

International Taxation

Automatic exchange of financial account information

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Part 9

CRS under the AEOI framework

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CRS : 2014 OECD report

- (1) A common standard on information reporting;
- (2) A legal and operational basis for the exchange of information (EOI);
- (3) Common or compatible technical solutions.

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HKFI's legal obligations under s50B, IRO

- (1) A [reporting financial institution](#) must
 - (a) establish procedures that are designed to
 - (i) identify the [jurisdiction of residence](#) of
 - (A) the [account holder](#) of a [financial account](#) maintained with the institution; and
 - (B) (if the account holder is a [passive NFE](#)) the [controlling person](#) of the passive NFE;
 - (ii) identify whether a financial account is a [reportable account](#);
 - (iii) secure that any evidence relied on, or a record of the steps taken, for carrying out the procedures in relation to a financial account is kept for a period of 6 years beginning on the date on which the procedures are completed; and
 - (iv) enable the institution to identify and collect the [required information](#) within the meaning of section 50C(3) ([required information](#)); and
 - (b) incorporate into those procedures the [due diligence requirements](#) in Schedule 17D.

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HKFI's legal obligations under S50B, IRO

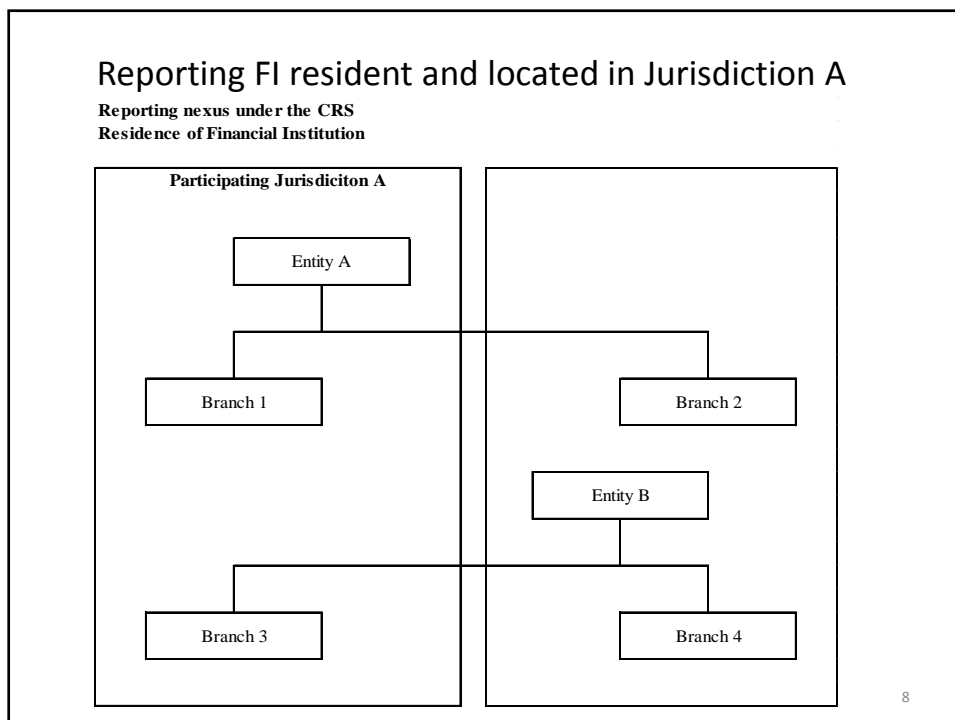
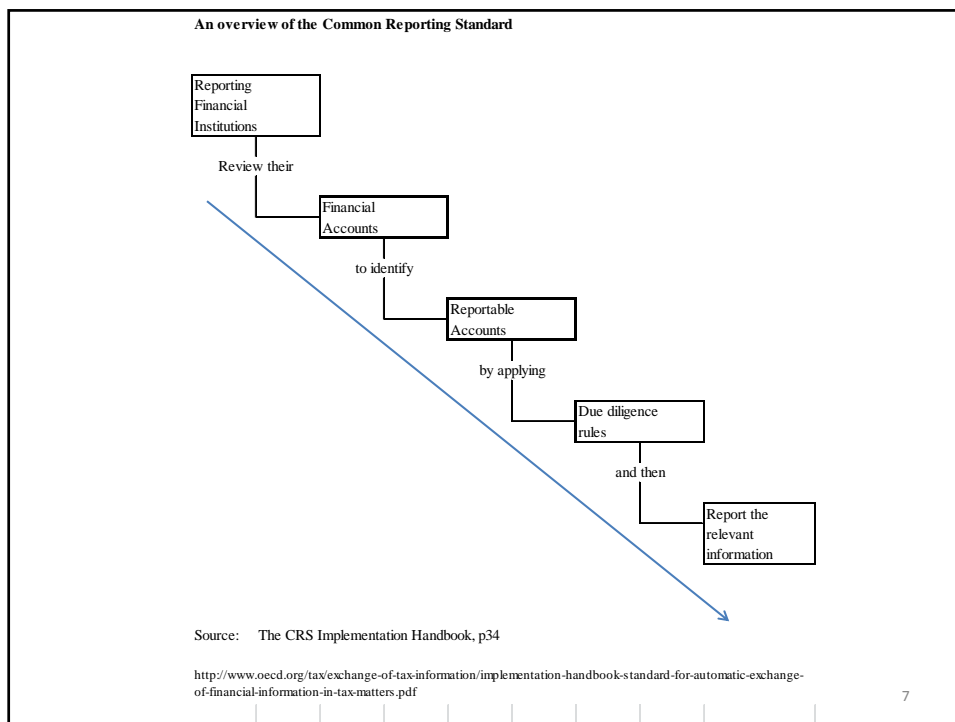
- (2) A [reporting financial institution](#) must maintain and, for carrying out its obligations under this Part, apply the procedures established in compliance with subsection (1)(a) and (b) ([required procedures](#))
- (a) to identify [reportable accounts](#), and to identify and collect the [required information](#); and
 - (b) to ensure that the purpose mentioned in subsection (1)(a)(iii) can be achieved.

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HKFI's legal obligations under S50B, IRO

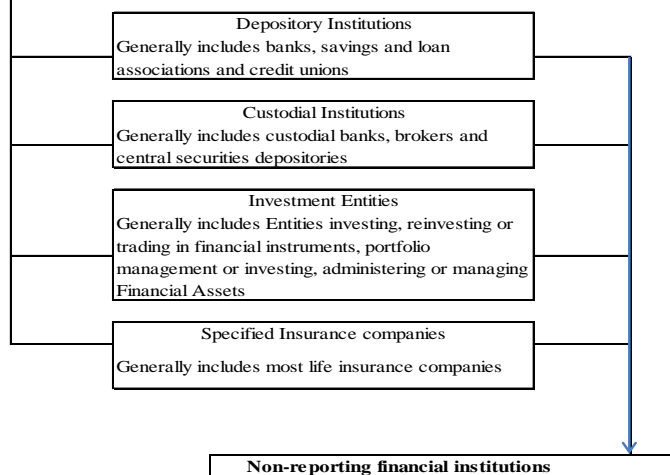
- (3) A [reporting financial institution](#) may, in carrying out its obligations under this Part, apply the [required procedures](#)—
- (a) in relation to any [financial account](#), even if—
 - (i) the [account holder](#) of the [financial account](#) is a resident for tax purposes in a territory outside Hong Kong that is not a [reportable jurisdiction](#); or
 - (ii) (if the [account holder](#) of the [financial account](#) is a [passive NFE](#)) any [controlling person](#) of the account holder is a resident for tax purposes in a territory outside Hong Kong that is not a [reportable jurisdiction](#); and
 - (b) for identifying and collecting the [required information](#) in respect of any [financial account](#) as referred to in paragraph (a).

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Reporting and non-reporting financial institution

Reporting Financial Institutions are defined as



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Reporting and non-reporting financial institution

As per Part 2 of Schedule 17C to the IRO ->

- Non-reporting financial institutions**
- 1 Governmental entities
 - 2 International organizations
 - 3 Central bank;
 - 4 Hong Kong Monetary Authority;
 - 5 Pension fund of government entity, international organization, central bank or HKMA;
 - 6 Broad participation retirement fund;
 - 7 Narrow participation retirement fund;
 - 8 Qualified credit card issuer;
 - 9 Exempt collective investment vehicle;
 - 10 Trustee-documented trust;
 - 11 Grant Schools Provident Fund and Subsidized Schools Provident Fund;
 - 12 Mandatory provident fund schemes and occupational retirement schemes;
 - 13 Credit union.

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Excluded accounts (Sch 17C, IRO)

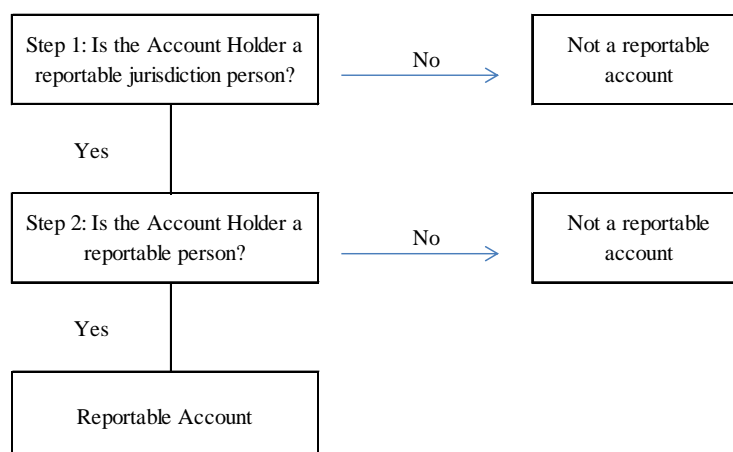
Non-reportable Accounts (Excluded Accounts)			
1	Retirement and pension accounts		
2	Non-retirement tax favored accounts		
3	Term life insurance contracts		
4	Estate account		
5	Escrow account		
6	Depository account owing to non-returned overpayments		
7	Dormant account		

<http://www.ird.gov.hk/eng/pdf/2016/chapter6.pdf>

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Reportable account – test 1

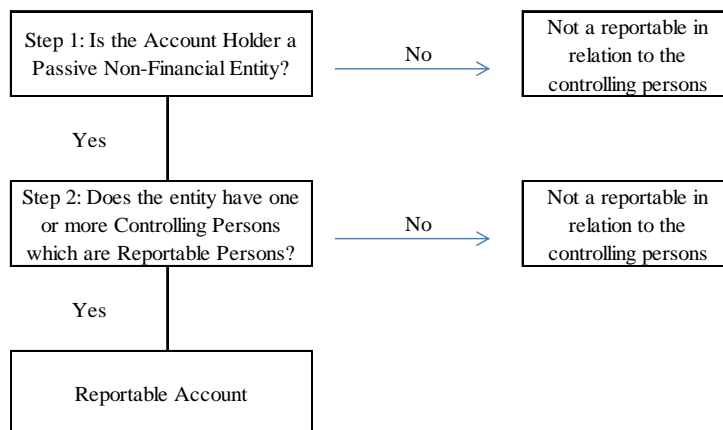
Reportable account by virtue of the Account Holder



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Reportable account – test 2

Reporting account by virtue of the Controlling Person



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Required information

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.

<http://www.ird.gov.hk/eng/pdf/2016/chapter15.pdf>

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Required information under s50C, IRO

- (1) A reporting financial institution must **furnish a return** in accordance with a notice given by an assessor under subsection (2) and in compliance with subsections (4) and (5).
- (2) An assessor may give a notice in writing to a reporting financial institution requiring it to furnish a return reporting the information referred to in subsection (3) (required information) in relation to reportable accounts with respect to any reportable jurisdiction that are maintained by the institution at any time during the period specified in the notice (specified information period), which must be either of the following—
- (a) the calendar year preceding the year in which the date of the notice falls;
 - (b) such other period as the Commissioner may decide in appropriate cases.
- (3) The **required information** is—
- (a) the information referred to in sections 50F and 50G; and
 - (b) any other information that the Board of Inland Revenue specifies.
- (4) The return under subsection (1) must be furnished—
- (a) within the time specified in the notice;
 - (b) in the manner specified in the notice; and
 - (c) in the form of an electronic record that—
 - (i) is sent by using a system specified by the Board of Inland Revenue; or
 - (ii) contains the required information arranged in a form specified by the Board of Inland Revenue.
- (5) If, during the specified information period, the reporting financial institution maintains no reportable accounts, the institution must state that fact in the return.

<http://www.hkii.hk/eng/hk/legis/ord/112/s50C.html>

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Required information under section s50F, IRO

The information required from financial institutions

- (1) A return furnished under section 50C must include the name and identifying number (if any) of the reporting financial institution.
- (2) The return must also include the following information in relation to each reportable account—
 - a) If the account holder (AH) is an individual who is a reportable person, his name, address, jurisdiction of residence, TIN, date and place of birth;
 - b) If AH is an entity that is a reportable person, the name, address, jurisdiction of residence and TIN;
 - c) If AH is an entity and at least one controlling person of the entity is a reportable person, the name, address, jurisdiction of residence and TIN of the entity, and the name, address, jurisdiction of residence, TIN, date and place of birth, of each reportable person.
 - d) The account number;
 - e) The account balance or value;
 - f) [see next ppt]

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S50F, IRO (continued)

(f) for a **custodial account**—

- (i) the total gross amount of interest paid to the account, or in respect of the account, during the specified information period or other appropriate reporting period;
- (ii) the total gross amount of dividends paid to the account, or in respect of the account, during the specified information period or other appropriate reporting period;
- (iii) the total gross amount of other income generated in respect of the financial assets held in the account, and paid to the account, or in respect of the account, during the specified information period or other appropriate reporting period; and
- (iv) the total gross proceeds from the sale or redemption of financial assets paid to the account during the specified information period or other appropriate reporting period in respect of which the reporting financial institution acts as a custodian, broker, nominee, or otherwise as an agent for the account holder;

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S50F, IRO (continued)

(g) for a **depository account**—the total gross amount of interest paid to the account during the specified information period or other appropriate reporting period;

(h) for any account in respect of which the reporting financial institution is the obligor or debtor, other than a custodial account or a depository account—the total gross amount paid to the account holder in respect of the account during the specified information period or other appropriate reporting period, including the aggregate amount of any redemption payments made to the account holder during that period.

(3) For reporting the information referred to in subsection (2)—

- (a) references to the balance or value of a reportable account include a nil balance or value;
- (b) references to paying an amount include crediting an amount; and
- (c) in any reference to an amount, the currency in which the amount is denominated must be identified.

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Non-compliance and enforcement (IRO)

- Assistant Commissioner of Inland Revenue has power to get information under search warrant under S51B(1AAA), S51B(1AAAB) to enter business premises of reporting financial institution anytime during office hours without giving prior notice, and search for data, open, cause to be removed and open, any articles containing the evidence in assessing the liabilities of the reporting Financial Institution.
- After giving notice, an assessor has power to enter business premises of reporting FIs and service providers and check for and follow up any non-compliance cases [S52BA]
- Penalties for offences relating to a person in making a self-certification [S80(2E), S80(2F)],
- Penalties for offences relating to reporting financial institutions: including administrative fines and criminal prosecution [i.e. a person obstructs Commissioner or authorized officer acting in discharge of their duty (S51B(4)); reporting FI that intentionally provides false information in a return under s50C (S80B)]

[http://www.china-tax.net/updates-hk-china-and-elsewhere/hong-kong-tax-updates.html#2016 Amendment](http://www.china-tax.net/updates-hk-china-and-elsewhere/hong-kong-tax-updates.html#2016%20Amendment)

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Part 10

Comparison:

(a) between CRS and FATCA;

(b) between Model 1-IGA and Model 2-IGA

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(I) Inter-governmental Agreement with the US

- Under the framework of “foreign account tax compliance act”, the U.S. signs
- Model 1-IGA (i.e. with Singapore, Mainland China);
- Model 2-IGA (i.e. with Hong Kong, Macau, Taiwan)

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(II) Model 1-IGA and Model 2-IGA

Model 1-IGA (i.e. Singapore)	Model 2-IGA (Hong Kong)
Reciprocal or non-reciprocal IGA	Non-reciprocal
No FFI agreement;	FFI agreement
FFI reporting to Singapore tax authority that in turn provides same to IRS.	No foreign government acting in-between
Reporting FATCA information : automatic	FFI must obtain consent from account holder or non-participating FFI to disclose reportable information to IRS.
No Chapter 4 (section 1471, IRC) withholding obligations; [note: a Singapore FFI has obligation on regular U.S. source withholdable payment under chapter 3 of sub-title A of IRC, as a qualified intermediary.]	Withholding obligation (Chapter 4, Section 1471, IRC) on: (i) US sourced FDAP income; (ii) gross proceeds from disposal of property producing U.S. source dividend or interest; or (iii) foreign passthru payments, if FFI a) Makes payment to a non-participating FFI; or b) foreign government not responding to IRS requests for information about a non-consenting person within 6 months

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Comparing FATCA with CRS

- Scope of reporting person;
- Due diligence procedures;
- Scope of information to be exchanged;
- Reporting modes (government in-between);
- Withholding obligations
- Enforcement

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Comparing FATCA (Model 2-IGA) with CRS

	FATCA	CRS
Reporting entity	FFI established in FATCA partner jurisdiction, and branches located in partner jurisdiction	<ol style="list-style-type: none"> 1. FI resident in a participating jurisdiction and branches located in participating jurisdiction; 2. FI (other than a trust) that does not have residence for tax purposes, is subject to participating jurisdiction agreement if (i) it is incorporated under the law of, (ii) has place of management in, or (iii) is subject to financial supervision in, the participating jurisdiction; 3. FI that is a trust: if one or more of the trustees are resident in the participating jurisdiction
Withholding obligation	Yes, under paragraph 2 of Article 2, and Article 3 in Model II-IGA	Not provided

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Comparing FATCA (Model 1-IGA) with CRS

	CRS	FATCA
Categories of non-reporting financial institutions	No such division, but 6 types of institutions excluded under FATCA are not included in the Standards	2 sub-categories: (a) Exempt beneficial owners; (b) Deemed compliant Foreign FI
Passive NFE and controlling persons	Controlling persons of passive NFEs are reportable, regardless of whether they are resident in the same jurisdiction as the Passive NFE	Only US controlling persons of passive foreign non-financial entities (NFFEs) are reportable

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Comparing FATCA (Model 1-IGA) with CRS

	CRS	FATCA
Definition of Passive NFE	Definition of Passive NFE includes investment entities not resident in a participating jurisdiction	No such inclusion
Reportable jurisdiction persons	Residents of a reportable jurisdiction are considered reportable jurisdiction persons. Where entities do not have a residence for tax purposes, the standard indicates the place of effective management.	Both US citizens and US residents are included in the definition of US person.

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Comparing FATCA with CRS in HK

(1)	Model 2, IGA (HK-US)	S49, IRO – authorizing the CE to enter into arrangement for TIEA
Non-reporting financial institution and excluded accounts	Annex II	Schedule 17C, IRO
Due diligence requirements	Annex I	Schedule 17D, IRO
Lists of reportable jurisdictions and participating jurisdictions	IRS website	Schedule 17E, IRO
Account holder's consent to exchange of information	Required	Not required

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Comparing FATCA with CRS in HK

(2)	Model 2-IGA	S49, IRO – authorizing the CE to enter into arrangement for TIEA
Reportable account	U.S. Account: <u>financial account</u> maintained by reporting FI, and held by <u>specified U.S. person(s)</u> , or by a non-U.S. entity, after application of due diligence procedure, that is identified as having one or more <u>controlling person(s)</u> that are specified U.S. persons	Reportable account: (a) a financial account identified by DD under Sch. 17D, and held by at least one <u>reportable person</u> , <u>or</u> a passive NFE with at least one <u>controlling person</u> being a reportable person; <u>and</u> (b) for purpose of 50C, 50D, 50F and 50G, includes a preexisting account that must be reported as undocumented account under DD requirements

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Specified U.S. person and reportable person

Model 2-IGA	CRS
<p>A <u>specified U.S. person</u> is a <u>U.S. person</u> other than:</p> <p>(i) corporation the stock of which is regularly traded on an established securities markets; (ii) corporation that is a related entity of a corporation above;</p> <p>(iii) governmental entity; (iv) state of the US, US territories, political subdivision of any of the foregoing; (v) organization exempt from tax under section 501 of the IRC, or individual retirement plan as defined in S581 of the IRC; (vi) banks as defined in S581 of the IRC; (vii) any real estate investment trust as defined in S856 of the IRC; (viii) any regulated investment company as defined in 851, IRC; (ix) any trust fund as defined in S584, IRC; (x) any common trust that is exempt from tax under S664, IRC; (xi) dealer in securities, commodities or derivative financial instruments that is registered as such under the laws of the US or any State; (xii) a broker as defined in S6045, IRC; (xiii) any tax exempt trust under a plan in S403 or S457, IRC.</p> <p>A <u>U.S. person</u> means: A citizen or resident individual; a partnership; a corporation; or a trust</p>	<p>A <u>reportable person</u> is any one of the following:</p> <p>(a) individual or an entity that is a resident for tax purposes of a reportable jurisdiction; or an estate of a decedent who was a tax resident for tax purposes of a reportable jurisdiction; but</p> <p>(b) does not include</p> <p>(i) corporation the stock of which is regularly traded on an established securities markets;</p> <p>(ii) corporation that is a related entity of a corporation above;</p> <p>(iii) governmental entity;</p> <p>(iv) an international organization;</p> <p>(v) a central bank;</p> <p>(vi) a financial institution</p>

Comparing FATCA with CRS – due diligence

Pre-existing individual accounts	Model 2-IGA	CRS
No requirement to be reviewed, identified or reported	<p>a) Balance or value < USD 50,000 (USD250,000 for cash value insurance contracts or annuity contracts);</p> <p>b) Cash value insurance contract or annuity contracts if the reporting FI is prevented by law from selling such contracts to U.S. residents</p>	No threshold is applicable; No review requirement for cash value insurance contract or annuity contracts if the reporting FI is prevented by law from selling such contracts to residents of a reportable jurisdiction
Lower value and high value accounts	<p>a) Account balance or value exceeding 50,000 (250,000 for insurance or annuity contracts), but not exceeding 1,000,000;</p> <p>b) Account balance or value exceeding 1,000,000</p>	Dividing line between low value account and high value account is HK\$7,800,000
Enhanced review for High value accounts	Yes	Yes

Comparing FATCA with CRS – due diligence

Pre-existing entity accounts	Model 2-IGA	CRS
No requirement to be reviewed, identified or reported	Account balance or value not exceeding USD250,000	Account balance or value not exceeding HKD1,950,000
Accounts subject to review	Account balance or value not exceeding 250,000 at 2014.6.30 but exceeding 1,000,000 at last day of 2015	

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Comparing FATCA with CRS – due diligence

New accounts	Model 2-IGA	CRS
Individual accounts not subject to review	if balance or value of deposit account not exceeding USD50,000	Not applicable
Entity accounts not required to be reviewed	Credit card account or revolving credit facility if FFI has policy to prevent the balance due to holder from exceeding USD50,000	Not applicable

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Comparing FATCA with CRS – due diligence

	Model 2-IGA	CRS
Application of due diligence rules	No such provision as CRS does.	A reporting FI may a) Apply the due diligence requirements for new accounts to pre-existing accounts (but in such cases the requirements that otherwise apply to pre-existing accounts continue to apply); and b) Apply the due diligence requirements for high value accounts to low value accounts.

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Comparing FATCA with CRS – due diligence

Self-certification

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Comparing FATCA with CRS – due diligence

	Model 2-IGA	CRS
Self-certification is subject to <u>reasonableness test</u> ?	IGA does not expressly require such a test.	There is an express requirement for reasonableness test
Reliance on self-certification	Reporting FI may not rely on self-certification if it knows, or has reason to know that self-certification is incorrect or unreliable.	Same requirement as FATCA applies to CRS
<u>Self-certification by the controlling person of a passive NFE</u> is not required If the aggregate balance or value of an account is not exceeding HK\$7.8 million	No such alternative requirement provides	Reporting FI may use information collected pursuant to AML/KYC procedure to determine whether controlling person is resident in reportable jurisdiction, in lieu of a self-certification

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Useful references:

OECD Exchange of Information website

<http://www.oecd.org/tax/exchange-of-tax-information/>

Common reporting standards (CRS)

<http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>

Internal Revenue Service - FATCA information

<https://www.irs.gov/businesses/corporations/fatcafaqs>

FATCA agreement with Hong Kong (Model 2-IGA)

<https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Hong%20Kong-11-13-2014.pdf>

HK Inland Revenue Department – DTA and TIEA

<http://www.ird.gov.hk/eng/tax/dta1.htm>

HKIRD - Guidance for financial institutions

<http://www.ird.gov.hk/eng/tax/aeoi/guidance.htm>

Internal Revenue (Amendment) (No. 3) Ordinance 2016

<http://www.gld.gov.hk/egazette/pdf/20162026/es12016202622.pdf>

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End of Presentation

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