnel an "in-care-of" address may constitute a residence address.

Entity account holders

14. Where the reportable person is an entity the address to be reported is the address that the financial institution holds on file for that entity.

TIN

15. TIN is the unique identifier assigned to the account holder by the tax administration in the account holder's jurisdiction of tax residence. It is a unique combination of letters and/or numbers used to identify an individual or entity for the purposes of administering the tax laws of that jurisdiction.

16. Any identifier assigned by a jurisdiction of source, for example, for identifying a person whose income has been subject to withholding tax at source, should not be reported.

17. Some jurisdictions do not issue a TIN, or do not issue a TIN to all residents, and where no TIN has been issued there will be nothing to report unless they use other high integrity numbers with an equivalent level of identification. For individuals these include:

- (a) Social security number;
- (b) National insurance number;
- (c) Citizen or personal identification code or number; and
- (d) Resident registration number

18. For entities, jurisdictions may use a business/company registration code or number where no TIN has been issued.

19. Some jurisdictions that issue TINs have domestic law that does not require the collection of the TIN for domestic reporting purposes. In such cases the reporting financial institution is not required to collect the TIN for those jurisdictions.

20. In its portal, the OECD has provided a guide to the structure and form of TINs used by tax administrations including those where domestic collection of the TIN is not required. The website is as follows:

<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/#d.en.347759>

21. The TIN, or TIN equivalent, must be reported for all new accounts where issued. For pre-existing accounts the TIN is reportable to the extent that it is already held in records maintained by the reporting financial institution or the reporting financial institution is otherwise obliged to collect it. Where the TIN is not held in respect of pre-existing accounts the reporting financial institution must use reasonable efforts to obtain it by the end of the second calendar year following the year in which the accounts are identified as reportable accounts. Not all jurisdictions issue a TIN, or functional equivalent, to all individuals or entities; where a TIN has not been issued to an individual or entity there is an exception from the requirement to report a TIN. If and when a jurisdiction starts issuing TINs the exception no longer applies and the TIN would be required to be reported if the financial institution obtains a self-certification that contains such a TIN, or otherwise obtains such a TIN.

22. As reportable persons may be resident in more than one jurisdiction they may have two or more TINs that the financial institution must report.

Jurisdiction of residence

23. The legislation for AEOI authorizes the wider approach that requires financial institutions to retain data on the jurisdiction of residence of account holders irrespective of whether or not that jurisdiction is a reportable jurisdiction.

24. Financial institutions must carry out the due diligence procedures required and where a person is identified as a reportable person information include the jurisdiction of residence must be reported to the IRD. Where a reportable person is identified as having more than one reportable jurisdiction of residence the financial institution is required to report all of the identified reportable jurisdictions to the IRD.

25. The jurisdictions of residence identified as a result of carrying out the due diligence procedures are without prejudice to any residence determination made by the financial institution for any other tax purpose.

26. Reportable account data is to be sent to the IRD where the account holder is a resident of a reportable jurisdiction. A list of reportable jurisdictions can be found at Part 1 of schedule 17E of the IRO.

Account number

27. The account number to be reported is the unique identifying number or code that the reporting financial institution has assigned to the reportable account. This will include identifiers such as bank account numbers and policy numbers for insurance contracts as well as other non-traditional unique identifiers. The unique identifier should be sufficient to enable the financial institution to identify the reportable account in future.

28. Where there is not a unique identifying number or code the financial institution should report any functional equivalent that they use to identify the account. This may include non-unique identifiers that relate to a class of interests, which, along with the name of the account holder, enable the account to be identified.

29. Exceptionally, if the reportable account does not have any form of identifying number or code the financial institution should report a description of the account sufficient to identify the account held by the named account holder in future.

Identifying information of reporting financial institution

30. The reporting financial institution must report its name and identifying number. This is to enable the jurisdiction receiving the information to easily identify the source of it in the event that they have any follow-up questions in respect of the data reported. The financial institution will need to report an AEOI ID issued by the IRD upon its registration via the IRD AEOI Portal.

Account balance or value

31. The reporting financial institution must report the balance or value of reportable financial accounts as of the end of the reporting period for each calendar year. This will be 31 December in each year unless it is not possible or usual to value an account at that date. If that is the case then that value at the normal valuation point for the account that is nearest to 31 December should be used. The reporting financial institution may also report the balance or value as of the end of other appropriate reporting period of 12 months ending on 31 March, 30 June and 30 September. The value of the account should be reported in the currency in which the account is denominated.

32. In general, the balance or value to be reported is that which the financial institution calculates for the purpose of reporting to the account holder. Where the balance or value of an account is nil or a negative amount, for example where an account is overdrawn, the financial institution must report the balance or value as nil.

33. For cash value insurance contracts or annuity contracts the amount to be reported is the cash value or surrender value of the contract.

34. For an equity interest in an investment entity the amount to be reported is the value calculated by the financial institution for the purpose that requires the most frequent determination of value.

35. For a debt interest in an investment entity the balance or value is the principal amount of the debt.

36. The balance or value of an account must not be reduced by any liabilities or obligations incurred by an account holder with respect to the account or any of the assets held in the account.

Joint accounts

37. Each holder of a jointly held account is attributed the entire balance or value of the joint account as well as the entire amounts paid or credited to the account.

38. For example, where a jointly held account has a balance or value of \$600,000 and one of the account holders is resident in Jurisdiction A (a reportable jurisdiction), the amount attributable to that person in the report to Jurisdiction A will be \$600,000.

39. If both account holders in the above example were resident in Jurisdiction A then each would be attributed \$600,000 in the report to Jurisdiction A.

Multiple jurisdictions

40. Where a reportable person is either an account holder or the controlling person of a passive NFE and is identified as having more than one jurisdiction of residence, the entire balance or value of the reportable account, as well as the entire amount paid or credited to the reportable account must be reported to each jurisdiction of residence of the account holder or controlling person.

Account closure

41. An account is regarded as closed according to the normal operating procedures of the reporting financial institution that are consistently applied for all accounts that it maintains. For example, an equity interest in an investment entity would be considered closed when that interest is terminated by the transfer, surrender, redemption or cancellation of the interest or the liquidation of the entity.

42. An account with a balance or value equal to zero or which is negative will not be a closed account solely by reason of such a balance or value.

43. When an account is closed the reporting financial institution must report the fact of the closure but is not required to report the balance or value of the account at closure. Any reportable amounts paid or credited to the account in the reporting period up to the date of closure remain reportable.

Account ceases to be reportable

44. If, as a result of a change of circumstances, an account holder ceases to be a reportable person then the account will cease to be a reportable account in the year in which the change of circumstance is identified by the reporting financial institution.

45. As reporting is based on the status of accounts in existence at the end of the reportable period such accounts will not be reportable for the period in which the change of circumstances occurs. This is different to the reporting required when an account held by a reportable person is closed during a reportable period.

Place of Birth

46. The place of birth to be reported is the town or city and the country of birth of the reportable account holder. Reporting financial institutions are encouraged to collect place of birth as from the experience of our treaty partners, the collection of such information is necessary and proportionate for the purpose of enabling tax administrations to correctly and unequivocally identify the taxpayers concerned.

Date of Birth

47. The date of birth is reportable for all new accounts. It is only reportable for pre-existing accounts to the extent that it is already held in records maintained by the reporting financial institution or the reporting financial institution is otherwise obliged to collect it. Where the date of birth is not held in respect of pre-existing accounts the reporting financial institution must use reasonable efforts to obtain it by the end of the second calendar year following the year in which the accounts are identified as reportable accounts.

Custodial account

48. In addition to the general reporting requirements, where the reportable account is a custodial account the information to be reported for each reporting period is:

- (a) the total gross amount of interest paid or credited to the account.
- (b) the total amount of dividends paid or credited to the account.
- (c) the total gross amount of other income generated with respect to the assets held in the account paid or credited to the account.
- (d) the total gross proceeds from the sale or redemption of financial assets paid or credited to the account.

Gross proceeds

49. A custodial institution is required to report the total gross proceeds from the sale or redemption of financial assets held in a custodial account during the reporting period. This is without regard to whether or not the account holder would be subject to tax in Hong Kong on the sale or redemption of the financial asset.

50. The total gross proceeds from the sale or redemption of a financial asset is the total amount credited to the account of the person entitled to the payment without regard to any sums netted off against the payment to satisfy outstanding liabilities. For example, a loan used to fund acquisition of the asset may be repaid from the proceeds of sale. This must not be deducted from the amount reportable.

51. Commissions and fees paid with respect to the sale or redemption of the asset may be taken account of in arriving at the gross proceeds of sale.

52. Where the financial asset that is sold or redeemed is an interest bearing debt

obligation the gross proceeds should include any interest that has accrued between interest payment dates.

Depository accounts

53. In addition to the general reporting requirements, where the reportable account is a depository account the information to be reported for each reportable period is the gross amount of interest paid or credited to the account during that period.

Other accounts

54. In addition to the general reporting requirements, in the case of any account other than a depository account or a custodial account the information to be reported for each reporting period is the total gross amount of income paid or credited to the account holder in the reporting period with respect to which the reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the reporting period.

55. For cash value insurance contracts this will include any part surrenders taken throughout the policy year.

56. For a purchased life annuity it will include any amounts paid or credited to the policy holder.

57. Where a deferred annuity is not converted into a purchased life annuity at the end of the accumulation phase and the account holder takes the surrender value of the contract instead, the amount paid as the surrender value is the amount to be reported.

Currency

58. All amounts to be reported by the reporting financial institution must identify the currency in which they are denominated.

Paper and electronic records

59. The records of a financial institution include both paper and electronic records that the financial institution maintains for the purpose of keeping account holder information available for use in the business. This includes information such as the customer master file necessary to maintain contact with the account holder and information for satisfying AML/KYC procedures.

60. Information is not regarded as maintained by the financial institution if it has been archived and is not used by the business, for example there may be regulatory requirements that documents are kept for a minimum period before they can be destroyed but are otherwise not used by the business. Only when such information is retrieved by the financial institution from the archive so that it can be used by it will the information be regarded as maintained.

61. Electronic records are available for use by the financial institution to the extent that they are electronically searchable. This means information maintained by the financial institution that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data or files are not electronically searchable merely because they are stored in an image retrieval system such as portable document format (pdf.) or as scanned documents.

62. Financial institutions should rely on the IT systems they have in place at the time the electronic searches are carried out, they are not expected to build systems to carry out electronic searches solely for the purpose of reporting under their automatic exchange of information obligations.

Reasonable efforts to obtain

63. Where a financial institution does not hold information in its records on either the account holder's taxpayer identification number or date of birth it is expected to make reasonable efforts to obtain the information by the end of the second calendar year following the year in which the account is identified as reportable.

64. Reasonable efforts require genuine attempts to obtain the information and would include all or any of the following:

- (a) contacting the account holder by mail, in-person or telephone and could include requests made as part of other documentation;
- (b) electronic contact such as facsimiles or e-mail;
- (c) reviewing electronically searchable information maintained by a related entity in accordance with the aggregation principles.

65. Reasonable efforts do not require the closing, blocking or transferring of an account, nor conditioning or otherwise limiting its use, simply because the account holder does not comply with a request for this information.



66. Reasonable efforts may continue to be made after the above mentioned period if the financial institution so chooses.