

# INCOME TAX (EXCHANGE OF INFORMATION) RULES 2011

PU (A) 219

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IN exercise of the powers conferred by subsection 132(2) and paragraph 154(1)(c) of the Income Tax Act 1967 [Act 53], the Minister makes the following rules:

## CITATION

1 These rules may be cited as the **Income Tax (Exchange of Information) Rules 2011**.

## INTERPRETATION

2 For the purpose of these Rules, unless the context otherwise requires—

**"bank"** means—

- (a) a bank, finance company, or a banking and finance company licensed or deemed to be licensed under the Banking and Financial Institutions Act 1989 [Act 372];
- (b) an Islamic bank licensed or deemed to be licensed under the Islamic Banking Act 1983 [Act 276]; and
- (c) a prescribed institution under the Development Financial Institutions Act 2002 [Act 618];

**"information"** means an information required to be disclosed pursuant to the article on exchange of information of a double taxation arrangement;

**"double taxation arrangement"** means an arrangement as declared under section 132 of the Act;

**"competent authority"** means the duly authorized servant or agent of a government of any territory outside Malaysia with which the Government of Malaysia has entered into a double taxation arrangement.

## REQUEST FOR INFORMATION

**3(1)** Subject to these Rules, a competent authority may request from the Director General for information of a person to whom the double taxation arrangement entered into by the government of such competent authority with the Government of Malaysia relates.

**3(2)** The request referred to in subrule (1) shall state the following items:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) a statement of the information sought including the details and form as the competent authority wishes to receive the information from the Director General;
- (d) the tax purpose for which the information is requested;
- (e) the grounds for believing that the information requested is found in Malaysia or is in the possession or control of a person within the jurisdiction of Malaysia;
- (f) to the extent known, the name and address of any person believed to be in possession of the requested information;

- (g) a statement that the request is in conformity with the law and administrative practices of the territory of the competent authority, that if the requested information was within the jurisdiction of the territory of the competent authority, then the competent authority would be able to obtain the information pursuant to the laws of its own territory or in accordance with the normal course of administrative practice and is in conformity with the double taxation arrangement; and
- (h) a statement that the competent authority has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

**3(3)** Where the request mentioned in subrule (1) is received, the Director General may by notice under section 81 of the Act, require the person referred to in the request to provide the information as requested by the competent authority within the time specified in the notice.

**3(4)** Any person to whom a notice is issued under subrule (3) who, without any reasonable excuse, fails to comply with such notice commits an offence under section 120 of the Act.

## **INFORMATION HELD BY A BANK**

**4(1)** The requirement under this rule shall be subject to the following provisions:

- (a) paragraph 99(1)(i) of the Banking and Financial Institutions Act 1989;
- (b) subsection 34(3) of the Islamic Banking Act 1983; and
- (c) paragraph 120(k) of the Development Financial Institutions Act 2002.

**4(2)** Where the Director General fails to obtain information of any person under rule 3, the Director General may, by notice under section 81 of the Act, require a bank which has the information of such person to provide the information as requested by the competent authority.

**4(3)** Notwithstanding subrules 3(3) and 4(2), the Director General may make a request from a bank, information of a person referred to under rule 3 without first making a request from that person.

**4(4)** Any bank which has the information of a person to whom the double taxation arrangement entered into by the government of the territory of such competent authority with the Government of Malaysia relates, and to which a notice is issued under subrule (2), which, without any reasonable excuse, fails to comply with such notice commits an offence under section 120 of the Act.

## **REVOCATION**

**5** The Income Tax (Request for Information) Rules 2009 [*P.U. (A) 311/2009*] is revoked.