

MULTILATERAL COMPETENT AUTHORITY AGREEMENT ON THE EXCHANGE OF COUNTRY-BY-COUNTRY REPORTS

Whereas, the jurisdictions of the signatories to the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (the “Agreement”) are Parties of, or territories covered by, the Convention on Mutual Administrative Assistance in Tax Matters or the Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol (the “Convention”) or have signed or expressed their intention to sign the Convention and acknowledge that the Convention must be in force and in effect in relation to them before the automatic exchange of Country-by-Country (CbC) Reports takes place;

Whereas, a country that has signed or expressed its intention to sign the Convention will only become a Jurisdiction as defined in Section 1 of this Agreement once it has become a Party to the Convention;

Whereas, the jurisdictions desire to increase international tax transparency and improve access of their respective tax authorities to information regarding the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which Multinational Enterprise (MNE) Groups operate through the automatic exchange of annual CbC Reports, with a view to assessing high-level transfer pricing risks and other base erosion and profit shifting related risks, as well as for economic and statistical analysis, where appropriate;

Whereas, the laws of the respective Jurisdictions require or are expected to require the Reporting Entity of an MNE Group to annually file a CbC Report;

Whereas, the CbC Report is intended to be part of a three-tiered structure, along with a global master file and a local file, which together represent a standardised approach to transfer pricing documentation which will provide tax administrations with relevant and reliable information to perform an efficient and robust transfer pricing risk assessment analysis;

Whereas, Chapter III of the Convention authorises the exchange of information for tax purposes, including the exchange of information on an automatic basis, and allows the competent authorities of the Jurisdictions to agree on the scope and modalities of such automatic exchanges;

Whereas, Article 6 of the Convention provides that two or more Parties can mutually agree to exchange information automatically, albeit that the actual exchange of the information will take place on a bilateral basis between the Competent Authorities;

Whereas, the Jurisdictions will have, or are expected to have in place by the time the first exchange of CbC Reports takes place, (i) appropriate safeguards to ensure that the information received pursuant to this Agreement remains confidential and is used for the purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks, as well as for economic and statistical analysis, where appropriate, in accordance with Section 5 of this Agreement, (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Section 4 of this Agreement) and (iii) the necessary legislation to require Reporting Entities to file the CbC Report;

Whereas the Jurisdictions are committed to discuss with the aim of resolving cases of undesirable economic outcomes, including for individual businesses, in accordance with paragraph 2 of Article 24 of the Convention, as well as paragraph 1 of Section 6 of this Agreement;

Whereas mutual agreement procedures, for instance on the basis of a double tax convention concluded between the jurisdictions of the Competent Authorities, remain applicable in cases where the CbC Report has been exchanged on the basis of this Agreement;

Whereas, the Competent Authorities of the jurisdictions intend to conclude this Agreement, without prejudice to national legislative procedures (if any), and subject to the confidentiality and other protections provided for in the Convention, including the provisions limiting the use of the information exchanged thereunder;

Now, therefore, the Competent Authorities have agreed as follows:

SECTION I

Definitions

1. For the purposes of this Agreement, the following terms have the following meanings:
 - a. the term “**Jurisdiction**” means a country or a territory in respect of which the Convention is in force and is in effect, either through ratification, acceptance or approval in accordance with Article 28, or through territorial extension in accordance with Article 29, and which is a signatory to this Agreement;
 - b. the term “**Competent Authority**” means, for each respective Jurisdiction, the persons and authorities listed in Annex B of the Convention;
 - c. The term “**Group**” means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;
 - d. the term “**Multinational Enterprise (MNE) Group**” means any Group that (i) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and (ii) is not an Excluded MNE Group;
 - e. the term “**Excluded MNE Group**” means a Group that is not required to file a CbC Report on the basis that the annual consolidated group revenue of the Group during the fiscal year immediately preceding the reporting fiscal year, as reflected in its consolidated financial statements for such preceding fiscal year, is below the threshold defined in domestic law by the Jurisdiction and being consistent with the 2015 Report, as may be amended following the 2020 review contemplated therein;
 - f. the term “**Constituent Entity**” means (i) any separate business unit of an MNE Group that is included in the consolidated financial statements for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange (ii) any separate business unit that is excluded from the MNE Group’s consolidated financial statements solely on size or materiality grounds and (iii) any permanent establishment of any separate business unit of the MNE Group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;

- g. the term “**Reporting Entity**” means the Constituent Entity that, by virtue of domestic law in its jurisdiction of tax residence, files the CbC Report in its capacity to do so on behalf of the MNE Group;
 - h. the term “**CbC Report**” means the country-by-country report to be filed annually by the Reporting Entity in accordance with the laws of its jurisdiction of tax residence and with the information required to be reported under such laws covering the items and reflecting the format set out in the 2015 Report, as may be amended following the 2020 review contemplated therein;
 - i. the term “**2015 Report**” means the consolidated report, entitled “Transfer Pricing Documentation and Country-by-Country Reporting, on Action 13 of the OECD/G20 Action Plan on Base Erosion and Profit Shifting”;
 - j. the term “**Co-ordinating Body**” means the co-ordinating body of the Convention that, pursuant to paragraph 3 of Article 24 of the Convention, is composed of representatives of the competent authorities of the Parties to the Convention;
 - k. the term “**Co-ordinating Body Secretariat**” means the OECD Secretariat that provides support to the Co-ordinating Body;
 - l. the term “**Agreement in effect**” means, in respect of any two Competent Authorities, that both Competent Authorities have indicated their intention to automatically exchange information with each other and have satisfied the other conditions set out in paragraph 2 of Section 8. A list of Competent Authorities between which this Agreement is in effect is to be published on the OECD Website.
2. As regards to the application of this Agreement at any time by a Competent Authority of a Jurisdiction, any term not otherwise defined in this Agreement will, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Jurisdiction applying this Agreement, any meaning under the applicable tax laws of that Jurisdiction prevailing over a meaning given to the term under other laws of that Jurisdiction.

SECTION 2

Exchange of Information with Respect to MNE Groups

1. Pursuant to the provisions of Articles 6, 21 and 22 of the Convention, each Competent Authority will annually exchange on an automatic basis the CbC Report received from each Reporting Entity that is resident for tax purposes in its jurisdiction with all such other Competent Authorities of Jurisdictions with respect to which it has this Agreement in effect, and in which, on the basis of the information in the CbC Report, one or more Constituent Entities of the MNE Group of the Reporting Entity are either resident for tax purposes, or are subject to tax with respect to the business carried out through a permanent establishment.
2. Notwithstanding the previous paragraph, the Competent Authorities of the Jurisdictions that have indicated that they are to be listed as non-reciprocal jurisdictions on the basis of their notification pursuant to paragraph 1 b) of Section 8 will send CbC Reports pursuant to paragraph 1, but will not receive CbC Reports under this Agreement. Competent Authorities of Jurisdictions that are not listed as non-reciprocal Jurisdictions will both send and receive the information specified in paragraph 1. Competent Authorities will, however, not send such information to Competent Authorities of the Jurisdictions included in the aforementioned list of non-reciprocal Jurisdictions.

SECTION 3

Time and Manner of Exchange of Information

1. For the purposes of the exchange of information in Section 2, the currency of the amounts contained in the CbC Report will be specified.
2. With respect to paragraph 1 of Section 2, a CbC Report is first to be exchanged, with respect to the fiscal year of the MNE Group commencing on or after the date indicated by the Competent Authority in the notification pursuant to paragraph 1a) of Section 8, as soon as possible and no later than 18 months after the last day of that fiscal year. Notwithstanding the foregoing, a CbC Report is only required to be exchanged, if both Competent Authorities have this Agreement in effect and their respective Jurisdictions have in effect legislation that requires the filing of CbC Reports with respect to the fiscal year to which the CbC Report relates and that is consistent with the scope of exchange provided for in Section 2.
3. Subject to paragraph 2, the CbC Report is to be exchanged as soon as possible and no later than 15 months after the last day of the fiscal year of the MNE Group to which the CbC Report relates.
4. The Competent Authorities will automatically exchange the CbC Reports through a common schema in Extensible Markup Language.
5. The Competent Authorities will work towards and agree on one or more methods for electronic data transmission, including encryption standards, with a view to maximising standardisation and minimising complexities and costs and will notify the Co-ordinating Body Secretariat of such standardised transmission and encryption methods.

SECTION 4

Collaboration on Compliance and Enforcement

A Competent Authority will notify the other Competent Authority when the first-mentioned Competent Authority has reason to believe, with respect to a Reporting Entity that is resident for tax purposes in the jurisdiction of the other Competent Authority, that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC Report. The notified Competent Authority will take appropriate measures available under its domestic law to address the errors or non-compliance described in the notice.

SECTION 5

Confidentiality, Data Safeguards and Appropriate Use

1. All information exchanged is subject to the confidentiality rules and other safeguards provided for in the Convention, including the provisions limiting the use of the information exchanged.

2. In addition to the restrictions in paragraph 1, the use of the information will be further limited to the permissible uses described in this paragraph. In particular, information received by means of the CbC Report will be used for assessing high-level transfer pricing, base erosion and profit shifting related risks, and, where appropriate, for economic and statistical analysis. The information will not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. It is acknowledged that information in the CbC Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and, consequently, transfer pricing adjustments will not be based on the CbC Report. Inappropriate adjustments in contravention of this paragraph made by local tax administrations will be conceded in any competent authority proceedings. Notwithstanding the above, there is no prohibition on using the CbC Report data as a basis for making further enquiries into the MNE Group's transfer pricing arrangements or into other tax matters in the course of a tax audit and, as a result, appropriate adjustments to the taxable income of a Constituent Entity may be made.

3. To the extent permitted under applicable law, a Competent Authority will notify the Co-ordinating Body Secretariat immediately of any cases of non-compliance with paragraphs 1 and 2 of this Section, including any remedial actions, as well as any measures taken in respect of non-compliance with the above-mentioned paragraphs. The Co-ordinating Body Secretariat will notify all Competent Authorities with respect to which this is an Agreement in effect with the first mentioned Competent Authority.

SECTION 6

Consultations

1. In case an adjustment of the taxable income of a Constituent Entity, as a result of further enquiries based on the data in the CbC Report, leads to undesirable economic outcomes, including if such cases arise for a specific business, the Competent Authorities of the Jurisdictions in which the affected Constituent Entities are resident shall consult each other and discuss with the aim of resolving the case.

2. If any difficulties in the implementation or interpretation of this Agreement arise, a Competent Authority may request consultations with one or more of the Competent Authorities to develop appropriate measures to ensure that this Agreement is fulfilled. In particular, a Competent Authority shall consult with the other Competent Authority, before the first-mentioned Competent Authority determines that there is a systemic failure to exchange CbC Reports with the other Competent Authority. Where the first mentioned Competent Authority makes such a determination it shall notify the Co-ordinating Body Secretariat which, after having informed the other Competent Authority concerned, will notify all Competent Authorities. To the extent permitted by applicable law, either Competent Authority may, and if it so wishes through the Co-ordinating Body Secretariat, involve other Competent Authorities that have this Agreement in effect with a view to finding an acceptable resolution to the issue.

3. The Competent Authority that requested the consultations pursuant to paragraph 2 shall ensure, as appropriate, that the Co-ordinating Body Secretariat is notified of any conclusions that were reached and measures that were developed, including the absence of such conclusions or measures, and the Co-ordinating Body Secretariat will notify all Competent Authorities, even those that did not participate in the consultations, of any such conclusions or measures. Taxpayer-specific information, including information that would reveal the identity of the taxpayer involved, is not to be furnished.

SECTION 7

Amendments

This Agreement may be amended by consensus by written agreement of all of the Competent Authorities that have the Agreement in effect. Unless otherwise agreed upon, such an amendment is effective on the first day of the month following the expiration of a period of one month after the date of the last signature of such written agreement.

SECTION 8

Term of Agreement

1. A Competent Authority must provide, at the time of signature of this Agreement or as soon as possible thereafter, a notification to the Co-ordinating Body Secretariat:
 - a. that its Jurisdiction has the necessary laws in place to require Reporting Entities to file a CbC Report and that its Jurisdiction will require the filing of CbC Reports with respect to fiscal years of Reporting Entities commencing on or after the date set out in the notification;
 - b. specifying whether the Jurisdiction is to be included in the list of non-reciprocal Jurisdictions;
 - c. specifying one or more methods for electronic data transmission including encryption;
 - d. that it has in place the necessary legal framework and infrastructure to ensure the required confidentiality and data safeguards standards in accordance with Article 22 of the Convention and paragraph 1 and Section 5 of this Agreement, as well as the appropriate use of the information in the CbC Reports as described in paragraph 2 of Section 5 of this Agreement, and attaching the completed confidentiality and data safeguard questionnaire attached as Annex to this Agreement; and
 - e. that includes (i) a list of the Jurisdictions of the Competent Authorities with respect to which it intends to have this Agreement in effect, following national legislative procedures for entry into force (if any) or (ii) a declaration by the Competent Authority that it intends to have this Agreement in effect with all other Competent Authorities that provide a notification under paragraph 1e) of Section 8.

Competent Authorities must notify the Co-ordinating Body Secretariat, promptly, of any subsequent change to be made to any of the above-mentioned content of the notification.

2. This Agreement will come into effect between two Competent Authorities on the later of the following dates: (i) the date on which the second of the two Competent Authorities has provided notification to the Co-ordinating Body Secretariat under paragraph 1 that includes the other Competent Authority's Jurisdiction pursuant to subparagraph 1e) and (ii) the date on which the Convention has entered into force and is in effect for both Jurisdictions.
3. The Co-ordinating Body Secretariat will maintain a list that will be published on the OECD website of the Competent Authorities that have signed the Agreement and between which Competent Authorities this is an Agreement in effect. In addition, the Co-ordinating Body Secretariat will publish the information provided by Competent Authorities pursuant to subparagraphs 1(a) and (b) on the OECD website.
4. The information provided pursuant to subparagraphs 1(c) through (e) will be made available to other signatories upon request in writing to the Co-ordinating Body Secretariat.

5. A Competent Authority may temporarily suspend the exchange of information under this Agreement by giving notice in writing to another Competent Authority that it has determined that there is or has been significant non-compliance by the second-mentioned Competent Authority with this Agreement. Before making such a determination, the first-mentioned Competent Authority shall consult with the other Competent Authority. For the purposes of this paragraph, significant non-compliance means non-compliance with paragraphs 1 and 2 of Section 5 and paragraph 1 of Section 6 of this Agreement and/or the corresponding provisions of the Convention, as well as a failure by the Competent Authority to provide timely or adequate information as required under this Agreement. A suspension will have immediate effect and will last until the second-mentioned Competent Authority establishes in a manner acceptable to both Competent Authorities that there has been no significant non-compliance or that the second-mentioned Competent Authority has adopted relevant measures that address the significant non-compliance. To the extent permitted by applicable law, either Competent Authority may, and if it so wishes through the Co-ordinating Body Secretariat, involve other Competent Authorities that have this Agreement in effect with a view to finding an acceptable resolution to the issue.

6. A Competent Authority may terminate its participation in this Agreement, or with respect to a particular Competent Authority, by giving notice of termination in writing to the Co-ordinating Body Secretariat. Such termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of termination, all information previously received under this Agreement will remain confidential and subject to the terms of the Convention.

SECTION 9

Co-ordinating Body Secretariat

Unless otherwise provided for in the Agreement, the Co-ordinating Body Secretariat will notify all Competent Authorities of any notifications that it has received under this Agreement and will provide a notice to all signatories of the Agreement when a new Competent Authority signs the Agreement.

Done in English and French, both texts being equally authentic.