

Illustrative Note of Automatic Exchange of Financial Account Information in Tax Matters (AEOI) and Common Reporting Standards (CRS)

Since July 2014, the Organization for Economic Cooperation and Development (“OECD”) has been advocating Automatic Exchange of Financial Account Information in Tax Matters (AEOI) and has endeavored to call on governments of all jurisdictions to obtain relevant financial account information from their financial institutions and to exchange that information automatically with other relevant jurisdictions. The Standard for AEOI, hereinafter referred to as the Common Reporting Standard (“CRS”), was jointly developed by OECD, the G20 countries and the European Union. More and more members of the international community have been supporting AEOI as a new global standard and a more efficient mode to promote international tax transparency and combat cross-border tax evasion. So far over 100 jurisdictions in the world have been committed to the implementation of AEOI and CRS, and many of these Participating Jurisdictions have already translated the AEOI/CRS rules and requirements into their domestic laws.

Financial institutions, situated in a participating jurisdiction (“CRS Participating Jurisdiction”) are required to automatically report financial information on accounts held by non-resident individuals and entities as well as non-resident Controlling Persons of Passive Non-Financial Entities (“Passive NFEs” such as trusts and foundations) to their local tax administration. The local tax administration will then exchange financial account information, on an annual basis, with the tax authorities of the jurisdiction where an account holder / Controlling Person is a tax resident, provided that the account holder is a resident for tax purposes in a CRS reportable Jurisdiction.

As a responsible international citizen and a leading financial centre, Hong Kong indicated in September 2014 its commitment to implement AEOI on a reciprocal basis with appropriate partners, the reportable jurisdictions. In this regard, we would like to draw your attention to the Inland Revenue (Amendment) (No. 3) Ordinance 2016 (the Amendment Ordinance) which came into effect on 30 June 2016 and put in place a legislative framework for Hong Kong to implement AEOI. The first exchange of information required in Hong Kong will be made in 2018 in relation to calendar year 2017. Given the continued expansion in the scope and network of tax information exchange in the international community, Hong Kong has also switched in 2018 from the established bilateral approach for implementing various new tax standards to riding on the Multilateral Convention on Mutual Administrative Assistance in Tax Matters to implement the relevant initiatives.

The List of Reportable Jurisdictions (the List) under Hong Kong CRS/AEOI regime has also been expanded from time to time and the updated List has been published timely on the website of Inland

Revenue Department of Hong Kong. 75 jurisdictions have been included in the List so far. For details, please double click the following link:

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

As many financial institutions in Hong Kong are defined, Habib Bank Zurich (Hong Kong) Limited (HBZ) is also a “reporting financial institution” under the AEOI/CRS regime in Hong Kong and is demanded to fulfill all the legal obligations of due diligence on financial accounts and reporting of reportable accounts held by tax residents of reportable jurisdictions or held by passive non-financial entities whose controlling persons are tax residents of reportable jurisdictions in accordance with due diligence procedures. “Tax residents of reportable jurisdictions” usually refer to those who are liable to tax by reason of residence in the jurisdictions. In general, whether or not an individual is a tax resident of a jurisdiction is determined by having regard to the person’s physical presence or stay in a place (e.g. whether over 183 days within a tax year) or; in the case of a company, the place of incorporation or the place where the central management and control of the entity is exercised. However, each jurisdiction has its specific definition of tax residence. Tax laws may vary from one jurisdiction to another, and the tax residence of an account holder may change from one year to another. If any customer would like to know more information regarding the tax laws of different jurisdictions for defining tax residence, the relevant website address in the AEOI portal of OECD is <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/#d.en.347760>. Account holders shall also verify and update their tax residence regularly and seek professional advice whenever necessary to avoid any doubt or risk which could be triggered by any relevant cause or change.

HBZ are required by laws to establish, maintain and apply due diligence procedures to identify account holders or controlling persons of account holders in the nature of Passive NFEs) who are tax residents of reportable jurisdictions, and collect all required information and documentation from account holders. To identify reportable parties, HBZ needs to ask account holders to complete self-certification forms for verification of their tax residency status. The self-certifications is a legally formal declaration that an account holder makes in connection with the tax residence and will be kept by the HBZ for a period of at least six years. The account holders/controlling persons shall be responsible for the accuracy and completeness of all the information provided and all the statements made in the self-certification. If they have doubts about the tax residence, they shall consider seeking professional advice. An account holder/controlling person who knowingly or recklessly provides a statement that is misleading, false or incorrect in a material particular in making a self-certification to a reporting financial institutions is liable on conviction to a fine at level 3 (\$10,000). IRD clearly states that IRD may check the details of the self-certification submitted to and kept by HBZ at any time, if

necessary.

HBZ shall further perform the exercise of the reasonableness test based on the information and documents obtained by HBZ during the course of the initial know-your-customers (KYC) and customer due diligence (CDD) as well as the ongoing KYC/CDD pursuant to the prevailing policies and procedures of HBZ. If the self-certification satisfies such kind of reasonableness test, HBZ will reply on it as expected by IRD. **Where necessary, HBZ may contact the customers to request additional information and documentation to further substantiate the tax residence status.**

Based on all the proper due diligence performed and self-certifications collected, HBZ will report to IRD information of the identified account holders (individual or entity) and the relevant financial account information on an annual basis. IRD will then transmit the information to the tax administration of the relevant jurisdictions of which the account holders are tax residents. For each client/account holder and/or Controlling Person identified as “reportable”, the major information HBZ is required to report includes the following items:

- (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(s) number;
- (h) the name and identifying number of the reporting financial institution;
- (i) the account(s) balance or value as of the end of the calendar year or other appropriate period;and
- (j) the gross amount of interests, dividends and sale proceeds of financial assets in the account(s) as appropriate for the year concerned.

When an account is closed, HBZ 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.

All the customers (non-exempted) of HBZ are expected to acknowledge and agree that (a) the information contained in their self certification forms is collected and may be kept by HBZ for the purpose of automatic exchange of financial account information, and (b) such information and information regarding the account holders/controlling persons and any reportable account(s) may be reported by HBZ to the Inland Revenue Department of the Government of the Hong Kong Special Administrative Region (IRD) and exchanged by IRD with the tax authorities of another jurisdictions in which the account holders/controlling person(s) may be resident for tax purposes, pursuant to the legal provisions for exchange of financial account information provided under the Inland Revenue Ordinance (Cap. 112).

The customers also need to understand and acknowledge that the bank may provide, directly or indirectly, a copy of their self-certification forms and information regarding income paid or credited to for the benefit of the reportable account(s) to any persons that have control, receipt, or custody of income to which the forms relate; or any persons that can disburse or make payments of income to which the forms relate; or any party authorized to audit or conduct a similar control of aforementioned persons for tax purposes.

The customers are obligated to advise HBZ of any change in circumstances which affects the tax residency status of any individual or entity party identified in the self-certification forms provided or causes the information contained therein to become incorrect. The customers shall also provide HBZ with the suitably updated self-certification form within 30 days of such change in circumstances. If a customer fails to comply with the obligations to submit the necessary forms and/or documentation following a change in the relevant circumstances, reporting and/or disclosure consequences may occur.

Please disregard this Note if you are a domestic individual or entity account holder in Hong Kong and a resident for tax purposes only in Hong Kong; or if you are a Controlling Person of a Passive NFE and a resident for tax purposes only in Hong Kong. The definition of Hong Kong tax resident for AEOI purpose has been clearly explained by IRD in Q16 of "Frequently Asked Questions" under AEOI published on its website, to which the direct link is https://www.ird.gov.hk/eng/faq/dta_aeoi.htm. For comprehensive information, please also see the document about the tax residency for Hong Kong tax residents published on the Automatic Exchange Portal in the website of OECD: <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/Hong-Kong-Residency.pdf>

For more details about the AEOI/CRS regime in Hong Kong and its impact on you or your entity, please access the AEOI information/education center on the website of the Inland Revenue

Department of Hong Kong, via the links posted on on our website.

Should you have any questions regarding this Note, please do not hesitate to contact your principal relationship manager(s) at HBZ.