

No. S 44

INCOME TAX ACT
(Chapter 35)

INCOME TAX (INTERNATIONAL TAX COMPLIANCE AGREEMENTS)
(COMMON REPORTING STANDARD) (AMENDMENT) REGULATIONS, 2019

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In exercise of the power conferred by section 86Q of the Income Tax Act, the Minister of Finance and Economy, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

Citation and commencement

1. These Regulations may be cited as the Income Tax (International Tax Compliance Agreements) (Common Reporting Standard) (Amendment) Regulations, 2019 and shall be deemed to have commenced on 29th June 2017.

Amendment of regulation 2 of S 56/2017

2. Regulation 2 of the Income Tax (International Tax Compliance Agreements) (Common Reporting Standard) Regulations, 2017, in these Regulations referred to as the principal Regulations, is amended —

(a) in sub-regulation (1), by inserting “and the CRS commentaries,” immediately before “for” in the fourth line;

(b) by adding the following new sub-regulation —

“(3) The CRS commentaries are binding and each reporting financial institution shall apply the CRS in accordance with the CRS commentaries.”.

Amendment of regulation 3

3. Regulation 3 of the principal Regulations is amended by inserting the following new definitions in the appropriate alphabetical order —

“ “CRS commentaries” means the commentaries on the CRS, contained in Part IIIB of the Standard for Automatic Exchange of Financial Account Information in Tax Matters, approved by the Council of the Organisation for Economic Co-operation and Development on 15 July 2014, and as amended from time to time;

“reportable jurisdiction” has the same meaning assigned to it under paragraph D4 of section VIII of the CRS;”.

Amendment of regulation 4

4. Regulation 4 of the principal Regulations is amended, in sub-regulation (2), in the definition of “Governmental entity” —

(a) in paragraph (e), by deleting the full stop and by substituting a comma therefor;

(b) by adding “provided that the conditions set out in paragraph B2 of section VIII of the CRS are met.”.

Insertion of new regulation 6A

5. The principal Regulations are amended by inserting the following new regulation immediately after regulation 6 —

“Meaning of “related entity”

6A. (1) In these Regulations, an entity is a related entity of another entity if —

(a) an entity controls the other entity;

(b) the two entities are under common control; or

(c) the two entities are investment entities described in paragraph A(6)(b) of section VIII of the CRS and are under common management, and such management fulfils the due diligence obligations of such investment entities.

(2) For the purposes of sub-regulation (1)(b), “control” includes direct or indirect ownership of more than 50 *per cent* of the vote and value in an entity.”.

Amendment of regulation 8

6. Regulation 8 of the principal Regulations is amended —

(a) by repealing sub-regulation (7);

(b) in sub-regulation (8), by deleting “(1), (5) or (7)” and by substituting “(1) or (5)” therefor;

(c) by repealing sub-regulation (9);

(d) in sub-regulation 11—

(i) by deleting the definition of “reportable jurisdiction”;

- (ii) in the definition of “self-certification”, in paragraph *(b)*, by deleting “reasonably”.

Amendment of regulation 9

7. Regulation 9 of the principal Regulations is amended —

(a) by inserting the following new sub-regulation immediately after sub-regulation (5) —

“(5A) In paragraph B of section V of the CRS, the reference to paragraph D of section V of the CRS is a reference to paragraph C of section V of the CRS.”;

(b) in sub-regulation (13), by deleting paragraph *(b)* and by substituting the following new paragraph therefor —

“*(b)* any other financial account maintained by the reporting financial institution on or after 1st January 2017 if all of the following conditions are satisfied —

- (i) the account holder also holds with the reporting financial institution (or with a related entity within the same jurisdiction as the reporting financial institution) a financial account that is a pre-existing account maintained under paragraph *(a)*;
- (ii) the reporting financial institution (and, as applicable, the related entity within the same jurisdiction as the reporting financial institution) treats the financial accounts maintained under paragraph *(a)* and this paragraph, and any other financial accounts of the account holder that are treated as pre-existing accounts under this paragraph, as a single financial account for purposes of determining the balance or value of any of the financial accounts when applying any of the account thresholds;
- (iii) with respect to a financial account that is subject to AML/KYC procedures, the reporting financial institution is permitted to satisfy such AML/KYC procedures for the financial account by relying on the AML/KYC procedures performed for the pre-existing account described in paragraph *(a)*; and
- (iv) the opening of the financial account does not require the provision of new, additional or amended customer

information by the account holder than for purposes of the CRS.”;

(c) by repealing sub-regulation (14);

(d) by repealing sub-regulation (15);

(e) in sub-regulation (17), by deleting the definition of “control”.

Amendment of regulation 10

8. Regulation 10 of the principal Regulations is amended –

(a) by repealing sub-regulation (1) and by substituting the following new sub-regulation therefor –

“(1) A reporting financial institution shall, in respect of the year 2017 and every following year, prepare and provide to the Collector, or a person authorised by the Collector under section 86L, a return setting out information in relation to every reportable account that the institution maintained at any time during the year that the institution is required to report under section I of the CRS.”;

(b) in sub-regulation (2), by deleting “beneficiary of a discretionary trust” and by substituting “discretionary beneficiary of a trust” therefor;

(c) in sub-regulation (5), by deleting “31st” from the third line and by substituting “30th” therefor;

(d) in sub-regulation (8) –

(i) in the definition of “reportable account”, by inserting “described in paragraphs B5 and C5(c) of section III of the CRS” immediately after “account” in the last line;

(ii) by deleting the definition of “undocumented account”.

Made this 16th. day of Rabiulawal, 1441 Hijriah corresponding to the 13th. day of November, 2019.

DATO SERI SETIA DR. AWANG HAJI MOHD. AMIN LIEW BIN ABDULLAH
Minister in the Office of the Prime Minister and
Minister of Finance and Economy II.