

Joint Statement from the Competent Authority of the United States of America and the Competent Authority of the Federal Republic of Germany on the Implementation of the Spontaneous Exchange of Country-by-Country Reports for Fiscal Years Beginning in 2018

The Competent Authority of the United States of America and the Competent Authority of the Federal Republic of Germany (the “Competent Authorities”) 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 groups (“MNE Groups”) operate through the exchange of annual country-by-country reports (“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.

The Competent Authorities recognize that the laws of the United States of America and the laws of the Federal Republic of Germany require an MNE Group to annually file a CbC Report conforming to the requirements of 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 (“2015 Report”).

Article 26 of the Convention between the Government of the Federal Republic of Germany and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital and to Certain Other Taxes, signed at Bonn on August 29, 1989, as amended by the Protocol, signed at Berlin on June 1, 2006 (the “Convention”), authorizes exchange of information for tax purposes.

The Competent Authorities desire to exchange CbC Reports 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.

Each Competent Authority recognizes that the jurisdiction of the other Competent Authority has in place the appropriate safeguards with respect to confidentiality and use of information exchanged and the infrastructure for an effective exchange relationship.

The Government of the United States of America and the Government of the Federal Republic of Germany are negotiating an intergovernmental agreement and a competent authority arrangement to allow for the automatic exchange of CbC Reports. The Competent Authorities, without waiting for the negotiation’s conclusion, desire to exchange CbC Reports with respect to fiscal years of MNE Groups commencing on or after January 1, 2018 and before January 1, 2019.

Indeed, the Competent Authorities acknowledge that assessing high-level transfer pricing risks and other base erosion and profit shifting risks, as well as economic and statistical analysis, where appropriate, are critical objectives of exchanging CbC Reports that should not be postponed, and that CbC Reports for fiscal years of MNE Groups commencing on or after January 1, 2018 and before January 1, 2019 (“Spontaneously Exchanged CbC Reports”) are relevant to these objectives.

1. The Competent Authorities intend to spontaneously exchange the Spontaneously Exchanged CbC Reports pursuant to Article 26 of the Convention 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 Spontaneously Exchanged CbC Report relates.
2. The Competent Authorities intend to exchange the CbC Reports spontaneously through a common schema in Extensible Markup Language (XML).
3. 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. The notified Competent Authority intends to take appropriate measures available under its domestic law to address the errors described in the notice.
4. 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.
5. The Competent Authorities acknowledge the appropriate use conditions described in paragraphs 25 and 59 of the 2015 Report as endorsed by the OECD and in the G20 Leaders Communique in November 2015 and acknowledge that their laws and administrative practices comport with those conditions.
6. According to best cooperation practices and 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 4 and 5, including regarding any remedial actions or measures taken in respect of such cases that are inconsistent with the above-mentioned paragraphs.
7. 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 25 of the Convention.
8. Any terms used but not defined herein are intended to have the meanings provided in the relevant, existing, published procedures and guidance of the United States of America and the Federal Republic of Germany.

For the Competent Authority of
the United States of America:

Douglas W. O'Donnell

Commissioner, Large Business &
International, Internal Revenue Service

For the Competent Authority of the
Federal Republic of Germany:

Ernst Czakert

Head of Division, Exchange of
Information, Federal Ministry of Finance