

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

Whereas the Government of the United States of America and the Government of the Republic of India concluded an Agreement on the Exchange of Country-by-Country Reports on 27th March, 2019 at New Delhi (the "Agreement");

Whereas paragraph 2 of Article 2 of the Agreement provides that the Competent Authorities of the United States of America and the Republic of India "shall enter into an arrangement under the mutual agreement procedure provided for in Article 27 (Mutual Agreement Provision) of the Convention," in order to establish and set forth the procedures necessary to implement certain provisions in the Agreement;

Whereas the Competent Authorities recognize that each jurisdiction 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 Competent Authorities desire to conclude this Arrangement on exchange of CbC Reports based on domestic reporting and reciprocal automatic exchange pursuant to the Convention and subject to the confidentiality and other protections provided for in the Convention, including the provisions limiting the use of the information exchanged under the Convention;

Now, therefore, consistent with the Agreement and after consultations between the Competent Authorities, the Competent Authorities have reached the following arrangement (the "Arrangement"):

SECTION 1

Object, Scope and Definitions

1. As provided in paragraph 2 of Article 2 of the Agreement, this Arrangement establishes the procedures for time and manner of the exchange of CbC Reports described in Article 2 of the Agreement and sets forth the procedure for collaboration on transmission and errors in exchange of such CbC Reports. This Arrangement also provides for confidentiality, data safeguards and appropriate use with respect to such CbC Reports and provides for consultations with respect to such CbC Reports and modifications to, and term of, this Arrangement.

2. Terms used in this Arrangement have the same meanings as in the Agreement, unless otherwise specified in this Arrangement.

SECTION 2

Time and Manner of Exchange of Information

1. For the purposes of the exchange of information described in paragraph 1 of Article 2 of the Agreement, 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 should be first exchanged 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 a Competent Authority has 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 Competent Authorities intend to exchange the CbC Reports automatically 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 3

Collaboration on Transmission and Errors

1. Each Competent Authority intends to 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 noncompliance of the Reporting Entity with

respect to its obligation under the domestic law of the jurisdiction of the other Competent Authority to file a CbC Report. The notified 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 2, the Competent Authority receiving the file is expected to provide notice of such successful receipt to the Competent Authority providing the file. The notice need not express the receiving Competent Authority's view about the adequacy of the information received or whether the receiving Competent Authority believes that the providing 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 receiving Competent Authority is expected to provide notice of such processing failure to the providing Competent Authority.

SECTION 4

Confidentiality, Data Safeguards and Appropriate Use

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

2. To the extent consistent with Article 28 of the Convention, each Competent Authority intends to limit the use of the information by its tax administration to the uses described in this paragraph. In particular, information exchanged by means of the CbC Report should be used by the tax administration 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 tax administrations 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. Each 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 tax administration should not base transfer pricing adjustments on the CbC Report. Inappropriate adjustments in

contravention of this paragraph made by the tax administration are expected to be conceded in any competent authority mutual agreement proceedings under Article 27 of the Convention. 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. For purposes of the foregoing, the term "tax administration" means in the case of the United States, the Internal Revenue Service, and in the case of India, the authorities constituted under the Income-tax Act, 1961 for administration of the said Act.

3. To the extent permitted under applicable law, each Competent Authority should 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 5

Consultations

1. Where a person considers that an adjustment to the taxable income of a Constituent Entity, as a result of further inquiries based on the data in the CbC Report, results for such person in taxation not in accordance with the provisions of the Convention and presents its case to the Competent Authority specified in the Convention, the Competent Authorities acknowledge their obligation to endeavor to resolve the case under Article 27 of the Convention.

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. A Competent Authority should consult with the other Competent Authority before the first-mentioned Competent Authority determines that there is a systemic failure by the other Competent Authority, which under its domestic law may result in a local filing requirement for a Constituent Entity that is a member of an MNE Group for which CbC Reports are intended to be exchanged under the Agreement. For purposes of the foregoing, the term "systemic failure" means, with respect to the exchange of CbC Reports by a Competent Authority, such Competent Authority has

suspended automatic exchange under Article 2 of the Agreement (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 other Competent Authority under Article 2 of the Agreement.

SECTION 6

Modifications

This Arrangement may be modified at any time by mutual written determination of the Competent Authorities.

SECTION 7

Term of Arrangement

1. This Arrangement becomes operative on the later of (1) the date of the latter signature below and (2) entry into force of the Agreement. This Arrangement continues to be operative until the Agreement is terminated or until discontinued under paragraph 3 of this section, whichever occurs earlier.

2. A Competent Authority may provide notice in writing to the other Competent Authority that the exchange of information under the Agreement is being temporarily suspended based on its determination that the other Competent Authority is or has been acting inconsistently with paragraphs 1 and 2 of Section 4 or paragraph 1 of Section 5 of this Arrangement, including the provisions of the Convention referred to therein, or that the Competent Authority is or has been failing to provide timely or adequate information as intended under the Agreement and this Arrangement. Before making such a determination, the first-mentioned Competent Authority should consult with the other Competent Authority. A suspension of the exchange of information under this Arrangement becomes operative immediately and lasts until the second-mentioned 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 second-mentioned 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 becomes 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 the Agreement remains confidential and subject to the terms of the Convention.

For the Competent Authority of the
United States of America:

For the Competent Authority of the
Republic of India:

Douglas W. O'Donnell,
United States Competent Authority
Commissioner, Large Business &
International, Internal Revenue
Service

Rasmi Ranjan Das,
India Competent Authority
Joint Secretary, Foreign Tax & Tax
Research Division – I, Central Board
of Direct Taxes

Place

Place

Date

Date