

**ARRANGEMENT BETWEEN THE COMPETENT AUTHORITY OF THE UNITED STATES OF AMERICA AND
THE COMPETENT AUTHORITY OF BERMUDA
ON THE EXCHANGE OF COUNTRY-BY-COUNTRY REPORTS**

Whereas the Government of the United States of America and the Government of Bermuda desire to increase international tax transparency and improve access 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 groups (“MNE Groups”) having a Reporting Entity resident for tax purposes in Bermuda operate through the automatic exchange of annual country-by-country reports (“CbC Reports”) by the Competent Authority of Bermuda (the “Bermuda Competent Authority”) with the Competent Authority of the United States of America (the “United States Competent Authority”), 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 United States of America and Bermuda require the Reporting Entity of an MNE Group to annually file a CbC Report;

Whereas the CbC Report is one element of a standardized approach to transfer pricing documentation which is intended to provide tax administrations with relevant and reliable information to perform an efficient and robust transfer pricing risk assessment analysis;

Whereas Article 3 (Exchange of Information) of the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland (on Behalf of the Government of Bermuda) for the Exchange of Information with Respect to Taxes, done at Washington on December 2, 1988 (the “TIEA”), authorizes the exchange of information by the Bermuda Competent Authority with the United States Competent Authority for tax purposes, including the automatic exchange of information;

Whereas the Bermuda Competent Authority recognizes that the United States of America has in place the appropriate safeguards with respect to confidentiality and use of information exchanged and the infrastructure for an effective exchange relationship;

Whereas the United States Competent Authority and the Bermuda Competent Authority (the “Competent Authorities”) desire to conclude this Arrangement on exchange of CbC Reports by the Bermuda Competent Authority based on domestic reporting and automatic exchange with the United States Competent Authority pursuant to the TIEA and subject to the confidentiality and other protections provided for in the TIEA, including the provisions limiting the use of the information exchanged under the TIEA;

Now, therefore, the Competent Authorities declare their intent as follows:

SECTION 1
Definitions

1. For the purposes of this Arrangement, the following terms have the following meanings:
 - a) 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;
 - b) the term “multinational enterprise group” or “MNE Group” means any Group that (i) includes two or more enterprises the tax residences of which are 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;
 - c) 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 that is defined in domestic law by the jurisdiction of tax residence of the Reporting Entity and is consistent with the 2015 Report (for purposes of the foregoing, the threshold includes any modifications that may result from the 2020 review contemplated in the 2015 Report);
 - d) 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;
 - e) 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;
 - f) 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 (for purposes of the foregoing, the information and format includes any modifications that result from the 2020 review contemplated in the 2015 Report);
 - g) the term “Fiscal Year” means the annual accounting period with respect to which the Reporting Entity prepares its financial statements; and

- h) the term “2015 Report” means the final 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.
- 2. The terms “United States,” “Bermuda,” “Competent Authority,” and “Covered Jurisdiction” have the meaning they have in the TIEA.
- 3. As regards the application of this Arrangement at any time by a Competent Authority, any term not defined in this Arrangement, unless the context otherwise requires or the Competent Authorities decide on a common meaning (as permitted by domestic law), is intended to have the meaning that it has at that time under the law of the Covered Jurisdiction applying this Arrangement, any meaning under the applicable tax laws of that Covered Jurisdiction prevailing over a meaning given to the term under other laws of that Covered Jurisdiction.

SECTION 2

Exchange of Information with Respect to MNE Groups

Pursuant to the provisions of Article 3 of the TIEA, the Bermuda Competent Authority intends to exchange with the United States Competent Authority annually on an automatic basis the CbC Report received from each Reporting Entity that is resident for tax purposes in Bermuda, provided that, on the basis of the information provided in the CbC Report, one or more Constituent Entities of the MNE Group of the Reporting Entity are resident for tax purposes in the United States, or are subject to tax with respect to the business carried out through a permanent establishment situated in the United States.

SECTION 3

Time and Manner of Exchange of Information

- 1. For the purposes of the exchange of information in Section 2, the amounts contained in each CbC Report are expected to be stated in a single currency, which is expected to be specified in the CbC Report.
- 2. A CbC Report is intended to be first exchanged by the Bermuda Competent Authority with respect to Fiscal Years of MNE Groups commencing on or after January 1, 2016. Such CbC Report is intended to be exchanged as soon as possible and no later than 18 months after the last day of the Fiscal Year of the MNE Group to which the CbC Report relates. CbC Reports with respect to Fiscal Years of MNE Groups commencing on or after January 1, 2017 are intended 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. Notwithstanding the foregoing, the exchange of CbC Reports is intended to commence only once this Arrangement becomes operative, and the Bermuda Competent Authority is intended to have until the expiration of the time periods set out in this paragraph or three months after this Arrangement becomes operative, whichever is later, to exchange the CbC Reports.
- 3. The Bermuda Competent Authority intends to exchange the CbC Reports automatically with the United States Competent Authority through a common schema in Extensible Markup Language (XML).

4. The Competent Authorities intend to work toward and decide on one or more methods for electronic data transmission including encryption standards.

SECTION 4

Collaboration on Transmission and Errors

1. The United States Competent Authority intends to notify the Bermuda Competent Authority when the United States Competent Authority has reason to believe, with respect to a Reporting Entity that is resident for tax purposes in Bermuda, that an error may have led to incorrect or incomplete information reporting or that there is noncompliance of the Reporting Entity with respect to its obligation under the domestic law of Bermuda to file a CbC Report. Upon notification, the Bermuda Competent Authority intends to take appropriate measures available under its domestic law to address the errors or the non-compliance with its domestic law described in the notice.
2. Within 15 days of successfully receiving a file containing the CbC Report in the time and manner described in Section 3, the United States Competent Authority is expected to provide notice of such successful receipt to the Bermuda Competent Authority. The notice need not express the United States Competent Authority's view about the adequacy of the information received or whether the United States Competent Authority believes that the Bermuda Competent Authority should take measures pursuant to paragraph 1 of this Section to address errors or non-compliance with its domestic law.
3. Within 15 days of receiving a file containing information that cannot be processed, the United States Competent Authority is expected to provide notice of such processing failure to the Bermuda Competent Authority.

SECTION 5

Confidentiality, Data Safeguards and Appropriate Use

1. All information exchanged is subject to the confidentiality and other protections provided for in the TIEA, including the provisions limiting the use of the information exchanged.
2. To the extent consistent with Article 3 of the TIEA, the United States Competent Authority intends to limit the use of the information by the United States Internal Revenue Service (the "IRS") to the uses described in this paragraph. In particular, information exchanged by means of the CbC Report should be used by the IRS for assessing high-level transfer pricing risks, base erosion and profit shifting related risks, and, where appropriate, for economic and statistical analysis. The information should not be used by the IRS 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. The United States Competent Authority acknowledges that information in the CbC Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and, consequently, the IRS should not base transfer pricing adjustments on the CbC Report. Inappropriate adjustments in contravention of this paragraph made by the IRS are expected to be conceded. The CbC Report data may be used as a basis for making further inquiries into the MNE Group's transfer pricing arrangements or into other tax matters in the course of a tax audit and, as a result of such further inquiries, making appropriate adjustments to the taxable income of a Constituent Entity.

3. To the extent permitted under applicable law, each Competent Authority intends to notify the other Competent Authority immediately regarding any cases of use or disclosure inconsistent with the rules set out in paragraphs 1 and 2 of this Section, including regarding any remedial actions or measures taken in respect of such cases that are inconsistent with the above-mentioned paragraphs.

SECTION 6 **Consultations**

1. Where a person considers that an adjustment to the taxable income of a Constituent Entity by the IRS, as a result of further inquiries based on the data in the CbC Report, results for such person in undesirable economic outcomes, including if such a matter arises for a specific business, and notifies the Bermuda Competent Authority, the Competent Authorities intend to endeavor to resolve the matter.
2. If any difficulties in the implementation of this Arrangement arise, either Competent Authority may request consultations to develop appropriate measures to fully implement this Arrangement.
3. The United States Competent Authority intends to consult with the Bermuda Competent Authority before the United States Competent Authority determines that there is a systemic failure by the Bermuda Competent Authority. For purposes of the foregoing, the term “systemic failure” means, with respect to the exchange of CbC Reports by the Bermuda Competent Authority with the United States Competent Authority, the Bermuda Competent Authority has suspended automatic exchange under this Arrangement (for reasons other than those that are consistent with the terms of this Arrangement) or has otherwise persistently failed to provide automatically the CbC Reports in its possession that are intended to be exchanged with the United States Competent Authority under Section 2 of this Arrangement.

SECTION 7 **Modifications**

This Arrangement may be modified by mutual written decision of the Competent Authorities.

SECTION 8 **Term of Arrangement**

1. This Arrangement becomes operative on the date of the later of the date of signatures below.
2. The Bermuda Competent Authority may provide notice in writing to the United States Competent Authority that it is temporarily suspending the exchange of information under this Arrangement based on its determination that the United States Competent Authority is or has been acting inconsistently with paragraphs 1 and 2 of Section 5 or paragraph 1 of Section 6 of this Arrangement, including the provisions of the TIEA referred to therein. Before making such a determination, the Bermuda Competent Authority intends to consult with the United States Competent Authority. A suspension of the exchange of information under this Arrangement is intended to become operative immediately and is intended to last until the United States Competent Authority establishes in a manner acceptable to both Competent Authorities that there

has been no act inconsistent with the paragraphs referenced above or that the United States Competent Authority has adopted relevant measures that address such inconsistencies.

3. Either Competent Authority may discontinue this Arrangement and is expected to provide notice of discontinuation in writing to the other Competent Authority. Such discontinuation is intended to become operative on the first day of the month following the expiration of a period of 12 months after the date of the notice of discontinuation. In the event of discontinuation, all information previously exchanged under this Arrangement remains confidential and subject to the terms of the TIEA.

For the Competent Authority of
the United States of America:

For the Competent Authority of
Bermuda:

Douglas W. O'Donnell
Commissioner, Large Business &
International, Internal Revenue Service

The Hon. David Burt JP. MP.
Minister of Finance, Ministry of Finance

Place

Place

Date

Date