

Increasing Transparency in Asia



Increasing Transparency in Asia

- Common Reporting Standard (CRS)
- Experience of each Asian Countries
- Taxpayer rights and privacy

Panelists

Hong Kong	Simon Wang (Partner, EY Hong Kong)
Indonesia	Ichwan Sukardi (Partner, RSM Indonesia)
Japan	Hayato Furukawa (Director, National Tax Agency of Japan)
Korea	Wonseok Choi (Professor, University of Seoul)
Singapore	Nico Derksen (Owner/ Director, International Tax Management (ITM) Pte Ltd)
Taiwan	Pi-Lien Ding (Deputy Director General, Dept. of International Fiscal Affairs, Ministry of Finance, Taiwan)
Taiwan	Wellington Liu (Partner, Tsar & Tsai Law Firm)

OECD: AEOI Status of Commitment



**Global Forum on Transparency
and Exchange of Information for Tax Purposes**



As at November 2017

AEOI: STATUS OF COMMITMENTS

The table below summarises the intended implementation timelines of the new standard.¹

JURISDICTIONS UNDERTAKING FIRST EXCHANGES IN 2017 (49)

Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus², Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, United Kingdom



OECD: AEOI Status of Commitment

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018 (53)

Andorra, Antigua and Barbuda, Aruba, Australia, Austria, Azerbaijan³, The Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Curacao, Dominica, Ghana³, Greenland, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Kuwait, Lebanon, Macau (China), Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, Niue, Pakistan³, Panama, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay, Vanuatu

Increasing transparency in Asia

- Current response to CRS and development in Asian countries

Taiwan – CRS implementation

1. International Legal Basis
2. Domestic Legislation/Regulations
3. Execution Planning and Timeline

Taiwan – CRS implementation

1. International Legal Basis

Bilateral Tax Agreements

- **Avoidance of Double Taxation Agreements (ADTAs)**
 - ✓ Taiwan has 32 ADTAs in force, all of which were drafted by reference to the OECD/UN Model Tax Convention and contain a provision of “Exchange of Information”
- **Tax Information Exchange Agreements (TIEAs)**
 - ✓ So far there is no TIEA in force yet. We are working on consulting with other jurisdictions about bilateral TIEAs by reference to the OECD Model TIEA
- **Bilateral Competent Authority Agreements (CAAs)**
 - ✓ Legal basis: bilateral agreements on tax matters (ADTAs or TIEAs)
 - ✓ Main content: in reference to the OECD Model CAA for automatic exchange of financial account information

Taiwan - CRS implementation

2. Domestic Legislation / Regulations

- **The Amendments, Article 5-1 and 46-1 to the Tax Collection Act (Promulgated on June 14, 2017)**
- ✓ Art. 5-1(1): the Ministry of Finance (MOF) may, based on the principle of reciprocity, enter into a treaty or an agreement of information exchange for tax purposes and provision of other mutual tax assistance with a foreign government or an international organization
- ✓ Art. 5-1(2): exchange of information shall be on a reciprocal basis. Situations in which exchange of information shall not be conducted are stipulated
- ✓ Art. 5-1(3): methods to collect information and collection of information exempt from confidentiality provisions of the Act and other laws are stipulated
- ✓ Art. 5-1(4): providing information to the other contracting party is exempted from confidentiality provisions of the Act and other laws
- ✓ Art. 5-1(5): the scope of other laws described in the preceding two paragraphs are stipulated
- ✓ Art. 5-1(6): the MOF, consulting with the Financial Supervisory Commission, is authorized to draw up and promulgate rules and regulations (translation of the CRS into domestic legislation)
- ✓ Art. 5-1(7): an agreement for the avoidance of double taxation with respect to taxes on income, which was signed prior to the entry into force of the amendments, and which includes clauses of exchange of information, also applies to the provisions of paragraph 2 through 4
- ✓ Art. 46-1: punishments for those who do not cooperate to provide information when failing to fulfill obligations of cooperation and due diligence

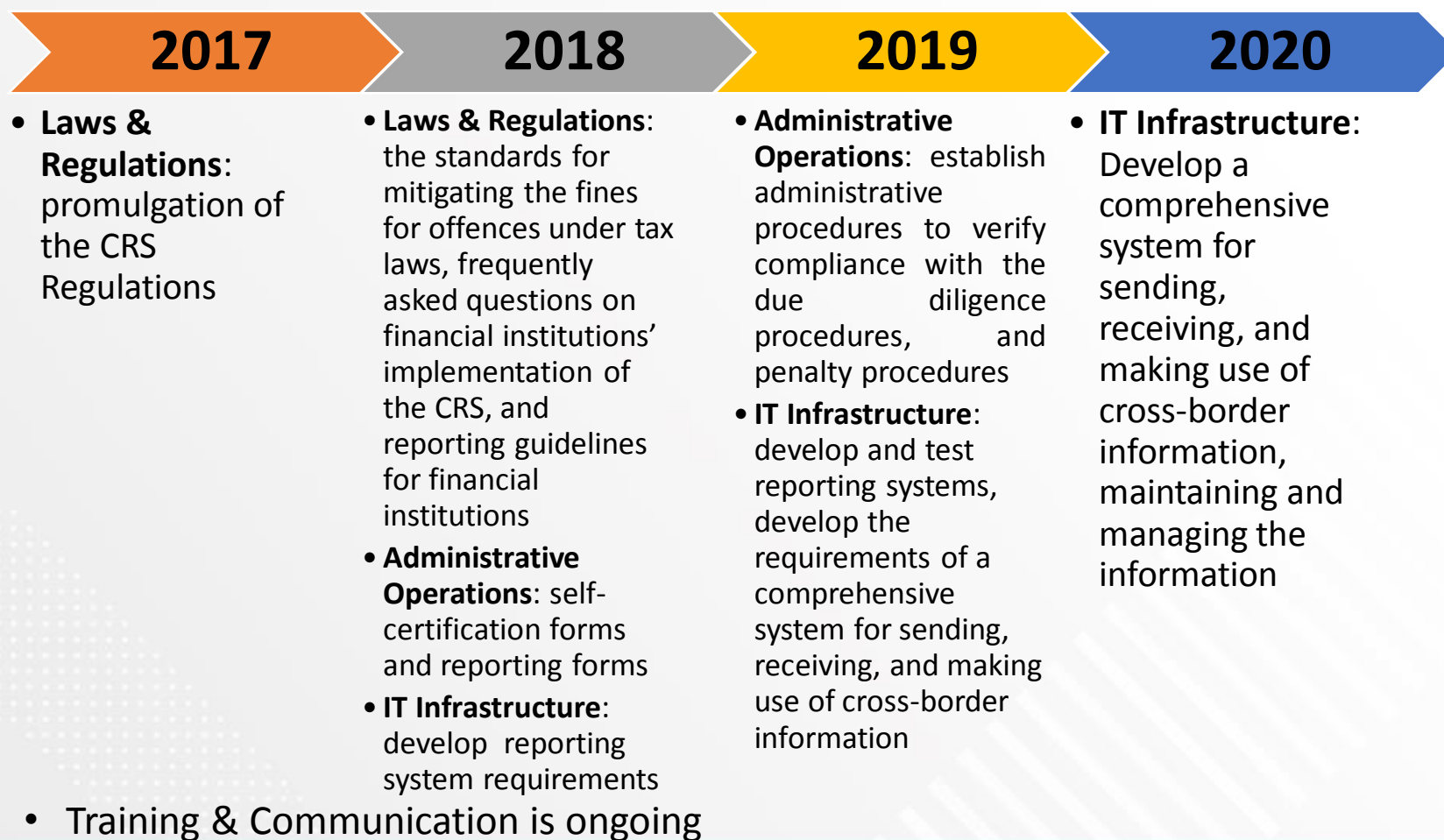
Taiwan - CRS implementation

2. Domestic Legislation / Regulations

- **Regulations Governing the Exchange of Tax Information Concerning Agreements on Tax Matters (Promulgated on December 7, 2017)**
 - ✓ a consistent operational standard for Taiwan's Competent Authority and tax collection authority
 - ✓ systematic mechanism for exercising exchange of information, including raising or receiving a specific request, spontaneous exchange, and automatic exchange
 - ✓ protection of legitimate taxpayers' rights and of tax fairness
- **Regulations Governing the Implementation of the Common Standard on Reporting and Due Diligence for Financial Institutions (CRS Regulations) (Promulgated on November 16, 2017)**
 - ✓ translating the CRS into domestic legislation
 - ✓ Financial institutions located in Taiwan are required to identify financial account information, and report the required financial account information to the Tax Administrations in accordance with the CRS Regulations
 - ✓ establish a consistent due diligence and reporting standard in line with the international standard and enhance the effectiveness of cross-border assistance and cooperation

Taiwan - CRS implementation

3. Execution Planning and Timeline



Korea - Multilateral & Automatic Exchange of Finance Account Information

- KOREA signed the MCAA on October 2014 and started to exchange information on September 2017.
- Exchanged information
 - ✓ Account Holder Identity(Name)
 - ✓ Taxpayer Identification Number
 - ✓ Date of Birth
 - ✓ Account Number and Balance
 - ✓ Identity(Name) of the Reported Financial Institution
 - ✓ Income related to Account Number
- KOREA is EAG(Early Adopters Group) and started to exchange information with 45 countries after September 2017.

Korea - Domestic Legislation and Regulation

- **ADJUSTMENT OF INTERNATIONAL TAXES ACT**
 - ✓ Article 31 (Exchange of Tax and Financial Information)
 - ✓ Article 31-2 (Penalty Provisions)
 - ✓ Article 31-3 (Joint Penalty Provisions)
 - ✓ Article 31-4 (Administrative Fines)
- **ENFORCEMENT DECREE OF THE ADJUSTMENT OF INTERNATIONAL TAXES ACT**
 - ✓ Article 47 (Exchange of Tax Information and Financial Information)
- **Regulation on the Implementation of the Tax Treaty for the Periodic Exchange of Financial Information**
(Notification No.2017-38 of the Ministry of Strategy and Finance, Effective from January 1, 2018)

Indonesia - CRS Implementation

Timeline

2011

Indonesia signed the Convention on Mutual Administrative Assistance in Tax Matters ("MAC")

2014

The Ministry of Finance Decree No. 60/PMK.03/2014 regarding procedures for AEOI was released.

Indonesia signed a commitment to start AEOI in 2018.

2015

Indonesia is included as one of the MCAA signatories, triggering obligations for Indonesian to submit the first CRS report in 2018

2018

The anticipated CRS first reporting year, with 2017 as the first year to fulfil the CRS identification requirement.

AEOI Requirements

International Agreement

- The MAC
- Tax Treaty
- Tax Information Exchange Agreement
- The implementation requires each country to enter into:
 - ❑ MCAA
 - ❑ BCAA

Domestic Legislation

- Law No. 9/2017 regarding Access to Financial Information for Tax Purposes
- MoF Decree No. 70/2017 as amended by MoF Decree No. 73/2017

Data Transmission System

- Outbound system to transmit the information to other countries
- Internal system to transmit the information from FI to the tax authority
- The use of Common Transmission System

Confidentiality and Data Protection

- First review on data protection in July 2016
- Indonesia to follow recommendation from the Global Forum on Transparency and Exchange of Information for Tax Purposes

Indonesia - CRS Implementation – domestic rule

1. The implementation of International Agreements

MOF Decree on Financial Information Access for Tax Purposes

2. Domestic Tax Purposes

Coverage

1. Financial Services Institutions (Banks, Capital markets and insurance under supervision of OJK)
2. Other Financial Services Institutions (Banks, Capital markets and insurance under supervision of OJK)
3. Other Entity (other than Banks, Capital markets and insurance under supervision of OJK)

Submission of Financial Information

How to submit Financial Information	Period to submit Financial Information	Type of information	Report Mechanism	Requested information	Time Period of Reporting
Automatic	Financial Information for 1 calendar year	Electronic	<ol style="list-style-type: none"> 1. Electronic (online) 2. Non electronic (direct) 	<ol style="list-style-type: none"> 1. Account Holder Identity 2. Account Number 3. Identity of the Reported Financial Institution 4. Balance Account 5. Income related to Account Number 	Max. of reporting: <ul style="list-style-type: none"> • April 30th/year, to DJP; • August 1st/year, by OJK
By Request		By Request	Directly	As needed of Directorate General of Taxes	1 month after requesting

Confidential

The obtained information are used as tax database.

Information must be kept confidential

Officer / Expert are not permitted to leak, distribute, grant access to any unauthorized persons

Imprisonment and Penalty Charges under the Taxation General Provisions Art. 41 on infringement of confidentiality for Officer/ Expert

Penalties

Infringement:

1. Identification procedure for Financial Account (specially for AEOI)
2. Documentation (specially for AEOI)
3. Falsification of documents, reduction / concealment of information

Clarification

Non-compliance:

1. Automatic Report Obligation
2. Given Information Obligation

Warning Letter

Preliminary Investigation

Tax Investigation

Singapore - CRS Implementation

- Starting to exchange information September 2018
- On 1 May 2016 the Mutual Administrative Assistance in Tax Matters entered into force for Singapore
- Signed the MCAA on 21 June 2017
- Principles:
 - a. The AEOI partner has the safeguards needed to ensure the confidentiality of information exchanged and prevent its unauthorised use; and
 - b. There is full reciprocity with the AEOI partner in terms of information exchanged.

In the case of CRS, Singapore will also want to ensure that there is a level playing field among all major financial centres. Singapore will consider engaging in automatic exchange of financial account information with regional jurisdictions which have the safeguards to ensure the confidentiality of information exchanged, and have similar agreements in place with relevant financial centres, including Hong Kong and Switzerland.

Japan - CRS Implementation

- By the Tax Reform of 2015, procedures have been introduced by which financial institutions in Japan report information on non-residents' financial accounts to NTA annually by the end of April.
- Based on this information, NTA will implement CRS information exchange from this year with about 80 jurisdictions.
- Information will be exchanged through OECD's Common Transmission System.

China - CRS Implementation

- May 2017 - Public Notice regarding the “Administration Measures on Due Diligence of Financial Account Information related to Tax Matters of Non-residents
- Effective July 1, 2017

Hong Kong - CRS Implementation

- June 2016 – Inland Revenue (Amendment) (No. 3) Ordinance 2016 – legislative framework for Hong Kong to implement AEOI
- July 2017 – Inland Revenue (Amendment) (No. 2) Ordinance 2017 – expand list of reportable jurisdictions to cover 75 reportable jurisdictions effective July 1, 2017

Increasing transparency in Asia

- Taxpayer rights and privacy under the global tax transparency environment

Taiwan-Framework of Taxpayer Rights Protection Act

- Tax exemption of basic livelihood income
- Legal due process
- Fair and reasonable taxation
- Taxpayer rights protection advisory committee & ombudsman

Basic Livelihood Income

- 60% of median disposable income x number of household members
- Adjusted bi-annually

Legal due process (plus provisos)

- Evidence exclusionary rule (fruit of the poisonous tree)
- Right to retain representation (attorneys and advisors)
- Right to audio/video recording at investigatory meetings
- Right to prior written notice
- Right to access tax rulings (no secret tax rulings)

Fair And Reasonable Taxation

- Tax avoidance shall be subject to delay penalty and interest, but not tax evasion penalty.
- Tax avoidance is defined as a scheme that violates legislative intent and abuses legal form to convert non-arm's length transaction to arm's length transaction in order to gain tax benefit.

Taxpayer Rights Protection Ombudsmen

- Civil servants appointed by tax authorities as ombudsmen
- Provide assistance to taxpayers in tax disputes

Taxpayer rights and privacy- Singapore

- Sections 105HA and 105Q Singapore Income Tax Act allow for judicial review proceedings
- ABU v Comptroller of Income Tax (2015)
- AXY and Others v Comptroller of Income Tax (2017)

Increasing transparency in Asia

- Challenges of promoting the implementation of CRS in Asian countries

Hong Kong – Promoting CRS



配合財務機構 支持國際稅務合作

Work with Financial Institutions
Support International Tax Co-operation



2017年起，為配合國際稅務合作的最新標準，財務機構（包括銀行、證券行、保險公司及投資基金）可能會向現有及新客戶索取資料，並按法定程序辨識客戶會否因境外居民身份而在當地有繳稅責任。

財務機構現須按《稅務條例》要求，收集超過70個指定地區的帳戶資料並交予稅務局，以便與當地交換。

希望公眾配合有關安排，並小心處理個人資料。如你對財務機構索取的資料有疑問，可向有關財務機構查詢。

To meet the latest global standard for international tax co-operation, from 2017, financial institutions (including banks, securities firms, insurance companies and investment funds) may seek relevant information from their existing and new customers. They will identify, in accordance with procedures prescribed in the law, whether their customers are subject to taxation as residents of other jurisdictions.

The financial institutions are now required to, in accordance with the requirements of the Inland Revenue Ordinance, collect the account information of more than 70 designated jurisdictions and furnish the Inland Revenue Department with the information so collected, for onward exchange with such jurisdictions.

Please work with the financial institutions and take care of personal data. For enquiries on the information sought by financial institutions, please contact the relevant institutions.



財經事務及庫務局
Financial Services and the Treasury Bureau



稅務局
Inland Revenue Department

Taiwan's Challenge to the CRS

1. International Tax Cooperation
2. Domestic Legislation and Regulations
3. IT Infrastructure

Taiwan's Challenge to the CRS

1. International Tax Cooperation

- **International organizations/instruments regarding promoting tax transparency**
 - Global Forum on Transparency and Exchange of Information for Tax Purposes
 - Convention on Mutual Administrative Assistance in Tax Matters (MAAC)
 - The CRS Multilateral Competent Authority Agreement (MCAA)
- **Challenges resulting from not participating in the above-mentioned Global Forum and Multilateral Conventions**
 - Not being a member of the Global Forum, Taiwan is unable to obtain resources and assistance and to participate in the peer-review mechanism
 - Taiwan has not signed Multilateral Conventions, so that it may not be able to enjoy the simplified and standardized mechanism which the Multilateral Conventions provides
 - Other Jurisdictions lack access to understanding our implementation on tax transparency
- **Corresponding measures**
 - Participate in relevant seminars held by international organizations
 - Pay close attention to up-to-date information released by international organizations
 - Expand the network of our bilateral agreements on tax matters pragmatically
 - Release relevant information on the website of our MOF

Taiwan's Challenge to the CRS

2.Domestic Legislation and Regulations

Challenges

- CRS legislation: Highly professional, involving the translation of the new international standard into domestic legislation, and financial practice.
- More than 100 suggestions and questions from the public.

Corresponding measures

- Suggestions and opinions which were in line with the CRS and feasible in practice after being evaluated were taken to revise relevant provisions of the CRS Regulations.
- Doubts about practical implementation of the CRS Regulations will be covered in frequently asked questions to assist financial institutions understand the legal effect of each case.
- Continually updating frequently asked questions will serve as a basis for reviewing the CRS Regulations in the future.

Taiwan's Challenge to the CRS

3. IT Infrastructure

Background

- Common Transmission System (CTS): a platform for automatic exchange of information which the 149 members of the Global Forum may subscribe for use.
- The development of the CTS was led by the OECD. Users of the CTS may obtain the OECD's instruction and technical assistance.

Challenges

- Unable to use the same platform as the one used by the majority of jurisdictions.
- Limited obtainable resources when encountering technical problems regarding automatic exchange of information.

Corresponding measures

- Develop, establish, and maintain our own platform for automatic exchange of information which complies with international standards of data safeguard.
- Consult with our treaty partners which share the same interest in concluding a CAA on their opinions and experiences on automatic exchange of information.

Korea - The Difficulties of Identifying Taxpayers

Challenges

- The identifying information such as date of birth and taxpayer identification number is insufficient and inaccurate and so it is difficult to specify taxpayers.

Corresponding measures

- It is necessary to arrange the International Common Standards(plan) to provide requisitely passport information and taxpayer identification number of resident country in order to enhance the identification of taxpayers.

Korea - The Problems of Avoiding the CRS

Challenges

- Because each tax authority verifies only formal errors about the information submitted by financial institutions and inform the other contracting country of this information, there is the problem of avoiding the CRS in lack of due diligence in financial institutions and intentionally omitted reporting.

Corresponding measures

- The international community recognizes avoiding the CRS as a major issue and has a lively discussion about how to solve that problems in order to guarantee effectiveness of the CRS.
- ✓ The introduction of Mandatory Disclosure Rules, Responding to avoiding the CRS abusing Citizenship/Residence by Investment, Preparing a plan for fulfilling the effective reporting obligations of financial institutions

Increasing Transparency in Asia

