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Recent Amendments to the Income Tax (Country-by-Country Reporting) Rules 2016

Malaysia has introduced the Country-by-Country Reporting (CbCR) Rules 2016 (“**CbCR Rules**”) to enhance tax transparency by facilitating the exchange of information between different jurisdictions. The CbCR Rules are an adaptation of the BEPS Action Plan 13.

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CbCR Rules

The CbCR Rules, which came into operation on 1.1.2017, introduced reporting requirements that are applicable to a multinational corporation group (“**MNC Group**”) where:

- (a) Any of the group’s constituent entities has cross-border transactions with its other constituent entities;
- (b) The total consolidated group revenue in the financial year preceding the reporting financial year is at least RM3 billion;
- (c) The ultimate holding company is incorporated under the Companies Act 1965 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.

Under the CbCR Rules, a report is to be filed by the ultimate holding company of an MNC Group resident in Malaysia or, in limited circumstances, the surrogate holding company. The report must contain:

- (a) Aggregate information relating to revenue, profit or losses before tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and

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tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the group operates; and

- (b) Identification of each constituent entity of the group and the respective jurisdiction of tax residence. Where the jurisdiction under the laws of which such constituent entity is organised is different from its tax residence, its governing laws as well as the nature of its main business activities.

Amendments via Income Tax (Country-by-Country Reporting) (CbCR) (Amendment) Rules 2017

Through the Income Tax (Country-by-Country Reporting) (CbCR) (Amendment) Rules 2017 (“**CbCR Amendments**”), which took effect on 28.12.2017, the following amendments were introduced:

- (a) References to “company” in the CbCR Rules are now substituted with “**entity**”, “corporation” to be substituted with “**enterprises**”. The definition of “multinational corporation groups” or “MNC Group” is now substituted with “**multinational enterprises group**” or “**MNE Group**”;
- (b) Information must be provided where the tax residence jurisdiction of a constituent entity is different under the laws of which the constituent entity is “**incorporated, registered or established**”. The previous requirement only required provision of information where the jurisdiction under the laws of the constituent entity concerned is “organised”;
- (c) Under the CbCR Rules, where a constituent entity of an MNE Group resident in Malaysia is not the reporting entity, the constituent entity shall notify the Director General of Inland Revenue (“**DGIR**”) in writing of the identity and tax residence of the reporting entity. With the CbCR Amendments, even where the constituent entity is a **permanent establishment** in Malaysia, the said entity would be obliged to notify the DGIR of the reporting entity;

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- (d) Definition of “ultimate holding company” is amended by inserting, after the definition “a constituent entity of an MNE Group that owns directly or indirectly a sufficient interest in one or more other constituent entities of such MNE Group”, the phrase “**and there is no other constituent entity of such MNE Group that owns directly or indirectly such interest in the first mentioned constituent entity**”;
- (e) Removal of the requirement for any of its constituent entities of a MNC Group to have cross-border transaction with its other constituent entities; and
- (f) Instead of being only applicable to the ultimate holding company of a MNC Group incorporated under the Companies Act 1965 or any written law and resident in Malaysia, the 2016 Rules, upon amendment, have now been widened to include application to a MNE Group where **any** of its **constituent entities**, whether it is:
- (i) an **ultimate holding entity** incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016 or under any written law and resident in Malaysia;
 - (ii) **incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016** or under any written law or under the laws of a territory outside Malaysia and resident in Malaysia;
 - (iii) a **surrogate holding entity** which is incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016 or under any written law and resident in Malaysia; or
 - (iv) a **permanent establishment** in Malaysia.

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Observations

These amendments have widened the scope of the CbCR Rules by including entities that may be incorporated, registered or established. Similar reporting obligations have also been imposed on a constituent entity that is a permanent establishment in Malaysia to notify the DGIR of the reporting entity. Additionally, the CbCR Rules application is extended with the removal of the requirement for any of its constituent entities of such a group to have cross-border transactions with its other constituent entities.

While the CbCR Rules and the CbCR Amendments aim to enhance tax transparency, they come at a cost. Compliance costs for businesses will increase following these requirements for more extensive compliance documentation and reporting. Tax administrators worldwide are pushing for more tax compliance laws. Hence, businesses must make a concerted effort to enhance their tax risk management policy and procedures. Failure to do so can lead to unnecessary civil and/or criminal sanction.

For instance, failure to comply with the CbCR Rules and the CbCR Amendments is an offence which, on conviction, attracts a fine between RM20,000 and RM100,000 or imprisonment of up to six months, or both.

Please contact us at tax@lh-ag.com if you have any queries on transfer pricing matter.

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