

INCOME TAX (COUNTRY-BY-COUNTRY REPORTING) RULES 2016

PU (A) 357
18 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 (Country-by-Country Reporting) Rules 2016**.

1(2) These Rules come into operation on 1 January 2017.

APPLICATION

2 These Rules shall apply to a multinational corporation group where—

- (a) any of its constituent entities having cross border transaction with its other constituent entities;
- (b) the total consolidated group revenue in the financial year preceding the reporting financial year is at least three billion ringgit;
- (c) its ultimate holding company is incorporated under the Companies Act 1965 [Act 125] or under any written law and resident in Malaysia; and
- (d) its constituent entities are incorporated or registered under the Companies Act 1965 or under any written law or under the laws of a territory outside Malaysia and resident in Malaysia.

INTERPRETATION

3 In these Rules, unless the context otherwise requires—

"constituent entity" means—

- (a) any separate business unit of an MNC Group that is included in the consolidated financial statements of the MNC Group, or would be so included if equity interests in such business unit were traded on a public securities exchange;
- (b) any separate business unit that is excluded solely on grounds of size or materiality from the MNC Group's consolidated financial statements;
- (c) any permanent establishment of any separate business unit of the MNC Group mentioned in paragraph (a) or (b), provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

"reporting entity" means the ultimate holding company, or where paragraph 5(2)(a), (b) or (c) applies, the surrogate holding company;

"multinational corporation group" (hereinafter referred to as **"MNC Group"**) means a collection of corporations related through ownership or control such that it is required to prepare consolidated financial statements for financial reporting purposes under the applicable accounting principles or would be so required if equity interest in any of its corporations were traded on a public securities exchange which includes—

- (a) two or more corporations the tax residence for which is in different jurisdictions; or
- (b) a corporation that is resident in Malaysia and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, or is resident in another jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in Malaysia;

"Country-by-Country Report" means the report referred to in rule 4;

"International Agreement" means—

- (a) the Convention on Mutual Administrative Assistance in Tax Matters;
- (b) any bilateral or multilateral tax convention; or
- (c) any tax information exchange agreement,

to which the Government is a party and that by its terms provides legal authority for the exchange of tax information between the Government and the government of any territory outside Malaysia, including automatic exchange of such information;

"ultimate holding company" means a constituent entity of an MNC Group that owns directly or indirectly a sufficient interest in one or more other constituent entities of such MNC Group;

"surrogate holding company" means a constituent entity of an MNC Group that is resident in Malaysia and appointed by the MNC Group as a sole substitute for the ultimate holding company to file the Country-by-Country Report under subrule 5(2);

"financial year" means an annual accounting period with respect to which the ultimate holding company of the MNC Group prepares its financial statements; and

"reporting financial year" means that financial year the financial and operational results of which are reflected in the Country-by-Country Report.

COUNTRY-BY-COUNTRY REPORT

4(1) For the purposes of these Rules, a Country-by-Country Report with respect to an MNC Group shall contain—

- (a) aggregate information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNC Group operates; and
- (b) an identification of each constituent entity of the MNC Group setting out the jurisdiction of tax residence of such constituent entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such constituent entity is organized, and the nature of the main business activity or activities of such constituent entity.

4(2) The financial information referred to in paragraph (1)(a) shall be denominated in Ringgit Malaysia.

- 4(3)** The Country-by-Country Report shall be filed in a form prescribed under section 152 of the Act on an electronic medium, or through an electronic transmission, in extensible markup language format.

FILING OBLIGATION

- 5(1)** The ultimate holding company of an MNC Group that is resident in Malaysia shall file a Country-by-Country Report conforming to the requirements of rule 4 with the Director General with respect to its reporting financial year on or before the date specified in rule 7.

- 5(2)** In the case where—

- (a) the ultimate holding company is not resident in Malaysia and is not obligated to file a Country-by-Country Report in its jurisdiction of tax residence;
- (b) the jurisdiction in which the ultimate holding company is resident for tax purposes has a current International Agreement to which Malaysia is a party but does not have a Qualifying Competent Authority Agreement in effect to which Malaysia is a party at the time the Country-by-Country Report required to be filed as specified in rule 7; or
- (c) there has been a systemic failure of the jurisdiction of tax residence of the ultimate holding company that has been notified by the Director General to the constituent entity resident for tax purposes in Malaysia,

the surrogate holding company shall file the Country-by-Country Report conforming to the requirements of rule 4 with the Director General with respect to the reporting financial year of the MNC Group on or before the date specified in rule 7.

- 5(3)** For the purpose of this rule—

"systemic failure" , in relation to a jurisdiction, means where a jurisdiction has a Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports in effect with Malaysia but—

- (a) has suspended automatic exchange of Country-by-Country Report for reasons other than those that are in accordance with the terms of that Agreement; or
- (b) has persistently failed to automatically provide to Malaysia the Country-by-Country Report in its possession of MNC Groups that have constituent entities in Malaysia;

"Qualifying Competent Authority Agreement" means an agreement which requires the automatic exchange of Country-by-Country Report made between authorized representatives of the Government and authorized representatives for the government of any territory outside Malaysia where both governments are parties to an International Agreement.

NOTIFICATION

- 6(1)** Any constituent entity of an MNC Group that is resident in Malaysia shall notify the Director General in writing if it is the ultimate holding company or the surrogate holding company, on or before the last day of the reporting financial year.

- 6(2)** Where a constituent entity of an MNC Group that is resident in Malaysia is not the reporting entity, the constituent entity shall notify the Director General in writing of the identity and tax residence of the reporting entity, on or before the last day of the reporting financial year.

TIME FOR FILING

- 7** The Country-by-Country Report required under these Rules shall be filed not later than twelve months after the last day of the reporting financial year.

USE AND CONFIDENTIALITY OF COUNTRY-BY-COUNTRY REPORT INFORMATION

- 8(1)** The Director General may use the Country-by-Country Report for the purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in Malaysia, including assessing the risk of non-compliance by constituent entities of the MNC Group with applicable transfer pricing rules, and where appropriate for economic and statistical analysis.
- 8(2)** The Director General shall not use the Country-by-Country Report as a substitute for a detailed transfer pricing analysis for the purpose of transfer pricing adjustments.
- 8(3)** The Director General shall preserve the confidentiality of the information contained in the Country-by-Country Report at least to the same extent that would apply if such information were provided to the Director General under the provisions of the Convention on Mutual Administrative Assistance in Tax Matters.