

TECHNICAL

Direct Taxation

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION – LEGISLATIVE ENACTMENTS (2 OF 2)

Please refer to our [e-CTIM TECH-DT 6/2017](#) dated 18 January 2017 on the issue of Income Tax Rules and Orders on Country-by-Country Reporting, Common Reporting Standard and other related matters.

This e-CTIM provides a brief outline of the contents of the following enactment:

[INCOME TAX \(AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION\) RULES 2016 \[P.U. \(A\) 355/2016\]](#)

Background

[Common Reporting Standard \(CRS\)](#)

[Information relating to CRS](#) is provided by IRBM on its website.

CRS obligations are imposed on Malaysian Financial Institutions (MYFIs) through the operation of the above [Rules](#). Rule 2(1) states that the Rules have effect “*for and in connection with the implementation of the Standard for the purpose of giving effect to the Arrangements.*”

An overview of these Rules is provided by the table below, which sets out the Contents of these Rules.

Rule #	Heading	Notes
1	Citation and commencement	These Rules come into operation on 1 January 2017.
2	Application	These Rules apply to a Financial Institution as defined under Section VIII of the Standard (CRS).
3	Interpretation	The key words defined are “Reporting Financial Institution”, “Arrangements”, and “Standard”.
4	Due diligence obligations	Every Reporting Financial Institution (RFI) which is not a Non-RFI shall identify the <i>Reportable Account</i> (RA) from the <i>Financial Account</i> (FA) maintained by the RFI by applying the due diligence procedure as specified in Section II to VII of the Standard. (The words in italics are defined in Section VIII of the Standard. The FA shall not include any Excluded Account as defined in Section VIII of the Standard.)
5	Modifications to due diligence procedures	Reference is made to the following: “High Value Account”; “Lower Value Account”; “New Account”; “Preexisting Account”; “Group Annuity Contract”; and “Group Cash Insurance Contract”. (These terms have meanings which are defined in subrule 5(7).)
6	Related Entity	“Related Entity” is defined in subrule 6(1) for the purposes of general reporting requirements in Section I of the Standard and due diligence procedures described in Sections II to VII of the Standard.
7	Reporting	Imposes the obligation to furnish an “information return” to the

Rule #	Heading	Notes
	obligation	DGIR by a RFI, in respect of the calendar year 2017 and every following calendar year, on or before 30 June of the year following the calendar year to which the return relates, in relation to every FA identified as a RA maintained by the RFI at any time during a calendar year. (Sets out the rules and requirements relating to the submission of the return.)
8	Records	Imposes on RFIs the responsibility to keep and retain records that the RFI obtains or creates for the purpose of complying with these Rules.
9	Service providers	A RFI may appoint a third party as its agent to carry out the duties and obligations imposed on it under these Rules.
10	Powers of Director General	The DG 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.
11	Anti-avoidance	For the purpose of anti-avoidance, the DGIR is vested with powers to “disregard or vary (any) arrangement or (any) practice and make such adjustments as he thinks fit” under circumstances where he has reason to believe that the arrangement or practice entered into may give rise to certain effects specified (in items (a) to (c)) under Rule 11
12	Special provision for Passive NFE	(The term “Passive NFE” is defined in Section VIII, paragraph D(8) of the Standard.) Subrule 12(1) lists the situations in which a Financial Institution is taken not to be a Passive NFE for the years 2017 to 2019.
	SCHEDULE [Subrule 4(5)]	Subrule 4(5) reads – <i>“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.”</i>

Members may read the Order in full at the official website of the [Attorney-General's Chambers](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the above [Order](#).

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