

INCOME TAX (AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION) RULES 2016

PU (A) 355
19 December 2016

IN exercise of the powers conferred by paragraph 154(1)(c) of the Income Tax Act 1967 [Act 53], the Minister makes the following rules:

CITATION AND COMMENCEMENT

- 1(1)** These rules may be cited as the **Income Tax (Automatic Exchange of Financial Account Information) Rules 2016**.
- 1(2)** These Rules come into operation on 1 January 2017.

APPLICATION

- 2(1)** These Rules shall have effect for and in connection with the implementation of the Standard for the purpose of giving effect to the Arrangements.
- 2(2)** These Rules shall apply to a Financial Institution as defined under Section VIII of the Standard.

INTREPRETATION

- 3(1)** In these Rules—

"Reporting Financial Institution" means any Financial Institution that is resident in Malaysia (excluding any branch of that Financial Institution that is located outside of Malaysia) and any branch of a Financial Institution that is not resident in Malaysia if that branch is located in Malaysia;

"Arrangements" means—

- (a) the Convention on Mutual Administrative Assistance in Tax Matters;
- (b) the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information; and
- (c) any arrangements with participating jurisdictions to improve international tax compliance through—
 - (i) any bilateral or multilateral tax convention;
 - (ii) any bilateral or multilateral competent authority agreements; or
 - (iii) any tax information exchange agreement;

"Standard" means the Common Reporting Standard (which includes Commentaries) approved by the Council of the Organisation for Economic Co-operation and Development on 15 July 2014, as amended from time to time.

- 3(2)** Words and expressions which are not defined in these Rules shall have the same meaning as assigned to them in the Standard.

DUE DILIGENCE OBLIGATIONS

- 4(1)** Every Reporting Financial Institution which is not a Non-Reporting Financial Institution shall identify the Reportable Account from the Financial Account maintained by the Reporting Financial Institution by applying the due diligence procedure as specified in Section II to VII of the Standard.
- 4(2)** A Non-Reporting Financial Institution referred to in subrule (1) is—
- (a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
 - (b) a Broad Participation Retirement Fund, a Narrow Participation Retirement Fund, a Pension Fund of a Governmental Entity, International Organisation or Central Bank;
 - (c) a Qualified Credit Card Issuer which satisfies the following requirements
 - (i) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
 - (ii) beginning on or before 1 July 2017, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD50,000.00, or to ensure that any customer overpayment in excess of USD50,000.00 is refunded to the customer within sixty days, in each case applying the rules set forth in paragraph C of Section VII of the Standard for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;
 - (d) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in paragraphs (a), (b) and (c), and is defined in domestic law as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Standard;
 - (e) an Exempt Collective Investment Vehicle; or
 - (f) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I of the Standard with respect to all Reportable Accounts of the trust.
- 4(3)** Every Reporting Financial Institution shall establish, maintain and document the due diligence procedure referred to in subrule (1).
- 4(4)** The Financial Account referred to in subrule (1) shall not include any Excluded Account as defined in subparagraphs C(17)(a) to (g) Section VIII of the Standard.
- 4(5)** In applying the due diligence procedures, the relevant dates for the purposes of the provisions of the Standard specified in column (2) of the Schedule shall be the dates specified in column (3) of the Schedule.

- 4(6)** For the purposes of subparagraph C(6) Section III of the Standard and paragraphs A and B and subparagraph E(2) Section V of the Standard the following periods shall be treated as separate calendar year:
- (a) 1 January 2017 to 30 June 2017; and
 - (b) 1 July 2017 to 31 December 2017.
- 4(7)** An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures described in Sections II to VII of the Standard and, information in respect of a Reportable Account shall be reported annually in the calendar year following the year to which the information relates.
- 4(8)** For the purposes of these Rules, an account with a balance or value that is negative is deemed to have a balance or value equal to nil.
- 4(9)** In determining the balance or value of an account denominated in a currency other than United States dollars for the purposes of the Standard and these Rules, the institution shall translate the relevant United States dollars threshold amount described in the Standard or in these Rules into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.
- 4(10)** For the purposes of the Standard and these Rules, a Financial Account held by an individual as a partner of a partnership is deemed to be an entity account.

MODIFICATIONS TO DUE DILIGENCE PROCEDURES

- 5(1)** A Reporting Financial Institution may apply, for a calendar year—
- (a) the residence address procedure, as described in subparagraph B(1) of Section III of the Standard, to a Lower Value Account;
 - (b) the due diligence procedures for a High Value Account, described in paragraph C of Section III of the Standard, to a Lower Value Account; or
 - (c) paragraphs A to C of Section V of the Standard to determine whether a Preexisting Entity Account is subject to the due diligence procedures described in Section V of the Standard.
- 5(2)** Subject to subrules (3) and (4), a Reporting Financial Institution may apply, for a calendar year, the due diligence procedures for a New Account, described in Section IV or VI of the Standard, to a Preexisting Account.
- 5(3)** Where a Reporting Financial Institution applies the due diligence procedures for a New Account to a Preexisting Account, the procedures described in paragraph C of Section I, paragraph A of Section III, subparagraph B(1) of Section III and paragraph A of Section V of the Standard shall apply to the New Account.
- 5(4)** A Reporting Financial Institution shall not apply the due diligence procedures for a New Account to a Preexisting Account unless the institution applies the procedures to all Preexisting Accounts it maintains or a clearly identifiable group of Preexisting Accounts.
- 5(5)** With respect to New Entity Accounts, for the purposes of determining whether a controlling person of a passive non-financial entity is a Reportable Person, a Reporting Financial Institution may only rely on a self-certification from either the account holder or the controlling person.

5(6) For the purposes of rule 4, a Reporting Financial Institution may—

- (a) treat a Financial Account held by individual beneficiaries of a Cash Value Insurance Contract or an Annuity Contract as other than a Reportable Account in the circumstances described in paragraph B of Section VII of the Standard; and
- (b) treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee, certificate holder or beneficiary, if the Financial Account meets the following requirements:
 - (i) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers twenty-five or more employees or certificate holders;
 - (ii) the employees or certificate holders are entitled to receive any contract value related to their interest and to name beneficiaries for the benefit payable upon the employee's death; and
 - (iii) the aggregate amount payable to any employee, certificate holder or beneficiary does not exceed USD1,000,000.00.

5(7) In this rule—

"High Value Account" means a Preexisting Individual Account with an aggregate balance or value that exceeds USD1,000,000.00 as of 30 June 2017, 31 December 2017 or 31 December of any subsequent year;

"Lower Value Account" means a Preexisting Individual Account, which is not a High Value Account, with an aggregate balance or value that does not exceed USD1,000,000.00 as of 30 June 2017;

"New Account" means a Financial Account maintained by a Reporting Financial Institution opened on or after 1 July 2017, unless it is treated as a Preexisting Account under paragraph (b) of the definition of "Preexisting Account";

"Preexisting Account" means—

- (a) a Financial Account maintained by a Reporting Financial Institution as of 30 June 2017; or
- (b) any Financial Account of an account holder, regardless of the date such Financial Account was opened if—
 - (i) the account holder also holds a Financial Account that is a Preexisting Account with the Reporting Financial Institution (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution) under paragraph (a) of this definition;
 - (ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution) treats both the aforementioned Financial Accounts, and any other Financial Accounts of the account holder that are treated as Preexisting Accounts under this paragraph as a single Financial Account for the purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII of the Standard, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;
 - (iii) in respect of a Financial Account that is subject to AML/KYC procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC procedures for the Financial Account by relying upon the AML/KYC procedures performed for the Preexisting Account described in paragraph (a) of this definition; and

- (iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the account holder other than for purposes of the Standard;

"Group Annuity Contract" means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, a trade association or labour union, or other association or group;

"Group Cash Value Insurance Contract" means a Cash Value Insurance Contract that—

- (a) provides coverage on individuals who are affiliated through an employer, a trade association or labour union, or other association or group; and
- (b) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender and smoking habits of the member (or class of members) of the group.

RELATED ENTITY

- 6(1)** For the purposes of the general reporting requirements in Section I of the Standard and application of the due diligence procedures described in Sections II to VII of the Standard, an Entity is a "Related Entity" of another Entity if—
 - (a) either Entity controls the other Entity;
 - (b) the two Entities are under common control; or
 - (c) the two Entities are Investment Entities described in subparagraph A(6)(b) of Section VIII of the Standard, are under common management, and such management fulfils the due diligence obligations of such Investment Entities.
- 6(2)** The control referred to in paragraphs (1)(a) and (b) includes direct or indirect ownership of more than fifty percent of the vote and value in an Entity.

REPORTING OBLIGATION

- 7(1)** A Reporting Financial Institution shall, in respect of the calendar year 2017 and every following calendar year, furnish an information return to the Director General on or before 30 June of the year following the calendar year to which the return relates setting out the information required to be reported as described in paragraphs A and B of Section I of the Standard, subject to paragraphs C to E in Section I of the Standard, in relation to every Financial Account identified as a Reportable Account that is maintained by the Reporting Financial Institution at any time during a calendar year.
- 7(2)** For the purposes of subrule (1), each Reporting Financial Institution shall report the account balance or value, including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value, as at the end of the relevant calendar year or, if the account was closed during such year, as at the closure of the account with respect to each Reportable Account maintained by such Reporting Financial Institution.
- 7(3)** If a Reporting Financial Institution applies the due diligence procedures described in rule 4 for a calendar year and no account is identified as a Reportable Account, the Reporting Financial Institution shall furnish to the Director General an information return which provides that the Reporting Financial Institution maintains no such Reportable Accounts in respect of that year.

- 7(4)** An information return shall be furnished on an electronic medium or by way of an electronic transmission in the format as may be determined by the Director General.
- 7(5)** A Reporting Financial Institution is not exempt from providing the information as required under these Rules by the reason that the Reporting Financial Institutions has the duty to not collect, use or disclose such information, whether imposed by the written law, the rules of law, any contract or any rules of professional disciplinary procedure, in respect of such information.
- 7(6)** For the avoidance of doubt, all information provided or obtained under these Rules may be used by the Director General for any purposes related to the administration of the Act and the Labuan Business Activity Tax Act 1990 [Act 445].

RECORDS

- 8(1)** Every Reporting Financial Institution shall keep and retain in safe custody records that the Reporting Financial Institution obtains or creates for the purpose of complying with these Rules, including self-certifications and records of documentary evidence.
- 8(2)** Every Reporting Financial Institution required by these Rules to keep and retain in safe custody records and does so electronically shall retain them in an electronically readable format for the retention period referred to in subrule (4).
- 8(3)** Every Reporting Financial Institution that obtains or creates records in a language other than English shall, upon request of the Director General, provide an English translation.
- 8(4)** Every Reporting Financial Institution that is required to keep and retain in safe custody records that the Reporting Financial Institution obtains or creates under these Rules shall retain those records for a period of at least seven years following—
- (a) in the case of a self-certification, the last day on which a related Financial Account is opened; and
 - (b) in any other case, the end of the last calendar year in respect of which the record is relevant.

SERVICE PROVIDERS

- 9(1)** A Reporting Financial Institution may appoint a third party as its agent to carry out the duties and obligations imposed on it under these Rules.
- 9(2)** Where a third party is appointed by a Reporting Financial Institution in accordance with subrule (1)—
- (a) the Reporting Financial Institution shall, at all times, have access to and be able to produce, where so requested by the Director General, the records and documentary evidence used to identify and report on Reportable Accounts; and
 - (b) the Reporting Financial Institution is responsible for any failure of that third party to carry out the obligations of the Reporting Financial Institution rules and 10 and 11 shall apply to the Reporting Financial Institution notwithstanding that—
 - (i) the actions were the action of that third party; or
 - (ii) the failure to act was the failure by that third party to act.

POWERS OF DIRECTOR GENERAL

- 10(1)** The Director General may exercise all the powers vested in him under the Act to administer and enforce compliance with the provisions of the Arrangements and these Rules.
- 10(2)** The Director General may, by notice, require a Financial Institution to furnish to him within a time specified in the notice with such information including copies of any relevant books, records or other documents as the Director General may reasonably require for any purpose relating to the administration or enforcement of these Rules.
- 10(3)** The Director General may at all times have full and free access to enter any premises or place of business of a Financial Institution for the purposes of—
- (a) administrating and implementing compliance with the provisions of the Arrangements and these Rules; and
 - (b) examining the procedures put in place by the Financial Institution for the purposes of ensuring compliance with that Financial Institution's obligations under these Rules.
- 10(4)** The Director General may make extracts from or copies of all or any part of the books, records or other documents or other material made available to him or require that copies of books, records or other documents be made available to him for any purpose relating to the administration or enforcement of these Rules.

ANTI-AVOIDANCE

- 11(1)** If the Director General has reason to believe that any person has entered into any arrangements or engages in a practice which has the direct or indirect effect of—
- (a) relieving any person from any liability which has arisen or which would otherwise have arisen to furnish to the Director General an information return;
 - (b) evading or avoiding any obligation which is imposed or would otherwise have been imposed on any person under these Rules; or
 - (c) hindering or preventing the operation of these Rules in any respect,
- the Director General may, without prejudice to such validity as it may have in any other respect for any other purpose, disregard or vary the arrangement or the practice and make such adjustments as he thinks fit with a view to counteracting the whole or any part of any such direct or indirect effect of the arrangement or the practice.

SPECIAL PROVISION FOR PASSIVE NFE

- 12(1)** Subject to subrule (3), for the purposes of determining that an Entity is a Passive NFE with one or more Controlling Persons who are Reportable Persons under subparagraph D(2) of Section V and subparagraph A(2) of Section VI of the Standard, a Financial Institution is taken not to be a Passive NFE if—
- (a) the Financial Institution is an Investment Entity under subparagraph A(6)(b) of Section VIII of the Standard;
 - (b) the Financial Institution is not a Participating Jurisdiction Financial Institution; and
 - (c) the Financial Institution would be a Participating Jurisdiction Financial Institution if the jurisdictions declared to be committed jurisdictions under subrule (2) were Participating Jurisdictions.

12(2) The Director General may declare one or more jurisdictions to be committed jurisdictions in a published list or in any other manner as he deems appropriate.

12(3) For the purposes of subrule (1), a Financial Institution shall be taken not to be a Passive NFE for the years 2017 to 2019.

SCHEDULE

[Subrule 4(5)]

<i>Item</i> (1)	<i>Provisions of the Standard</i> (2)	<i>Relevant date</i> (3)
1.	Subparagraph C(6) of Section III	30 June 2017
2.	Paragraph D of Section III: (a) in relation to a Preexisting Individual Accounts that is a High Value Account (b) in relation to a Preexisting Individual Accounts that is a Lower Value Account	30 June 2018 30 June 2019
3.	Paragraph A of Section V	30 June 2017
4.	Paragraph B of Section V: (a) in relation to a Preexisting Entity Account that has an aggregate account balance or value that exceeds USD250,000.00 (b) in relation to a Preexisting Entity Account that does not exceed USD250,000.00	30 June 2017 30 June 2017
5.	Subparagraph E(1) of Section V (a) in relation to a Preexisting Entity Account with an aggregate account balance or value that exceeds USD250,000.00 (b) the completion date for review	30 June 2017 30 June 2019
6.	Subparagraph E(2) of Section V	30 June 2017
7.	Subparagraph B(9)(a) of Section VIII	1 January 2017
8.	Subparagraph B(9)(d) of Section VIII	1 January 2018
9.	Subparagraph C(17)(f)(ii) of Section VIII	1 July 2017