



Is it desirable to close your corporate bank account in Hong Kong?

Clayton Chan
K. M. Chan & Company, CPA
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Speaker

Clayton K. M. Chan FCA, FCCA, FCPA, CFE, CPA (Practising)

Clayton is a Certified Public Accountant (Practising) in Hong Kong, and a Certified Fraud Examiner in USA. He has years of combined experience in performing public auditing, advising tax efficient onshore/offshore structure for HK companies, contesting tax field audits and tax investigations, and conducting financial due diligence and investigative accounting. He has also been involved personally in attestation engagements for small and closely held companies, local and national businesses, and public held enterprises listed in US, Japan, Australia, Singapore, South Korea, China and Hong Kong.

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Introduction

- **A letter from the bank**



“ To combat cross-border tax evasion and enhance tax transparency, the HK Government has amended the IRO in June 2016....for implementing the new international standard on Automatic Exchange of Financial Account Information in Tax Matters.....we are obligated to collect the required information from account holders and furnish such information to HKIRD for information exchange with overseas tax authorities of relevant jurisdictions. To help us determine your tax residency as required, we will be contacting you for information and documentation starting from 2017....”

Introduction

- **A reminder from the bank**



“We would appreciate your cooperation on this Account Review. In case a review is not completed in time, it may result in us reluctantly suspending your accounts. The suspension will affect, including but not limited to, financial transactions of transfer, deposit and withdrawal instructions, clearing of cheques and incoming and outgoing payments.....”

Introduction

■ A letter from IRD

“Under the authority of Section 51(4)(a), Section 51 (4A) and Section 51 (4AA) of the IRO, and for the purpose of obtaining full information in regard to Profits Tax which may affect your liability, responsibility or obligation under the IRO and/or under the laws of a territory outside HK concerning any tax of that territory.....I require you to produce to me....the following information and documents....”



Introduction



.....State the bank accounts held by you, including those in Hong Kong and overseas:

- *the name/branch of the bank and its address*
- *the account number and the type of account*
- *the date of opening of the account*
- *the name, identification number/passport number/company registration number/business registration number and address of each of the authorised signatories*
- *the bank balance as at*
- *the bank withdrawal/transfer slips, remittance advice, and relevant bank statements....”*

Stringent DD procedures adopted by the banks...A Tale of Two Accounts



CASE I

- Nature of business: Trading of household items
- Payment routing: Central America-HK-China via TT
- Compliance request: Already initiated by the bank
- Outcome: Account service suspended
- Years of operation: 4

Stringent DD procedures adopted by the banks...A Tale of Two Accounts

- Impact:

- *“This is a huge disaster, already caused us a lot of damage with customers, and with suppliers who feel we are struggling. They are questioning our credibility and honesty. Each day is costing us a lot of money in late port fees, because we are not taking the goods out....”*



Stringent DD procedures adopted by the banks...A Tale of Two Accounts



- *“ We feel the treatment we received from them is unwanted and undesirable. We have complied with all their requests, and always cooperated with them, yet it seems to me they are not really interested in our business. “*
- *“This is damaging years of relationships with factories and customers alike. I am not even sleeping at night to try to solve this, because the pressure is so big. I cannot stress enough this. This people we cannot deal softly with them. They are taking advantage of us. They deal with us as if our company is not legit and correct. This is an insult..... I will go with a lawyer there next week, if they don't solve this. I will not let them damage our name and treat us like this anymore.”*

Stringent DD procedures adopted by the banks...A Tale of Two Accounts

CASE II

- Nature of business: Business consultancy
- Payment routing: Europe and Middle East-HK-China via TT
- Compliance request: Not initiated by the bank
- Outcome: Account service terminated
- Years of operation: 6



Stringent DD procedures adopted by the banks...A Tale of Two Accounts

- Impact:

- “We have every single transaction documented by contractsobviously I am shocked and disappointed.”



Stringent DD procedures adopted by the banks...A Tale of Two Accounts



- “We rely on this banking relationship to receive payments from our customers, pay our suppliers, partially pay some of our international staff. No reasons whatsoever were given for this closure decision, we have never received any request for additional information or any specific inquiries about our business activities or otherwise.”
- “.....such abrupt closure of our bank account is likely to have a material adverse impact on our day-to-day business activity and we reserve all of our rights to pursue any and all available remedies, including instituting legal proceedings....”

Stringent DD procedures adopted by the banks...A Tale of Two Accounts

OBSERVATIONS

- Not a new account
- Non-HK directors/shareholders
- No physical office in HK
- No employees in HK
- Threat of legal action, but helpful?



Tax Requirement Notice from the banks in January 2017



- Setting out the terms relating to tax withholding, reporting and associated requirements which apply to and are binding on the customers of the bank.
- Forming part of the account terms and conditions and/or the agreements or arrangements that the customers enter into with the bank.
- Implementing the following Compliance Requirements, amongst others:
 - any law binding or applying to the bank within or outside HK existing currently and in the future (e.g. the Inland Revenue Ordinance and its provisions including those concerning AEOI)

Tax Requirement Notice from the banks in January 2017

Guidelines



- any guidelines or guidance given or issued by any legal, regulatory, governmental, tax, law enforcement or other authorities, or self-regulatory or industry bodies or associations of financial services providers within or outside HK existing currently and in the future (e.g. guidelines or guidance given or issued by the Inland Revenue Department including those concerning AEOI)
- disclose any of the personal and account information as required under the Compliance Requirements to any local or foreign legal, regulatory, governmental, tax, law enforcement or other authorities, or self-regulatory or industry bodies or associations of financial services providers within or outside HK existing currently and in the future

Tax Requirement Notice from the banks in January 2017



- ❑ perform or cause to be performed, without notice or liability to the customers, withholding of any monies payable to the customers, deposit any such monies into a sundry account and/or retain such monies pending determination of the applicability of such withholding tax requirement, foreign exchange restriction or control. The bank will not be liable for any gross up or any losses that may be incurred by reason of such withholding, retention or deposit.
- ❑ block transactions, transfer arrangements or terminate all or any of the accounts or the agreements or arrangements entered into between the customers and the bank at any time without having to give any reason or notice if the customers fail to comply with any of the Tax Requirement Notice.

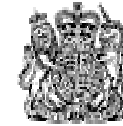
AEOI: how to deal with the financial institutions from 2017



BANK A:

- Self-Certification Form for FATCA and CRS
 - ❑ basic corporate information
 - ❑ account status (if it is a US Entity)
 - ❑ US account identification (if it is a specified US Person), FATCA Reporting Exemption Code and US TIN
 - ❑ FATCA classification (for financial institutions and non-financial institutions)
 - ❑ CRS classification (for financial institutions and non-financial institutions)
 - ❑ CRS-Jurisdiction of Residence and TIN

AEOI: how to deal with the financial institutions from 2017



Company Registration Number

12345678

Company Unique Taxpayer Reference

1234567890

- ❑ if the account holder is a tax resident of HK, the TIN is the HK business registration number
- ❑ if a TIN is not available, then provide a reason as follows:
 - the jurisdiction where the account holder is a tax resident does not issue a TIN;
 - the jurisdiction where the account holder is a tax resident does not require the TIN to be disclosed;
 - the account holder is not able to get a TIN (needs to provide “reasonable” explanations)

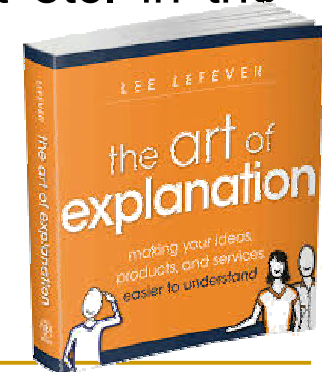
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- ❑ Details of controlling persons of the company (if the entity account holder is a Passive NFE) under CRS
 - personal particulars
 - if the account holder is a tax resident of HK, the TIN is the HKID number
 - if a TIN is not available, then provide a reason similar to that of the entity account)

AEOI: how to deal with the financial institutions from 2017

- ❑ Reasonable Explanations for the controlling individuals--Not a tax resident of the jurisdiction where the controlling person currently reside:
 - a student who holds appropriate visa in the jurisdiction
 - a teacher, a trainee, or intern at an educational institution, or a participant in an educational or cultural exchange visitor programme who holds appropriate visa in the jurisdiction
 - a foreign individual assigned to a diplomatic post etc. in the jurisdiction
 - other situations



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BANK B:

- **Connected Parties Declaration Form**
 - Capacity of connected individual and his personal particulars
 - owner, partner, director, shareholder, authorised signatory, key controller
 - key controller may include: CEO, CFO, COO, Chairman of the Audit/Remuneration/Risk Committee, Managing or Precedent Partner, Nominee, Powers of Attorney

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- Capacity of connected entity and its corporate particulars
 - disclosure of UBO, and not merely intermediate owner
 - an entity or legal arrangement (e.g. trust, foundation, limited partnership) that sits between the entity and the UBO in the ownership structure



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Bank C:

■ Business Information and Declaration Form

- ❑ Basic corporate information and business information (e.g. list of major customers and suppliers, including their geographical location; types of major products and % of sales; turnover and net profit—actual and projected)
- ❑ Analysis of bank account activities (e.g. Cash, Cheque, TT, LC), currency and frequency
- ❑ “No, I/we do not wish to update the information and documentation, and would like to arrange account closure ”
- ❑ “No, I/we do not wish to provide the HK Business Registration certificate, and would like to arrange account closure ”

AEOI: how to deal with the financial institutions from 2017

WHY CHOOSE US?



- ❑ Reasons of keeping the account with the bank
- ❑ Reasons of company not incorporated in HK
- ❑ Details of investment products (e.g. types, value, ROI)
- ❑ Details of operating results of subsidiary/associated company, if any, including dividend income received and receivable
- ❑ Dealings with UN-sanctioned countries
 - Provision of goods or services
 - Ownership—individual or corporate shareholder
 - Location of assets
 - Investment interests
 - Sensitive items like jewellery, arms, oil and gas

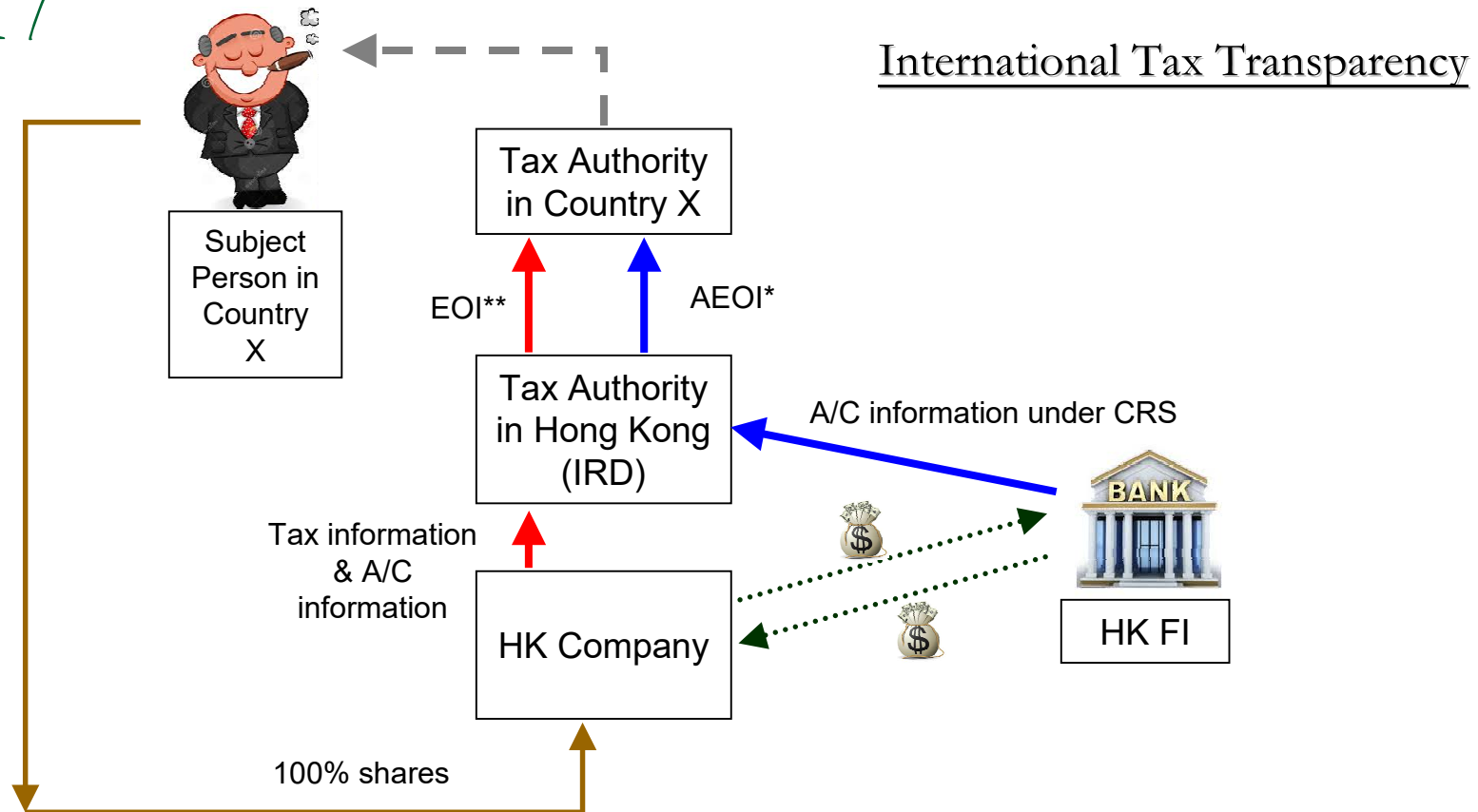
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CAVEATS:



- Normally account closure within 30 days from the date of notification letter
- Generally no access of information kept by the compliance department of the bank
- Generally no direct contact details of the case officer
- Generally no written reply from the bank for email enquiry
- Generally no extension of time to provide information
- No material difference for the estimated figures
- No material change to the nature of principal activities
- No written confirmation about the result of review
- No clear appeal mechanism

EOI and AEOI: how to deal with the IRD from 2017



*According to Inland Revenue (Amendment)(No.3) Ordinance 2016, effective 30.6.2016

**According to Inland Revenue (Amendment)(No.2) Ordinance 2013, effective 19.7.2013, and Inland Revenue (Amendment) Ordinance 2010, effective 12.3.2010.

EOI and AEOI: how to deal with the IRD from 2017



- Exchange of information between HKIRD and the tax treaty partners
 - On request from the competent authority
 - Relating to taxes specified under the tax treaty
 - Relating to the period after the effective date of the relevant tax treaty
 - Prior notification to the subject person before release of information
 - Right of request for a copy of reply and amendment (factual errors)
 - Right of appeal to the Financial Secretary of HK if amendment refused
 - Copy of written disclosure request made by the competent authority not to be provided to the subject person

EOI and AEOI: how to deal with the IRD from 2017

■ Power of IRD to obtain information under the IRO

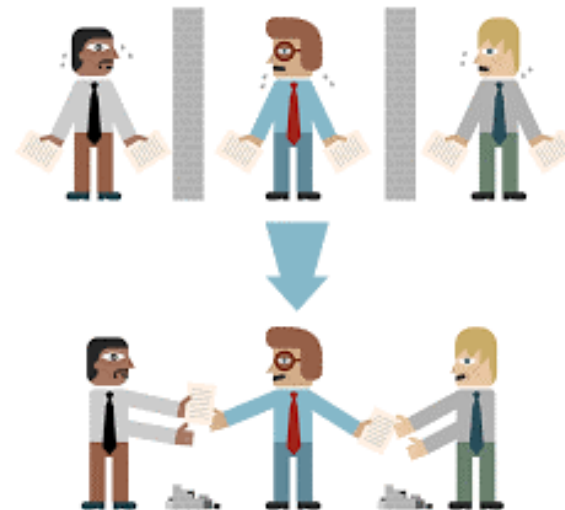
- S.51(4)(a): Such person who may be in possession or control of information or documents regarding to any matter which may affect any liability, responsibility or obligation of any person under the IRO
- S. 51(4AA): Obtaining full information regarding any matter (as defined in subsection (4)) that may affect any liability, responsibility or obligation of any person under the laws of a territory outside HK concerning any tax of that territory (with a competent authority agreement with HK for those taxes covered by the agreement)
- S. 51 (4A): Requiring information from, including attendance for the purpose of being examined of, any relevant person as defined in this section (except for legal privileged information)



EOI and AEOI: how to deal with the IRD from 2017

■ Obligation of Disclosure?

- ❑ Disclosure under EOI not automatic or spontaneous
- ❑ Control and Possession of information (by the Commissioner or the persons in HK)
- ❑ Foreseeable Relevance Test
- ❑ Third Party's Information
- ❑ No Bank Secrecy Laws
- ❑ Domestic Tax Interest Requirement
- ❑ Information held by Nominees etc.
- ❑ Reciprocity
- ❑ Public Policy
- ❑ Trade Secrets
- ❑ Statutory Retention Period
- ❑ Legal Professional Privilege



EOI and AEOI: how to deal with the IRD from 2017



■ Financial Account Information

- ❑ Information of financial accounts held by ‘tax residents of reportable jurisdictions’ will be collected and provided by the FIs to IRD, which will be exchanged between HK and the foreign tax authorities of reportable jurisdictions annually (and automatically).
- ❑ Account holders need to provide the relevant information to the FIs.
- ❑ FIs will identify the reportable accounts according to the CRS.
- ❑ Reportable accounts, which include bank accounts and life insurances, funds etc., can be accounts held by individuals or entities (including trusts and foundations).
- ❑ An account holder who knowingly or recklessly provides misleading, false or incorrect information is liable to prosecution.

EOI and AEOI: how to deal with the IRD from 2017

- Relevant Information to be exchanged under AEOI
 - Particulars of the account holder such as name, address, tax residence, TIN, date and place of birth etc.
 - Account details
 - Account balance/value
 - Interest, dividends, income from certain insurance products
 - Sales proceeds from financial assets



EOI and AEOI: how to deal with the IRD from 2017

■ Excluded Accounts under Schedule 17C of the IRO

- ❑ Retirement and pension account
- ❑ Non-retirement tax-favoured accounts
- ❑ Term life insurance contracts
- ❑ Estate account
- ❑ Escrow account
- ❑ Depository account owing to not-returned overpayments
- ❑ Dormant account (balance not exceeding HK\$7,800 plus certain conditions)



EOI and AEOI: how to deal with the IRD from 2017

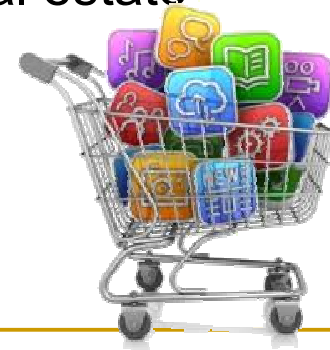


■ AEOI reporting timeline in HK

- Jan 2017: FIs in HK have started identifying financial accounts held by tax residents of jurisdictions with which HK has signed the competent authority agreement (i.e. reportable jurisdictions)
- Sep 2017: FIs are to register with IRD
- Jan 2018: IRD will issue e-notices to all FIs for filing the AEOI returns
- May 2018: FIs will file the first AEOI returns (regarding calendar year 2017) to IRD
- Sept 2018: IRD will transmit the collected data (regarding calendar year 2017) to the tax authorities of the reportable jurisdictions
- Jan 2019: IRD will exchange the information of financial accounts held by the residents of reportable jurisdictions on a regular basis (regarding calendar year 2018)

Latest development on AML regulatory framework in Hong Kong

- Consultation Paper on “Enhancing Anti-Money Laundering Regulation of Designated Non-financial Businesses and Professions” (Jan 2017)
 - DNFBP engaging in certain specific types of transactions also be subject to statutory CDD, RK and STR requirements
 - Types of transactions: management of client monies; securities or other assets; management of bank, savings or securities accounts; company formation and management; real estate transactions; buying/selling of business entities



Latest development on AML regulatory framework in Hong Kong



- Consultation Paper on “Enhancing Transparency of Beneficial Ownership of HK Companies” (Jan 2017)
 - UBO information available for public inspection upon request (listed companies not included) and to keep a “Register of People with Significant Control”
 - Directly or indirectly holding more than 25% of the shares/voting rights
 - Directly or indirectly holding the right to appoint or remove a majority of directors etc.

Any better alternatives

- To keep the bank account in HK?
 - Corporate bank account: HK company or overseas company?
 - Less onerous compliance requirements outside HK?
 - Difficult to open bank account in the future?
 - Safeguard from IRD concerning taxpayers' privacy and confidentiality of exchanged information?





**QUESTIONS?
THANK YOU !**