



## **Tax Espresso – Special Alert** Amended Common Reporting Standard (CRS) Rules 2017 and Draft CRS Guidance Notes

### **Background**

In furtherance to the Organisation for Economic Co-operation and Development's ("OECD") effort to combat tax avoidance and evasion at the international level, the original Income Tax (Automatic Exchange of Financial Account Information) Rules 2016 ("CRS Rules") were gazetted on 23 December 2016 to enable the implementation of CRS in Malaysia with effect from 1 January 2017.

The CRS Rules are applicable to Malaysian-based Financial Institutions ("MYFIs") to perform due diligence procedures to identify and document individual and entity Account Holders, including certain Controlling Persons behind entity Account Holders. Based on this documentation, Reporting MYFIs will need to report Financial Account information of such persons to the Inland Revenue Board of Malaysia ("IRBM"), which will then exchange the information with the relevant foreign tax authorities.

The due diligence procedures shall be applied on all new Financial Accounts opened on or after 1 July 2017 and pre-existing Financial Accounts maintained by the Reporting MYFIs as of 30 June 2017. Every Reporting MYFI is required to furnish a return to the IRBM on or before 30 June of the year following the calendar year (commencing calendar year 2017) setting out the information as specified in the CRS in relation to every Reportable Account it maintains at any time during a calendar year.

### **Amendments to CRS Rules (gazetted on 22 December 2017)**

The amendments to CRS Rules are intended to formalise the Special Provision for Reporting of Preexisting Individual Accounts with extended submission deadline for reporting in years 2018 and 2019 and to provide further clarity on the implementation of CRS Rules in Malaysia.

#### **The key takeaways are summarised below:**

<b>Coverage</b>	<b>Changes</b>
<b>Extension of 2018 and 2019 reporting deadlines</b>	<p>Reporting for 2018 and 2019 for all accounts are extended to 31 July (originally 30 June) to be in line with the special provision for Preexisting Individual Accounts reporting requirement below.</p> <p><u>High Value Individual Accounts</u></p> <p>Review to be completed by 30 June 2018 and any Reportable Accounts identified should be reported by 31 July 2018.</p>

	<p><u>Lower Value Individual Accounts</u></p> <p>Review to be completed by 30 June 2019 and any Reportable Accounts identified should be reported by 31 July 2019.</p>
<b>Extended definition of "Excluded Account"</b>	<p>Schedule 2 to the CRS Rules clarified that the following are regarded as Excluded Account:-</p> <p>(a) A depository account which is a dormant account (other than an Annuity Contract) that fulfils the conditions specified;</p> <p>(b) A securities account which is a dormant account under rule 26.10 of the Rules of Bursa Malaysia Depository Sdn Bhd.</p>
<b>Reporting of closure of accounts</b>	<p>It is clarified that in the case of an account closure, the Reporting MYFI has no obligation to report the account balance or value before or at closure, but must report that the account was closed.</p>

### **CRS Guidance Notes (Draft as at 15 January 2018)**

In order to assist the Reporting MYFIs to comply with the CRS Rules, the IRBM has released the draft CRS Guidance Notes which provide explanatory notes on the CRS Rules as well as to clarify the options which Malaysia has adopted in respect to CRS implementation. Some of the key points to take note are as follows:

<b>Key Aspects</b>	<b>Description</b>
<b>Wider Approach to CRS</b>	MYFIs are required to identify and maintain a record of all jurisdictions in which an Account Holder or a Controlling Person is a tax resident regardless of whether Malaysia has a CRS agreement with that jurisdiction.
<b>EPF-MIS accounts are out of scope</b>	The Malaysian Employees Provident Fund (EPF) approved members investment schemes (MIS) are out of scope under the CRS Rules and CRS Regulations.

<b>Clarification on Passive Income</b>	Paragraph 7.3 of the draft CRS Guidance Notes provides clarity on what constitutes passive income and certain exclusion to be taken into consideration.
<b>Currency Translation Rule</b>	The following conversion rates are allowed to be used to determine the threshold for preexisting accounts:  (a) Kuala Lumpur USD/MYR reference rate published by BNM; and  (b) Other currencies – acceptable published spot rate such as by Reuters or Bloomberg as at 5pm MY time.
<b>Penalty for Labuan Entity that is a FI</b>	In case of failure to file the CRS return on time, or filing of false information, or failure to comply with the obligations under the CRS Regulations, there may be a fine of up to RM1 million, or imprisonment for a term not exceeding two years, or both.

### **Way forward**

The amendments to the CRS Rules and the release of the draft CRS Guidance Notes are intended to assist the Reporting MYFIs to meet the first CRS reporting by 31 July 2018. With further clarification provided by the IRBM, Reporting MYFIs would have to look into the existing assessments done and the due diligence procedures performed to identify if there is any gap that is required to be addressed to be consistent with the amendments to the CRS Rules and the CRS Guidance Notes. It is anticipated that more updates in relation to the CRS implementation would be provided by the IRBM in the coming months, particularly on the reporting portal as well as the list of Reportable Jurisdictions.

### **References:**

- 1) CRS Rules refer to Income Tax (Automatic Exchange of Financial Account Information) Rules 2016 gazetted on 23 December 2016 [P.U. (A) 355]

- 2) Amendment to CRS Rules refers to Income Tax (Automatic Exchange of Financial Account Information) (Amendment) Rules 2017 [P.U. (A) 403]
- 3) CRS Guidance Notes (Draft as at 15 January 2018)

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