

## **Common Reporting Standard (CRS) and Foreign Account Tax Compliance Act (FATCA)**

### **Commonly Asked Questions / FAQ**

#### **1. What is Common Reporting Standard (“CRS”)?**

CRS is the Standard for Automatic Exchange of Financial Account Information in Tax Matters, developed by the Organisation for Economic Co-operation and Development (“OECD”) and any associated similar or analogous legislation, treaty, regulation, instruction, or other official guidance of any authority in any jurisdiction. It is an information-gathering and reporting requirement for financial institutions in participating countries, to help fight against tax evasion and protect the integrity of tax systems.

#### **2. What is Foreign Account Tax Compliance Act (“FATCA”)?**

FATCA which were enacted into U.S. law as part of the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010. It requires non-US financial institutions to provide information regarding their customers who are US persons to the US Internal Revenue Service (“US IRS”) or be subject to withholding on withholdable payments. It was established to reduce tax evasion by US Persons.

#### **3. When will CRS take effective in Malaysia?**

From 1 July 2017 onwards.

#### **4. When will FATCA legislations take effective in Malaysia?**

On 1 July 2014, Malaysia reached an agreement in substance on a Model 1 Intergovernmental Agreement (“IGA”) with the US to implement FATCA. Following the development, the Malaysia-US IGA has been signed on 21 July 2021 and the FATCA requirements have been gazetted into Malaysian laws and regulations on 1 September 2022.

#### **5. Which countries/jurisdictions are participating in the CRS?**

Please refer to OECD’s CRS portal for full listing of participating countries at:  
[CRS by jurisdiction – Organisation for Economic Co-operation and Development \(oecd.org\)](https://www.oecd.org/tax/crs/)

#### **6. Who is reportable under CRS?**

CRS seeks to establish the tax residency of the customers. Under the CRS, financial institutions are required to identify customers who appear to be tax resident outside of the country where they hold their accounts and products, and report certain information to our local tax authority, which may then be shared with the tax authority where you are a tax resident.

For an entity who is a foreign tax resident, the Bank will report your financial account information to the local tax authority if you are not one of the following:

- i) A corporation the stock of which is regularly traded on one or more established securities markets
- ii) Any corporation that is a Related Entity of a corporation described in clause (i)
- iii) A Governmental Entity
- iv) An International Organization
- v) A Central Bank
- vi) A Financial Institution

**7. Who is reportable under FATCA?**

A financial account that is held by:

Individual who is US Person including:

- US citizen
- US Permanent Resident
- US Resident (including tax resident)

Entity, which is US Person including entity:

- Incorporated in US
- Place of business in US
- US Resident (including tax resident)
- A Passive NFFE with one or more Controlling Persons that is a US Specified Person

Specified US Persons means any US Persons other than US Exempt Recipient under Income Tax (Agreement Between the Government of Malaysia and the Government of the United States of America to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act) Order 2022.

**8. What information will I be required to provide?**

The Bank would request the following information from you:

If you are an Individual:

- Name
- Nationality
- Date of Birth
- Place of Birth
- Current Residence Address
- Mailing Address (if different from residence address)

- Telephone Number
- US Person Status
- Jurisdiction(s) of Tax Residence
- Taxpayer Identification Number(s) (if applicable)

If you are an Entity:

- Registered Name
- Country of Incorporation
- Registered Address
- Mailing Address (if different from registered address)
- US Person Status
- Entity Type under CRS and FATCA
- Jurisdiction(s) of Tax Residence
- Taxpayer Identification Number(s) (if applicable)
- Global Intermediary Identification Number (GIIN) (if applicable)

If you are a Passive Non-Financial Entity (NFE)/Non-Financial Foreign Entity (NFFE), the Bank would additionally need to obtain the following information relating to your Controlling Person(s):

- Name
- Date and Place of Birth
- Current Residence Address
- Mailing Address (if different from residence address)
- Nationality
- Telephone Number
- Legal name of the relevant Entity Account Holders
- Percentage of Ownership/ Shareholding
- US Person Status
- Jurisdiction(s) of tax residence
- Type of Controlling Person
- Taxpayer Identification Number(s) (if applicable)

Please refer to <Compliance to Foreign Account Tax Compliance Act (“FATCA”) and Common Reporting Standard (“CRS”)> document for the definition of Controlling Person.

**9. How is my tax residence defined?**

This will depend on where you live, where you submit your tax returns and your circumstances. You are advised to contact a professional tax adviser or check the OECD website for more information on how to determine tax residency.

- Details of tax residency rules can be obtained at:

[Tax residency - Organisation for Economic Co-operation and Development \(oecd.org\)](http://www.oecd.org)

- TIN details for each country can be obtained at:

[Tax identification numbers \(TINs\) - Organisation for Economic Co-operation and Development \(oecd.org\)](http://www.oecd.org)

**10. Do I need to produce supporting documents to prove my tax residency?**

Yes. All customers are required to provide self-certification form to the Bank. The Bank is required by law to verify the details provided in the self-certification form to ensure they are valid and reasonable. In certain circumstances, the Bank may ask you to provide supporting documents such as a copy of your passport or other government issued documentation to verify your identity or confirm the tax residency declared in your self-certification form.

**11. How do I know which self-certification form should I use?**

- If you are an individual / sole proprietorship owned by individual, please complete <FATCA and CRS Self Certification Form (Individual Customer Declaration)>.
- If you are an entity / sole proprietorship owned by entity, please complete <FATCA and CRS Self Certification Form (Entity Customer Declaration)>.
- If you are an entity / sole proprietorship owned by entity that has declared yourself as a Passive NFE/NFFE, for each of your Controlling Persons, please complete <FATCA and CRS Self Certification Form (Controlling Person Declaration)>.

**12. Will ICBC Malaysia disclose my tax information collected pursuant to CRS and FATCA?**

Yes. The Bank is legally required to collect your information including your tax information and report to Inland Revenue Board of Malaysia (IRBM) or such other authorities deemed appropriate by the Bank, pursuant to the Malaysian CRS and FATCA legislations.

**13. What are my duties under CRS and FATCA?**

You are required to provide the Bank with your personal information including your tax information, pursuant to the Malaysian CRS and FATCA legislations. All such information provided by you shall be true, correct and accurate in all respects in relation to the facts pertaining. When there is a change or addition to the information which may affect your tax residency and/or US Person status, you have the duty to update the Bank promptly by producing a new self-certification form within 30 days from the date of change.

**14. What are the consequences for failure to provide information?**

In the event of failure of you to provide information or if the information provided by you is inaccurate, incomplete or misleading, the Bank may: -

- refuse to provide new banking services to you, including to open a new account for you;
- terminate and/or discontinue (entirely or in part) your account(s) and/or relationship with the Bank; and/or
- such other actions deemed appropriate by the Bank, at any time as may be required by the Bank, including to classify your account as a Reportable Account and to report your financial account information to IRBM.

**15. What happens if my tax residency changes?**

If there is any change in the information you have provided to us, you are required to inform the Bank immediately. The Bank may request you to provide a new FATCA and CRS self-certification form. If you do not provide the requested certification, the Bank may be required to report your details to the tax authority based on information available in our records.

**16. Does the Bank (ICBC Malaysia) include any account with negative balance or value for CRS and FATCA data extraction and reporting submission?**

Yes.

**17. How to report a reportable account with negative balance or value?**

Reporting Malaysian Financial Institution must report the balance and value of the account as having an account balance or value equal to zero under CRS and FATCA, pursuant to the Malaysian CRS and FATCA legislations.

**18. Does the Bank (ICBC Malaysia) determine undocumented account for CRS data extraction and reporting submission?**

Yes. Please refer to Item 23 for the definition of an “undocumented account”.

**19. What is dormant account and excluded account?**

Based on Malaysian CRS legislations, MYFIs may treat a dormant depository account with a balance that does not exceed USD1,000 as excluded accounts, subject to the fulfillment of the following conditions:

- The account holder has not initiated a transaction with regards to the account or any other account held by the account holder with the Reporting MYFI in the previous three years; and
- The account holder has not communicated with the Reporting MYFI regarding the account or any other account held by the account holder with the Reporting Financial Institution in the previous six years.

A dormant account which does not fulfill the conditions above may still be reportable for CRS dependent on the customer's information. The excluded account definition above is not applicable for FATCA and thus a US-reportable dormant account would be reported in the FATCA return accordingly.

**20. Does the Bank (ICBC Malaysia) determine dormant account for CRS and FATCA data extraction and reporting submission?**

No.

**21. Does the Bank (ICBC Malaysia) determine credit card account as reportable account for CRS and FATCA data extraction and reporting submission?**

No, ICBC would not treat credit card account as a reportable account for CRS and FATCA purposes. ICBC has implemented policies and procedures to prevent a customer to deposit/make overpayment in excess of USD50,000 in the credit card account.

**22. How to report the joint account with positive balance or value?**

Where a Financial Account is jointly held, the balance or value to be reported for each joint account holders in respect of the non-resident is the entire balance or value of the account.

**23. What is undocumented account?**

Based on sub-paragraph B(5), Section VIII of OECD Common Reporting Standard - If a "hold mail" instruction or "in-care-of" address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must review and report annually the account as an undocumented account until such account ceases to be undocumented.

The Undocumented Account definition does not apply to FATCA.

**24. How to follow up those undocumented account?**

The Bank will reach out to customers via letter, email or SMS to remind them on the submission of the Self-Certification Form to the Bank under CRS requirement.

**25. How often the Bank attempt those undocumented account?**

Annually.

However, the Bank does not have any undocumented account noted as of the time this document is being issued which indicates that none of the Account Holders is having a "hold mail" instruction or "in-care-of" address as the only indicia.

Please ensure there is no account being tagged as undocumented account moving forward as a self-certification form should have been obtained from all the customers when such customers are changing their address to a foreign “hold mail” instruction or “in-care-of” address.

**26. How to handle those undocumented account after the necessary follow up action has been taken by the Bank?**

The Bank will maintain a list of undocumented account and send to respective Branches for monitoring purpose. The undocumented account listing will be reviewed and monitored annually by Branches until the account ceases to be undocumented.

**27. Reference documents**

- OECD - Standard for Automatic Exchange of Financial Account Information in Tax Matters (2017)

[Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition |READ online \(oecd-ilibrary.org\)](#)

- IRBM - Common Reporting Standard (CRS) Guidance Notes (2020)

[CRS\\_Guidance\\_Notes\\_22092020.pdf \(hasil.gov.my\)](#)

- IRBM - Foreign Account Tax Compliance Act (FATCA) Guidance Notes (2015)

[MY\\_US\\_IGA\\_Revised\\_Guidance\\_Notes\\_11\\_09\\_2015.pdf \(hasil.gov.my\)](#)

- Income Tax (Agreement Between the Government of Malaysia and the Government of the United States of America to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act) Order 2022

[PUA 278.pdf \(hasil.gov.my\)](#)