

TECHNICAL

Direct Taxation

[LABUAN BUSINESS ACTIVITY TAX \(AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION\) REGULATIONS 2018 \[P.U. \(A\) 20/2018\]](#)

The above Regulations were gazetted on 8 February 2018. They are made under S21(1)(b) of the Labuan Business Activity Tax Act 1990 (LBATA).

Common Reporting Standard (CRS)

Please click on the following link to the page on IRBM's website on [CRS for the Automatic Exchange of Financial Account Information](#).

The table below sets out the Contents of the above Regulations and provides a brief overview of these Regulations.

Regu- lation #	Heading and Notes
1	Citation and commencement The citation is as shown above. The Regulations are deemed to have effect from 1 July 2017.
2	Interpretation Provides definitions of terms used in these Regulations. (Definitions of words which are <u>underlined</u> in this Table are found in regulation 2.)
3	Application These Regulations have effect for and in connection with the implementation of the <u>Standard</u> (Std) for the purpose of giving effect to the <u>Arrangements</u> . They apply to any Labuan entity which is a Financial Institution as defined in Section VIII of the Std. Non-Reporting Financial Institutions (NRFI) are identified in Reg. 3(3).
4	Application of Standard For the purpose of these Regulations, the Std shall be applied consistently with the Commentaries on the Std.
5	Due diligence obligation Every <u>Reporting Financial Institution</u> (RFI) which is not a NRFI shall identify the Reportable Account (RA) from the Financial Account (FA) maintained by the RFI by applying the due diligence procedure (DDP) as specified in Sections II to VII of the Std. An account is treated as a RA beginning from the date it is identified as a RA pursuant to the DDPs specified above, and information pertaining to the RA shall be reported annually in the calendar year following the year to which the information relates.
6	Financial Account treated as other than RA or not RA States when a RFI may (for the purposes of Reg. 5): (a) treat a FA that meets the conditions specified in Reg. 6(1)(a) as other than a RA in the circumstances described in para. B of Section VII of the Std; and (b) treat a FA that meets the conditions specified in Reg. 6(1)(b) as a FA that is not a RA until the date specified, provided that the FA meets the requirements [(I) to

	(III)] as stated in that sub-regulation.
7	<p>Determination of date and calendar year</p> <p>Refers to the Second Schedule. In applying the DDP, the relevant dates for the purposes of the provisions of the Std specified in column (2) of that Schedule shall be the dates corresponding against it as specified in column (3).</p> <p>Also provides for the periods 1.1.2017 to 30.6.2017, and 1.7.2017 to 31.12.2017, to be treated as separate calendar years for the purposes of specified provisions found in the Std.</p>
8	<p>Balance or value of account</p> <p>This regulation relates to accounts with negative balances or values and the determination of the balance or value of accounts denominated in a currency other than the USD.</p>
9	<p>Entity account</p> <p>A FA held by an individual as a partner of a partnership is deemed to be an entity account.</p>
10	<p>Modification of due diligence procedure</p> <p>Specific DDP described in the Std are referred to in relation to how each is to be applied to specified accounts. Some of the accounts that are mentioned under Reg. 10 are <u>Lower Value Account</u> and <u>High Value Account</u> (in Reg. 10(1), <u>New Account</u> and <u>Preexisting Account</u> [Reg.10(2) and 10(3)], New Entity Account [Reg. 10(4)]. (Please refer to this Regulation for details.)</p>
11	<p>Condition for modification of due diligence procedure</p> <p>Reg.11(1) and 11(2) state the conditions for the application of Reg.10(2) and Reg.10(3) respectively.</p> <p>Reg.11(3) states that a RFI shall not apply the DDP–</p> <ul style="list-style-type: none"> (a) for New Account to Preexisting Account; and (b) for Preexisting Account to a New Account – <p>except when specific requirements are met which are stated in Reg.11(3)(a) and 11(3)(b) respectively.</p>
12	<p>Related entity</p> <p>States the circumstances under which an Entity is considered as a “Related Entity” of another entity for the purpose of general reporting requirements (Section 1 of the Std) and the application of DDP (Section II to VII of the Std).</p>
13	<p>Reporting obligation</p> <p>Details the requirements to be met under the obligation imposed by Reg.13(1) for a RFI to furnish, in respect of the calendar 2017 and every following calendar year, an information return to the Director General (DG) 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 the relevant sections of the Std) in relation to every FA identified as a RA that is maintained by the RFI at any time during the calendar year.</p>
14	<p>Special provision for reporting of Preexisting Individual Accounts</p> <p>States the deadline for furnishing the return under Reg 13(1) for the above mentioned Accounts – i.e. 31.7.2018 for a High Value Account, and 31.7.2019 for a Low Value Account.</p>
15	<p>Furnishing of information return</p> <p>The above return shall be furnished on an electronic medium, or by way of electronic transmission in a format to be determined by the DG.</p>
16	<p>Use of information by DG</p> <p>All information obtained under these Regulations may be used by the DG for any purpose related to the administration the LBATA (the Act) or the ITA.</p>

17	Reportable jurisdiction This is stated to be – <table><tr><td>For purpose of Sections II to VII of the Std Section I of the Std</td><td>Reportable Jurisdiction - Any jurisdiction other than Malaysia - Those contained in a list to be determined and published by the DG</td></tr></table>	For purpose of Sections II to VII of the Std Section I of the Std	Reportable Jurisdiction - Any jurisdiction other than Malaysia - Those contained in a list to be determined and published by the DG
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18	Records Details the requirements relating to retaining and safekeeping of records that a RFI obtains or creates for the purpose of complying with these Regulations, including self certification and records of documentary evidence.		
19	Service providers A RFI may appoint a third party as its agent to carry out the obligations imposed on it by these Regulations, subject to the requirements stated under Reg.19(2).		
20	Powers of DG The DG may exercise all powers vested in him under the Act to administer and enforce compliance with the provisions of the Arrangements and these Regulations. These include the power to obtain information from a FI [Reg.20(2)], to be given free access to enter any premise or place of business of a FI for specified purposes [Reg.20(3)] and to make extracts/ copies of any books, records or other documents or material made available to him for purpose of enforcing or administering these Regulations [Reg.20(4)]		
21	Incorrect information return The penalty (upon conviction) for an offence of making an incorrect information return or giving incorrect information under these Regulations is a fine not exceeding RM1 million, or imprisonment for a term not exceeding 2 years or both.		
22	Failure to comply with Regulations The same penalty as stated above applies upon conviction of an offence for failing to comply with these Regulations. In addition, the court may further order the person convicted of the offence to comply with the relevant provisions of these Regulations within 30 days or such period as the court deems fit, from the date the order is made.		
23	Anti-avoidance This anti-avoidance provision empowers the DG to disregard or vary the arrangement or practice, or make such adjustments as he thinks fit with a view to counteracting the whole or part of certain effects (direct or indirect) which are described under Reg. 23(a), (b) and (c).		
24	Special provision for Passive NFE With reference to sub-para. D(2) of Section V and sub-para. A(2) of Section VI of the Std, Reg. 24(1) lists the circumstances under which an Entity is taken not to be a Passive NFE. Nevertheless, for the purpose of the Reg.24(1), a FI shall be taken not to be a Passive NFE for the years 2017 to 2019.		
First Schedule			
Excluded Accounts			
Second Schedule			
Refer Subregulation 7(1)			

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

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